OFFICIAL REPORT
AITHISG OIFIGEIL

Rural Economy and Connectivity Committee

Wednesday 13 December 2017

Session 5

The Scottish Parliament
Pàrlamaid na h-Alba

Wednesday 13 December 2017

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RURAL ECONOMY AND CONNECTIVITY COMMITTEE
36th Meeting 2017, Session 5

CONVENER

*Edward Mountain (Highlands and Islands) (Con)

DEPUTY CONVENER

*Gail Ross (Caithness, Sutherland and Ross) (SNP)

COMMITTEE MEMBERS

*Peter Chapman (North East Scotland) (Con)
*John Finnie (Highlands and Islands) (Green)
*Rhoda Grant (Highlands and Islands) (Lab)
*Jamie Greene (West Scotland) (Con)
*Richard Lyle (Uddingston and Bellshill) (SNP)
*Fulton MacGregor (Coatbridge and Chryston) (SNP)
*John Mason (Glasgow Shettleston) (SNP)
*Mike Rumbles (North East Scotland) (LD)
*Stewart Stevenson (Banffshire and Buchan Coast) (SNP)

*attended

THE FOLLOWING ALSO ATTENDED:

Claudia Beamish (South Scotland) (Lab)
Fergus Ewing (Cabinet Secretary for Rural Economy and Connectivity)

CLERK TO THE COMMITTEE

Steve Farrell

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Rural Economy and Connectivity Committee

Wednesday 13 December 2017

[The Convener opened the meeting at 09:30]

Forestry and Land Management (Scotland) Bill: Stage 2

The Convener (Edward Mountain): Good morning, and welcome to the 36th meeting in 2017 of the Rural Economy and Connectivity Committee. I remind everyone to ensure that their mobile phones are on silent.

Agenda item 1 is stage 2 consideration of the Forestry and Land Management (Scotland) Bill. I welcome the Cabinet Secretary for Rural Economy and Connectivity, Fergus Ewing, and his officials from the Scottish Government.

I declare an interest as a member of a farming partnership. That has little to do with the bill, but I wanted to put it on the record. Do any other members want to declare an interest?

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): I have a small registered agricultural holding.

Peter Chapman (North East Scotland) (Con): I, too, declare an interest as a partner in a farming partnership.

The Convener: Thank you.

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

It might be helpful to again explain the procedure briefly. There will be one debate on each group of amendments. I will call the member who lodged the first amendment in the group to speak to and move that amendment and to speak to all the other amendments in the group. I will then call any other members who have lodged amendments in that group. Members who have not lodged amendments in the group but who wish to speak should indicate that by catching my attention in the usual way. If the cabinet secretary has not already spoken on the group, I will invite him to contribute to the debate just before I move to the winding-up speech. The debate on the group will be concluded by my inviting the member who moved the first amendment in the group to wind up.

Following the debate on each group, I will check whether the member who moved the first amendment in the group wishes to press it to a vote or to withdraw it. If they wish to press ahead, I will put the question on that amendment. If the member wishes to withdraw their amendment after it has been moved, they must seek the agreement of other members to do so. If any member present objects, the committee will immediately move to the vote on the amendment. If any member does not want to move their amendment when called, they should say, “Not moved.” Please note that any other member present may move such an amendment. If no one moves the amendment, I will immediately call the next amendment on the marshalled list.

Only committee members are allowed to vote. Voting in any division is by a show of hands. It is important that members keep their hands clearly raised until the clerks have recorded the vote. The committee is required to indicate formally that it has considered and agreed each section of and schedule to the bill, so I will put a question on each section at the appropriate point. We aim to complete stage 2 today.

Section 22—Key terms in Part 4

The Convener: The first group of amendments is on the offence of unauthorised felling. Amendment 46, in the name of the cabinet secretary, is grouped with amendments 133 to 135.

The Cabinet Secretary for Rural Economy and Connectivity (Fergus Ewing): Amendment 46 amends the definition of “felling” in response to the evidence that was provided to the committee during stage 1. It will move us to a position in which “felling”, for the purposes of the bill, includes both its ordinary meaning and the intentional killing of trees. That is intended to capture what the sector would recognise as felling and to ensure that, for example, the poisoning or ring-barking of trees in order to kill them and move land out of forestry use is also caught. That is in line with the fundamental principle behind the approach to the well-established regulation of felling, which looks to control and maintain woodland cover and, if appropriate, apply restocking requirements. The sector supports the change.

Mr Chapman’s amendments would hardwire a small selection of the current exemptions to the offence of unauthorised felling into the primary legislation. As I have stated previously, I do not think that the face of the bill is the place for such exemptions. I see no reason to treat that small selection of current exemptions preferentially while setting aside those that allow other things. Those

include, for example, allowing power lines to be kept clear, exemptions for developments that have obtained planning permission to go ahead and exemptions for felling required by a water authority. I just give some examples of exemptions that Mr Chapman does not feel should be in the bill.

The amendments also fail to reproduce the exemptions that allow the felling of trees that are suffering from Dutch elm disease, for example, or for purposes associated with aviation, including obstructions to the approaches to and departures from aerodromes. Members will get the sense that there are a variety of circumstances in which felling might be appropriate or necessary so it is difficult to see why some should be in the bill and some should not. I am interested to hear what Mr Chapman says in explanation of his amendment.

In addition, I see nothing from Mr Chapman that caters for changes to be made to the exemptions that he has selected. They would be fixed and that is less flexible and proportionate than even the current arrangements, whereby much of what is in the Forestry Act 1967 can be changed by regulation. As you would expect, all the exemptions that are made in regulations can be changed. Mr Chapman's amendments would introduce a degree of inflexibility that is not appropriate or desirable and could cause unforeseen and, presumably, unintended consequences.

Amendments 133 to 135 would create a two-tier system of exemptions—one fixed in primary legislation without any route for change, were it to be required, and one set in regulations, with all the flexibility that comes with that approach, which is substantially supported by stakeholders.

As introduced, the bill poses a more practical regime in which all the exemptions are created by regulations and are found in one clear set of regulations that can be suitably adjusted if there is a good reason to do so. For the practitioner, having one clear set of regulations is always desirable.

I am absolutely certain that Mr Chapman lodged his amendments with good intentions, so I hope that my response has highlighted how far-reaching and important the exemptions are. We have to get this right, and I am working with stakeholders to ensure that the exemptions that we carry forward are fit for purpose. I am determined that we should use this as an opportunity to adjust them if that would be beneficial, rather than simply copying and pasting all of, or an arbitrary selection of, what is there now. For example, I know that some people have suggested exploring whether there is a way of increasing the protection of ancient or semi-natural woodlands by adjusting the exemptions based on volume, which are one set that Mr Chapman proposed to set in stone.

I am committed to considering such ideas so that the most appropriate arrangements are in place at the point of completing devolution in April 2019. As the committee has already heard, I am using the current exemptions as the basis for what we put into regulations. Changes will be made only when there is a good reason so to do and there will be no gap between the current exemptions and the new ones. I say that because the committee specifically said in its report that there should be no gap, which was sound advice that we should follow. That approach has broad support from the stakeholders that we have heard from. Confor does not support the amendments.

The regulation-making power for exemptions is affirmative, so Parliament will have the opportunity to scrutinise the result of the collaboration with the sector and other interested parties, which is a good thing.

I move amendment 46.

Peter Chapman: I am pleased to speak to amendments 133 to 135. As the cabinet secretary intimated, I lodged them with good intentions. We believe that the key definitions are in the Forestry Act 1967 and we want to ensure that they are in the bill.

Section 24 of the bill gives Scottish ministers the power to set out exceptions in regulations.

The cabinet secretary argues that that should remain a general and flexible power and he does not want the provision to set out specific detailed exceptions. However, given that the bill repeals the felling provisions from the Forestry Act 1967, we argue that specific cases that we want to be made exempt should be specified.

The three suggested provisions that we have taken from the Forestry Act 1967 would provide clarity for forestry landowners and widen the exceptions to the offence. That is why I intend to move amendments 133 to 135 in my name. I also support amendment 46 in the name of the cabinet secretary.

Stewart Stevenson: I will speak briefly to amendment 135, which is about the cubic size of trees that can be felled in three months. Putting that into primary legislation illustrates a more general problem: when you move something from secondary to primary legislation you remove the context. As a layperson—not a forester—I do not know what 5 cubic metres of wood is. Is it, for example, the size of the tree before you fell it? I suspect that that is not the case, as I cannot think of a single tree that would be 5 cubic metres before it is felled. Is it the result of what you get when you leave aside the brush that you are going

to discard? What does it mean? When you bring something like that into primary legislation without those sort of explanations, you create some dangerous issues—at least for the layperson. I accept that that might not be the case for the professional forester. As a layperson reading the amendment, it struck me that it would stand alone, without the context that it would have had in the secondary legislation.

Fergus Ewing: I recognise that Mr Chapman lodged amendments 133 to 135 with good intentions. I thank him for doing so and for allowing a debate on an important matter. However, we need the clarity and flexibility that will come from having the exemptions determined in secondary legislation. Amendments 133 to 135 would deny us that flexibility, which could be required in future. They would appear to demote the importance of exemptions in other areas, many of which I have covered, although there are many more.

It is largely a technical matter on which all the stakeholders appear to agree with the Government's approach. I commend that approach to the committee.

Amendment 46 agreed to.

The Convener: The next group of amendments is on remedial notices. Amendment 47, in the name of the cabinet secretary, is grouped with amendments 48, 52, 55, 57 to 75, 75A, 76 to 78, 78A, 79 to 81, 81A, 82 to 84, 84A, 85, 85A, 86, 86A, 87, 87A, 88, 89, 89A, 90 to 92, 97, 97A, 98 to 100, 100A, 101, 106 and 114.

Fergus Ewing: This large group of amendments encompasses three areas—two introduced by the Government and one by Mr Chapman—relating to the remedial notices provided for in part 4 of the bill. Remedial notices will be used where it appears to the Scottish ministers that a person is failing to comply with a permission, direction or registered notice. A remedial notice will set out what steps must be taken by a person in order to bring them back into compliance. Although the hope is that that will result in compliance, if it does not, ministers may then use their powers to step in.

For the sake of giving context to this large group of technical amendments, I will set out the sequence for felling permissions. A permission is granted for felling with conditions attached, usually relating to the restocking of the site. If one or more of those conditions is not complied with, ministers serve the person who is failing to comply with a remedial notice, setting out the steps that they must take in order to come back into compliance, perhaps in relation to the timing of restocking or the way in which it is to be done. If those steps are not taken, ministers may use their step-in powers to carry out those steps themselves. Finally, if ministers consider that it is reasonable to do so, they may reclaim the costs of taking those steps.

I thought it useful to run through that process. Remedial notices are a crucial part of the enforcement picture, in that they allow for the end that we all want to reach, which is for there to be compliance with conditions. In other words, conditions set out for restocking should be complied with, and the process allows us to have confidence that there is a mechanism to do that. However, remedial notices do not interfere with the ability to refer offences to the procurator fiscal. That option is open to ministers at any point in the process.

09:45

The first of my proposed changes is to make it clear that remedial notices may have conditions attached to them. That proposed change, which is dealt with by amendment 85 and the consequential amendments 81, 84, 86, 89, 97 and 100, will bring remedial notices into line with felling and restocking directions and will ensure that the Scottish ministers are able to specify in regulations what the conditions that are attached to remedial notices can include.

The second of my proposed changes is to bring remedial notices into line with permissions and directions as far as the ability to register is concerned. Amendments 87, 88 and 101 seek to do that by enabling registration; by underpinning registered remedial notices with an offence of failure to comply; and by providing for appeals to be made against refusal to vary or discharge a notice. The consequential amendments 47, 48, 52, 55, 57 to 80, 82, 83, 90 to 92, 98, 99 and 114 are important in ensuring that remedial notices can be enforced in the same way as permissions and directions under the bill.

Peter Chapman's amendments 75A, 78A, 81A, 84A, 85A, 86A, 87A, 89A, 97A and 100A seek to insert the word "reasonable" into all the Government amendments that insert references to conditions on remedial notices. I reassure the committee that ministers are bound to act reasonably in exercising all their powers. [*Laughter.*] Why that stimulates jocularity is a matter for members. We are bound by the law to act reasonably in exercising all our powers, including all those that are set out in the bill.

The power relating to the imposition of remedial notices and the inclusion of conditions is a discretionary power. All discretionary powers that ministers have must be exercised in accordance with the rules of administrative law, which means that they must be exercised in a manner that is reasonable and proportionate, and for proper

purposes. In Scotland, the Court of Session has judicial oversight, and decisions may be challenged through the process of judicial review. That has happened not infrequently, and "reasonableness" is at the very heart of that process. If a power is exercised in a manner—to paraphrase Lord Greene in the so-called Wednesbury case—that is so unreasonable that no reasonable authority could ever have come to that decision, the courts may interfere and hold that decision to be outwith the scope of the power that was conferred by Parliament.

I am very pleased that, in relation to decisions that I have taken over the years—I can think of four, which I will not name—the courts have eventually decided that I acted reasonably in all circumstances. That irrelevant personal observation aside—

The Convener: I am glad that you said that, cabinet secretary.

Fergus Ewing: That is an illustration of the fact that such matters are taken seriously.

I assume that Mr Chapman lodged his amendments with the laudable aim of protecting the regulated from unreasonable actions by their regulator, but I believe that, instead of providing clarity or reassurance, the addition of the word "reasonable" might cause confusion. After all, if one provides, in some circumstances, that ministers must act reasonably, that begs the question whether there is a difference between those circumstances and circumstances in which ministers have other discretionary powers in relation to the use of which the word "reasonable" does not appear. It begs the question whether different degrees of duty have been imposed on ministers.

Although I am absolutely certain that Mr Chapman's amendments are well intentioned, given that that potential for confusion exists, I respectfully invite him not to move his amendments.

I move amendment 47.

Peter Chapman: I will speak to my amendments 75A, 84A, 85A, 86A, 87A, 97A and 100A.

Although we support the addition of remedial notices and registered remedial notices, we do not agree with the wording

"a remedial notice (including any condition imposed on it)".

We think that that should read "including any reasonable condition imposed on it". We feel that the provision is too wide.

Putting the word "reasonable" before the word "condition" means that the condition imposed under the bill would have to relate to forestry. I would argue that adding "reasonable" to the conditions imposed on registered remedial notices would make for conditions that are fair and proportionate. As the cabinet secretary said, the Government is bound to act in a reasonable manner, so I take it from that that he can have no objection to the word "reasonable" appearing in the bill in the various provisions to which my amendments relate.

Stewart Stevenson: There is always a temptation to take a blanket approach to these things but, unfortunately, that leads us into temptations that we should avoid. I particularly want to look at amendment 84A, where the addition of the word "reasonable" would have the opposite effect to that which Mr Chapman suggested.

Mr Chapman said that the power is too wide and that the word "reasonable" needs to be added to amend it. As introduced, the bill states:

"The Scottish Ministers may vary or revoke a remedial notice."

If we add the cabinet secretary's amendment, that becomes:

"The Scottish Ministers may vary or revoke a remedial notice (including any condition imposed on it)".

When we add the word "reasonable", it becomes:

"The Scottish Ministers may vary or revoke a remedial notice (including any reasonable condition imposed on it)".

In other words, that would deny the Scottish ministers the opportunity to revoke a condition that was not reasonable. The addition of the word "reasonable" would therefore restrict the power to revoke a remedial notice.

One might make a logical case for adding the word "reasonable", but we have to go back to the legislation and look at the effect of every individual word that we add. I focus on amendment 84A only to exemplify the dangers of what Mr Chapman is proposing because it would have the opposite effect to the one that I think he seeks. I cannot support the amendment because it would restrict the ability to revoke remedial notices that Mr Chapman or others might conclude were not reasonable.

Mike Rumbles (North East Scotland) (LD): For a moment, I thought that I was on the set of the comedy production "Yes Minister" during that discussion about when the word "reasonable" actually means "unreasonable". I am astonished to hear the cabinet secretary and Stewart Stevenson make a marvellous case to make the word "reasonable" sound unreasonable. I do not accept that proposition. If they are moved, I will support Peter Chapman's amendments, which are full of reasonableness. I cannot think of better amendments that we have seen in this whole

process. They would restrict ministers' actions and would put that into law. I heard the cabinet secretary say that ministers are required by law to act reasonably—of course they are—but let us not forget that this is the law. We are making the law and putting it into black and white for the avoidance of doubt. To have to go to court to see whether ministers are acting reasonably or have not acted unreasonably would—

Stewart Stevenson: Will the member take an intervention?

Mike Rumbles: No, I think that you have had your say.

Stewart Stevenson: I have a question for the member.

Mike Rumbles: I am commenting on the minister's comments.

It would be strange to have to go to court to prove that ministers were not acting unreasonably, whereas there could be a requirement in black and white in the bill, which will become an act of the Parliament, for the minister to act reasonably with regard to the notices.

I go back to where I started. I thought that I was on the set of "Yes Minister" when I heard the English language being turned on its head. I am full of reasonableness and am a reasonable person, so I will certainly support Mr Chapman's reasonable amendments.

John Finnie (Highlands and Islands) (Green): I quite often think that I am on the set of "Yes Minister" when I hear Mr Rumbles speak.

I am also a member of the Justice Committee, which transacts a lot of business that places certain demands on ministers, and I have to say that we would be dealing with an endless number of amendments if we had to insert the word "reasonable" every time. We heard from Stewart Stevenson a very graphic and practical reason why we should not support Peter Chapman's amendments, and I will not support them.

Richard Lyle (Uddingston and Bellshill) (SNP): I know that Mr Rumbles is always a reasonable man, but I think that he just destroyed his own case. I am concerned that a lawyer will have a field day with that word, so I will support neither Mr Chapman nor the reasonable Mr Rumbles.

The Convener: I want to make an observation before I hand back to the cabinet secretary. As a remedial notice issued under the bill will have to come with reasonable conditions, there is no way that any conditions that are not reasonable can be removed, because they will not have been put in the notice in the first place. I think, therefore, that there is a very good argument for inserting the word "reasonable", and I will support Peter Chapman's amendments.

Fergus Ewing: I will make just three points. First, if Mr Chapman's amendments are accepted, we will be adopting in this statute an approach that is entirely inconsistent with the approach that we have taken in the Parliament and, indeed, that has been taken in the history of parliamentary draftsmanship. As I have said, such an approach is also unnecessary, given that the law extant in the UK is based on the Wednesbury test, and it will create confusion.

Moreover, there would, even in the bill, be unintended consequences. Mr Chapman's imposition of the word "reasonable" would apply to some matters and not to others. I am thinking of section 31, which confers quite wide powers on ministers if it appears that the felling of trees is required. For example, under section 31(6)(d), any regulations that are made may include

"the imposition of conditions on a felling direction".

Had Mr Rumbles seriously intended that a consistent approach be taken, the word "reasonable" should have appeared before the word "conditions" in that provision; after all, he would argue that the implication would be that we could act in unreasonable ways in felling directions. The approach therefore creates inconsistency even within the bill, because we would be explicitly bound to act reasonably in the case of remedial notices but not in other cases. Surely that is inconsistent and not something that any reasonably minded member would be liable to support.

Finally, the way in which Mr Chapman has worded his amendments leads to another presumably unintended consequence, which is that we would still be able to impose unreasonable remedial notices—we just would not be able to register them. The result of Mr Chapman's amendments is that we would be able to impose but not register unreasonable conditions, and I submit that that would certainly be unreasonable—and perhaps even perverse.

Amendment 47 agreed to.

Section 22, as amended, agreed to.

Section 23—Offence of unauthorised felling

Amendments 133 to 135 not moved.

Amendment 48 moved—[Fergus Ewing]—and agreed to.

Section 23, as amended, agreed to.

Sections 24 to 26 agreed to.

10:00

Section 27—Decisions on applications

The Convener: The next group of amendments is on the continuation of conditions on felling permissions. Amendment 49, in the name of the cabinet secretary, is grouped with amendment 50.

Fergus Ewing: I am grateful for the committee's consideration of the provisions in the bill relating to registration, and I hope that our discussion on 13 September served to clarify the intention behind the powers to register notices. Specifically, they are about ensuring that the conditions that ministers, as the forestry regulator, place on a piece of land bind future owners, with the entire focus on ensuring that conditions—or, as the case may be, directions—can be enforced, regardless of the number of changes in ownership that there have been, and that conditions come up in solicitors' ordinary property searches when a piece of land is being purchased.

Conditions are familiar to the forestry sector and routinely set out restocking requirements and timeframes. They may also set out how to ensure that operations respect buffer areas around certain rivers while salmon are spawning, for example, or stipulate that no operations may occur near capercaillie core areas during the breeding season. There could also be longer-term conditions relating to the management of important open space in a forest area to stop unwanted encroachment by natural regeneration of invasive species such as rhododendron.

As suggested, I have considered how best to ensure the proportionate and cost and resource-effective use of powers to register notices. At stage 1, the committee alluded to the risk-based approach to registration—which relates to the fact that it is a power and not an obligation to register in all instances—and the issue has now been given further thought. I consider a risk-based approach to registration to be the best way of using the power to ensure compliance with conditions such as restocking requirements on a felling permission. In future, owners will be required to advise the local conservancy of any plans to put their forest property on the market, and that will be a trigger for a conservancy—in other words, the new forestry division operating locally—to consider whether there are any conditions that require to be registered.

Amendment 49 seeks to put beyond any doubt that conditions can, on top of all the familiar conditions that I have mentioned, require those using felling permissions to provide information to ministers. The type of information that we envisage will be required might relate to, for example, the preparations for a sale of land so that ministers can take a risk-based approach to registering conditions. Amendment 50 makes it clear that the regulations on providing further information on how decisions will be made on felling permissions may include detail on how such requests for information will operate.

I believe that, taken together, the amendments support the proportionate use of the power to register that the committee rightly asked for, and I am pleased that Confor and Scottish Land & Estates, which had some initial reservations about registration, agree that this is the correct approach.

I move amendment 49.

Amendment 49 agreed to.

Amendment 50 moved—[Fergus Ewing]—and agreed to.

Section 27, as amended, agreed to.

Sections 28 and 29 agreed to.

Section 30—Felling of trees subject to tree preservation orders

The Convener: The next group is on the felling of trees subject to tree preservation orders. Amendment 51, in the name of the cabinet secretary, is grouped with amendments 53 and 54.

Fergus Ewing: Tree preservation orders—TPOs, as they are known—are used by planning authorities to protect trees in their areas in the interests of amenity or because they are of cultural or historical significance. As TPOs can impose prohibitions on the cutting down and lopping of trees, for example, there could be an overlap with the forestry felling regime. At the moment, however, such an overlap does not often occur.

Usually, TPOs are put in place when trees are currently subject to felling exemptions. Gardens, orchards and churchyards are currently exempt, as is the felling of small volumes of timber. As I have outlined, we are working with the sector to review the exemptions and, where appropriate, refine them. We expect the overlap to remain limited; however, to ensure that a person who wants to fell in an area where both regimes apply does not need to apply for permission twice, amendment 51 provides the Scottish ministers with the ability to refer an application to fell to the planning authority that made the TPO. If ministers decide to determine the application instead, amendment 51 preserves the requirement to consult the planning authority that made the TPO and to take account of its representations. It also disapplies the offence of felling without permission for actions taken in accordance with the TPO consent after such a referral, which is in line with current practice.

Amendment 54 requires ministers to consult a planning authority before issuing a felling direction if the direction relates to a tree that is subject to a TPO. That brings the felling direction provisions in line with the felling permission provisions. Amendment 53 is consequential to amendment 54.

I move amendment 51.

Amendment 51 agreed to.

Amendments 52 and 53 moved—[Fergus Ewing]—and agreed to.

Section 30, as amended, agreed to.

Section 31—Felling directions

Amendment 54 moved—[Fergus Ewing]—and agreed to.

Section 31, as amended, agreed to.

Section 32 agreed to.

Section 33—Restocking directions

Amendment 55 moved—[Fergus Ewing]—and agreed to.

Section 33, as amended, agreed to.

Sections 34 to 36 agreed to.

Section 37—Registration of notices of variation

The Convener: The next group is on the definition of "owner". Amendment 56, in the name of the cabinet secretary, is grouped with amendments 109 and 113.

Fergus Ewing: Amendment 109 defines what is meant by "owner" for the purposes of the bill. Amendment 113 is consequential to amendment 109. We are seeking to define "owner" for the purposes of the bill in order to put it beyond doubt that, when ownership has transferred by a means that does not trigger a change to the title sheet of the land register, we mean it to refer to the most recent owner. For example, when ownership is transferred on inheritance, that is often carried out by docket transfer, with no change to the title.

Amendment 56 replaces "each owner" with "the owner" in section 37, regarding registration of notices of variation. The term "the owner" is used throughout the rest of the bill. The effect of amendment 56 is to bring section 37 into line with other sections.

I move amendment 56.

Amendment 56 agreed to.

Amendments 57 to 64 moved—[Fergus Ewing]—and agreed to.

Section 37, as amended, agreed to.

Section 38—Registration of notices of discharge from compliance

Amendments 65 to 71 moved—[Fergus Ewing]—and agreed to.

Section 38, as amended, agreed to.

Section 39—Meaning of "register" in Chapters 6 and 7

Amendment 72 moved—[Fergus Ewing]—and agreed to.

Section 39, as amended, agreed to.

Section 40—Registration of notices under Chapters 6 and 7: descriptions of land

Amendment 73 moved—[Fergus Ewing]—and agreed to.

Section 40, as amended, agreed to.

Section 41—Receipt of notices under Chapters 6 and 7 by Keeper

Amendment 74 moved—[Fergus Ewing]—and agreed to.

Section 41, as amended, agreed to.

Section 42—Requests for information

Amendment 75 moved—[Fergus Ewing].

Amendment 75A moved—[Peter Chapman].

The Convener: The question is, that amendment 75A be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Chapman, Peter (North East Scotland) (Con)
Greene, Jamie (West Scotland) (Con))
Mountain, Edward (Highlands and Islands) (Con)
Rumbles, Mike (North East Scotland) (LD)

Against

Finnie, John (Highlands and Islands) (Green)
Grant, Rhoda (Highlands and Islands) (Lab)
Lyle, Richard (Uddingston and Bellshill) (SNP)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Ross, Gail (Caithness, Sutherland and Ross) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)

The Convener: The result of the division is: For 4, Against 7, Abstentions 0.

Amendment 75A disagreed to.

Amendment 75 agreed to.

Amendments 76 and 77 moved—[Fergus Ewing]—and agreed to.

Section 42, as amended, agreed to.

Section 43 agreed to.

Section 44—Site visits with consent of owner or occupier

Amendment 78 moved—[Fergus Ewing].

Amendment 78A not moved.

Amendment 78 agreed to.

Amendment 79 moved—[Fergus Ewing]—and agreed to.

Section 44, as amended, agreed to.

Section 45—Power of entry: unauthorised felling

Amendment 80 moved—[Fergus Ewing]—and agreed to.

Section 45, as amended, agreed to.

Section 46 agreed to.

Section 47—Power of entry: failure to comply

10:15

Amendment 81 moved—[Fergus Ewing].

Amendment 81A not moved.

Amendment 81 agreed to.

Amendments 82 and 83 moved—[Fergus Ewing]—and agreed to.

Section 47, as amended, agreed to.

Section 48—Remedial notices

Amendment 84 moved—[Fergus Ewing].

Amendment 84A not moved.

Amendment 84 agreed to.

Amendment 85 moved—[Fergus Ewing].

Amendment 85A not moved.

Amendment 85 agreed to.

Section 48, as amended, agreed to.

Section 49—Remedial notices: offence

Amendment 86 moved—[Fergus Ewing].

Amendment 86A not moved.

Amendment 86 agreed to.

Section 49, as amended, agreed to.

After section 49

Amendment 87 moved—[Fergus Ewing].

Amendment 87A not moved.

Amendment 87 agreed to.

Amendment 88 moved—[Fergus Ewing]—and agreed to.

Section 50 agreed to.

Section 51—Step-in power

Amendment 89 moved—[Fergus Ewing].

Amendment 89A not moved.

Amendment 89 agreed to.

Amendments 90 to 92 moved—[Fergus Ewing]—and agreed to.

Section 51, as amended, agreed to.

Section 52—Powers of entry and step-in power: application to court

The Convener: The next group is on powers of entry and step-in power. Amendment 93, in the name of the cabinet secretary, is grouped with amendments 94 to 96.

Fergus Ewing: Amendment 93 adds summary sheriffs to the list of persons who, under section 52, can issue warrants to authorise entry to land where entry "has been refused" or is "reasonably expected" to be refused, where "the land is unoccupied" or where the owner "is temporarily absent". That means that the full list of those who can issue warrants for the purposes of section 52 would be sheriffs, summary sheriffs and justices of the peace. It is Government policy to include summary sheriffs in provisions for the granting of warrants such as those in section 52.

Amendment 94 is consequential to amendment 93.

Amendment 96 has the effect that references to "the Scottish Ministers" in sections relating to site visits, powers of entry and step-in powers, will include

"persons authorised ... by the Scottish Ministers".

That means that ministers will be able to use contractors or consultants, as the need arises—for example, to carry out site visits to check compliance with conditions relating to a protected site.

Amendment 95 is consequential to amendment 96.

I move amendment 93.

Amendment 93 agreed to.

Amendment 94 moved—[Fergus Ewing]—and agreed to.

Section 52, as amended, agreed to.

Section 53 agreed to.

Section 54—Powers of entry and step-in power: further provision

Amendments 95 and 96 moved—[Fergus Ewing]—and agreed to.

Section 54, as amended, agreed to.

Section 55—Step-in power: recovery of expenses

Amendment 97 moved—[Fergus Ewing].

Amendment 97A not moved.

Amendment 97 agreed to.

Amendment 98 moved—[Fergus Ewing]—and agreed to.

Section 55, as amended, agreed to.

Sections 56 to 58 agreed to.

Section 59—Time limit for prosecution

Amendment 99 moved—[Fergus Ewing]—and agreed to.

Section 59, as amended, agreed to.

Section 60—Appeals against decisions by Scottish Ministers

Amendment 100 moved—[Fergus Ewing].

Amendment 100A not moved.

Amendment 100 agreed to.

Amendment 101 moved—[Fergus Ewing]—and agreed to.

Section 60, as amended, agreed to.

Section 61—Information, research and education etc

The Convener: The next group is on information, research and education. Amendment 13, in the name of Peter Chapman, is the only amendment in the group.

Peter Chapman: In my opinion, amendment 13 is important. It would change the word "may" to "must" in section 61, which would mean that ministers must carry out research. We have spoken to many stakeholders who all agreed that there will never be a time when we do not need more research and education on tree health.

I move amendment 13.

Stewart Stevenson: The effect of changing "may" to "must" would be extremely slight. Were the bill to say "must", the Scottish ministers would need to do research only once. That would be the effect. We know that research of the kind that is described is being undertaken: in a practical sense, the effect of the amendment would be that it would need to be done only once.

Fergus Ewing: Research, development and education are extremely important functions in respect of forestry. The Scottish Government is committed to carrying out those functions as appropriate. I can inform members that in 2016-17, the Scottish Government, through the Forestry Commission Scotland, commissioned nearly £1 million of Scotland-specific research and development. I have the full details here, but I wanted to start off with that clear commitment.

Although I appreciate what Peter Chapman is trying to achieve with amendment 13, I would like to offer an alternative approach, which I believe is to be preferred. I am also concerned that the amendment would oblige Scottish ministers to carry out functions even when the functions are not necessary. I acknowledge that that may seem unlikely when it comes to research into tree health; we are sadly unlikely to run out of avenues for research on that front in any of our lifetimes.

However, amendment 13 covers much more than research: it covers all the matters that are listed in section 61, to which members may wish to refer. It was necessary to draft section 61 quite broadly because the provisions are intended to be enabling in nature, but amendment 13 would oblige ministers to do all of the following: to

"conduct research and inquiries ... collect data and publish statistics ... provide education and training"

and

"encourage or assist other persons to do any of"

those things in the exercise of the bill's functions.

Furthermore, amendment 13 would apply to all the ministers' functions under the bill. Amendment 13 therefore goes much wider than, for example, the duty to carry out research into tree health or to provide training for machine operators in forestry, which I believe may be the intention behind the amendment. Such research and training are vital and are currently carried out without such an obligation being in place. The Forestry Act 1967 does not place such a duty on the forestry commissioners but, rather, enables them to carry out such work. As the duty would apply to all ministers' functions under the bill, it would include functions relating to the management of non-forested land and to the regulatory functions that we have discussed in relation to the previous groups.

Even in relation to the forestry parts of the bill, it is unclear what amendment 13 would mean. Consider, for example, an obligation to provide education and training in connection with the duty to prepare a forestry strategy. That duty rests on

Scottish ministers—currently, on me. Maybe Mr Chapman believes that I need to be educated or trained prior to undertaking the duty that would be imposed on me in order to prepare the forestry strategy. That is what his amendment would mean, but I presume that that is not something that he had in mind when he lodged it. Ministers may well consider it appropriate that the strategy includes material on education and training in the forestry sector, but that is not the same as a duty to provide education and training in connection with the duty to prepare the strategy.

A second example of the difficulties is that amendment 13 would oblige ministers to assist others personally, which would, again, have consequences that were, I presume, unintended. For example, the private sector has an obligation to collect data and publish statistics. Amendment 13 would impose an obligation on ministers to provide assistance in that, which might have the effect of imposing obligations on taxpayers to cover expenses that properly should be covered by private sector businesses. Again, I do not think that Mr Chapman intends that that be the case, but it would be a consequence because of how the amendment is framed and the wording of section 61.

Nonetheless, I understand the motivation behind amendment 13, and I have sympathy with anyone who is attempting to provide a sure footing for important issues. I am committed to ensuring that tree health research continues at the levels that we need. Indeed, on the day of the stage 1 debate, we announced that Forest Research would continue as an agency of the forestry commissioners: I will visit the Forest Research station at the Bush estate tomorrow.

I would prefer to work with Mr Chapman between now and stage 3 to develop a duty that focuses on having suitable arrangements in place to carry out tree health research. An amendment that focuses on maintaining or improving our capacity would be a proportionate way forward. I point out that ministers have agreed across the UK an equitable split of the £11 million core budget for cross-border functions, which is currently held in the Department for Environment, Food and Rural Affairs. The majority of that funding relates to research, which would be carried out in accordance with the published "Science and innovation strategy for forestry in Great Britain".

10:30

The Convener: Jamie Greene has asked to come in; I will let him do that. If any other member wants to come in before I ask Peter Chapman to wind up, let me know.

Jamie Greene (West Scotland) (Con): After listening to the cabinet secretary with great interest, I have a few points to make on amendment 13.

The cabinet secretary has identified a technicality issue with changing the word "may" to "must". Would it place a duty on the minister as an individual to undertake the activities that are listed in section 61(a) to (d)—including research, education and publishing data—or would it create a duty on the minister to ensure that they take place? I am unsure, so I ask for clarification.

In essence, I support what Peter Chapman is trying to achieve. It is up to him whether to press the amendment. However, in much of the evidence that we have taken, different factions have expressed genuine concern about the restructuring of the Forestry Commission Scotland and its becoming, in essence, a Government department. Those witnesses said that it is vital that we protect some of the commission's key functions, including publishing data, providing education and training, and conducting research.

I welcome the cabinet secretary's proposal to strengthen the bill. The problem with the word "may" is that it also means that Scottish ministers may not do what is outlined in the section. Peter Chapman is trying to strengthen section 61 to ensure that those current functions of the Forestry Commission are not lost as a result of the bill or any restructuring that takes place. That is why I am keen to support his amendment 13.

The Convener: Cabinet secretary, there was a question there, which I will give you a chance to answer. However, I will let Mike Rumbles speak first.

Mike Rumbles: Section 61 is an enabling section. It seems reasonable to me that the minister is being enabled to do all that it says, so I am perfectly happy with the word "may" rather than an instruction such as "must".

Stewart Stevenson said that if we put the word "must" into section 61, ministers would have to do what it says only once, but if we leave the word "may" in it, they would not have to do it at all. However, I trust the cabinet secretary and other ministers to operate under this enabling legislation. I do not trust everything that ministers do, but I do in this case, so I am happy not to support amendment 13.

The Convener: Cabinet secretary, would you like answer Jamie Greene's question?

Fergus Ewing: I am sorry, but I did not quite catch it. I wonder whether he could reframe it for my benefit.

Jamie Greene: I am happy to. It was probably more an observation. It concerned your statement

that changing the word "may" to "must" would mean that the duties would be on the minister as an individual as opposed to on the minister and his department.

Fergus Ewing: The objection to using the word "must" is that the obligation would then be to carry out research regardless of whether it was required. There is no question: we require research. We must have research because of the threats to tree health by Hylobius, for example. It is one of the biggest worries in forestry, as members know and as I am sure the committee has heard from stakeholders. There is no question about that. Our concern was that using the word "must" would mean that we had an obligation to carry out research of any sort, whether or not it is required.

I reassure members that the function will, in essence, be carried out at UK level. We have reached an agreement with the UK Government and the Welsh Administration about how that will be done. We have reached an agreement about how the budget should be allocated, and we have agreed that the various Administrations will take the lead in specific areas. We have agreed that the Welsh Government will take the lead on research; that the research that is to be carried out will be determined by all the relevant bodies, the UK Government and the devolved Administrations; and that it will be done in accordance with the "Science and innovation strategy for forestry in Great Britain". There is already a settled approach to conducting research, and many excellent staff in Scotland are working on that.

John Finnie: I am reassured by what you have said about the collaborative work that will be done at GB level. Can you confirm that part of the liaison regarding research will be done on an international basis?

Fergus Ewing: Of course. Scientists have regard to all the evidence, regardless of where it is gathered. It is important for scientists to look at the work of others across Europe and beyond, as they do. Mr Finnie makes an important point.

The Convener: I invite Peter Chapman to wind up and to indicate whether he wishes to press amendment 13 or to withdraw it.

Peter Chapman: I absolutely believe that "may" is not a strong enough word to use in section 61. I do not understand Stewart Stevenson's point. He said that if "must" were used, ministers would have to do the specified activities only once, which does not seem to be a logical argument.

However, I accept the cabinet secretary's point about the effect of my amendment on section 61(d), which could result in private companies being encouraged or assisted to undertake some of the activities that are mentioned, which was not my intention.

I welcome the cabinet secretary's offer to work with me. I think that section 61 needs to be strengthened, but if Mr Ewing is minded to work to achieve a better solution, I am prepared to accept that offer, and so seek to withdraw amendment 13.

Amendment 13, by agreement, withdrawn.

Section 61 agreed to.

Sections 62 to 64 agreed to.

After section 64

The Convener: The next group of amendments is on organisational structures. Amendment 102, in the name of Rhoda Grant, is grouped with amendments 103 to 105, 107, 108 and 136.

Rhoda Grant (Highlands and Islands) (Lab): When we took evidence on the bill, there was concern that the new structures would mean a loss of the Forestry Commission's well-regarded forestry expertise. The Government has ignored the pleas not to change the structures. My amendments attempt to protect forestry expertise and keep the new organisation rooted in the industry and the communities that it will serve.

Amendment 102 seeks to create the post of chief forester. It is modelled on the statutory provision that requires local authorities to have certain professional heads of service, such as a chief finance officer, a chief education officer and a chief social work officer. It establishes a requirement for such a post but leaves ministers to specify in regulations what professional qualifications would be mandatory for anyone who sought to occupy the post. Under amendment 107, those regulations would be subject to the negative procedure.

Amendment 103 is similar to amendment 102, but it seeks to create the post of area forester. It does not prescribe the areas—it leaves that to the Scottish ministers. As I understand it, there are currently five divisions, which could be designated as areas to be covered by area foresters. Amendment 103 allows ministers to specify in regulations what qualifications or experience the prospective postholder would be required to have. Under amendment 105, those regulations would be subject to the negative procedure.

Amendment 104 seeks to put in place a national advisory group, which would not be a formal commission but a group that ministers could appoint to advise them. Once again, the amendment is designed to keep forestry rooted in the economic environment and social principles that should guide our forestry policy.

Amendment 105 sets up similar local groups in areas that could follow current forestry divisions.

I hope that those amendments will keep the best of what the industry and communities cherish in the Forestry Commission, keeping the management of forestry close to its stakeholders by giving them a real say in policy making.

I turn to amendment 136, in the name of Claudia Beamish. One of the most contentious parts of the bill is the part that is not included. I support amendment 136, which provides for the publication of the Government structures so that they can be scrutinised, which would give some comfort to those in the industry.

I move amendment 102.

Claudia Beamish (South Scotland) (Lab): Good morning. I speak in support of amendment 136, about which my office and other offices have had considerable dialogue with some stakeholders in the lead-up to the meeting.

In its stage 1 report, the Rural Economy and Connectivity Committee recommended that Scottish ministers should set out details of how they should manage and administer their forestry responsibilities and that members should also consult on and notify the Parliament of any significant future change in those arrangements. The committee also noted that stakeholders had expressed wide-ranging concerns about the separation of the functions of the Forestry Commission.

I would like to quote some of the consultation responses to the bill. The first question of the consultation was:

"Our proposals are for a dedicated Forestry Division in the Scottish Government (SG) and an Executive Agency to manage the NFE. Do you agree with this approach?"

The consultation analysis says:

"Around 5 in 20 respondents agreed with the proposal, while 13 in 20 disagreed, and around 2 in 20 did not answer the question."

I am not sure how it could be "around" five, but they are not my words. It states that, among organisational respondents,

"The three most frequently-made points by those disagreeing with the proposals were that the management of Scotland's forests:

- Should be or remain independent and be the responsibility of a stand-alone organisation which is separate from government.
- Should be managed by forestry experts/professionals, rather than by civil servants.
- Should sit within a single organisation and not be divided between two different bodies."

Amendment 136 seeks to reflect the committee's recommendations, as I have understood them, and to address the concerns that have been expressed by some stakeholders, including the Forestry Commission Scotland staff union, by requiring ministers to lay before the Parliament a report setting out the administrative arrangements they intend to make for the carrying out of their functions under the bill. That would include the arrangements intended for the establishment of any agency, its governance, the different roles and responsibilities of senior officers, the financial accountability, the establishment of advisory groups and the exercising of the power to form companies and so on under section 62. The amendment would also require ministers to consult appropriate persons on any future significant amendments and to notify the Scottish Parliament.

As I have highlighted, several forestry stakeholders have raised concerns about the new arrangements. They have explained their belief that Scotland's forests should sit within one organisation. As I said, that issue was raised in the consultation on the bill.

I have not lodged an amendment to directly address that issue, partly because I do not sit on the Rural Economy and Connectivity Committee—I wish to show respect to the committee—but also partly due to advice that I have received about the legislative complexities. I do not wish to lodge an amendment that could be in any way construed as a wrecking amendment.

However, stakeholders are concerned about the bill's proposals that could sacrifice the long-established brand identity, the culture of joint working and knowledge sharing and the practical attitude of the current organisational arrangements.

It would be welcome if the cabinet secretary were able to address those concerns, which—as he will be aware—were raised at the consultation stage. Amendment 136 is an attempt to address those concerns constructively. Although I live in hope that the cabinet secretary might consider accepting the amendment, I appreciate that that might be a tall order at stage 2. Nevertheless, if the cabinet secretary were to consider, before stage 3, holding discussions on the issue of a single organisation with those who continue to express those concerns, I would be keen to participate.

Although I do not have a vote, I also support Rhoda Grant's amendments, which I think will enable a more outward-looking arrangement, especially if there is a chief forester to oversee things.

10:45

Jamie Greene: I thank Rhoda Grant and Claudia Beamish for lodging their amendments. I will start with amendment 102, on the creation of a chief forester. I believe that the aim of appointing a chief forester reflects a view that was taken in the committee's stage 1 report. It is a necessary function and a welcome addition to the bill, so I support amendment 102, in the name of Rhoda Grant.

However, I have concerns about amendments 103, 104 and 105. Putting in primary legislation that we must appoint area foresters is, in my view, a step too far in creating additional and perhaps unnecessary bureaucracy in the organisational structures of the future agency. I believe that the division of Scotland into administrative areas for forestry may be unnecessary when looking at a national outlook and strategy. I believe that decisions should be taken by the chief forester, which is why I am happy to support amendment 102, which would create such a role, but I think that, in putting area foresters into primary legislation, we would be setting in law a structure that might not meet the future governance needs of forestry.

In a similar tone, amendments 104 and 105 concern the creation of a national advisory group and local partnership groups. I have absolutely no doubt that Rhoda Grant has good intentions behind those amendments, but I feel that what those amendments propose would add unnecessary bureaucracy to proceedings. In any case, they could have unintended consequences in the sense that decisions made by future Governments could be hindered or disrupted if there were too many layers and levels in the decision-making process.

That said, I am happy to support amendment 107, which reverts regulatory powers to the chief forester. That amendment supports amendment 102, which creates that role, and it logically places regulatory responsibilities on that new role, if it goes ahead. However, I cannot support amendment 108, because it links back to the creation of the area foresters, which I do not support.

Finally, I will address amendment 136, in the name of Claudia Beamish. In my view, it is a welcome addition to the bill that addresses many of the concerns that we heard about over the course of stage 1 proceedings. I pay particular attention to proposed new subsection (3B), which I believe would increase accountability and scrutiny on the part of the Parliament of the Government's next steps as it makes the bold move of integrating the Forestry Commission's functions into its own departments. It also includes welcome additions to address some of the concerns that we heard about from witnesses concerning the loss of expertise, restructuring and the financial reporting and accountability of the department, as listed in proposed new subsection (3B). I would, therefore, be happy to support amendment 136. I also think that the cabinet secretary should take heed of the general comments that Claudia Beamish has made about the intention behind the amendment.

John Finnie: I speak in support of the amendments in the names of my colleagues Rhoda Grant and Claudia Beamish.

On amendment 104, we heard that there is a lot of affection for the Forestry Commission as it is presently structured, but we also heard concerns about the potential absorption of the commission into the Scottish Government and the potential loss of forestry expertise and professionalism.

Amendment 102 is entirely in line with not only what was said in the stage 1 report but also, as Rhoda Grant said, local authorities' positions. It is also entirely in line with the views of people involved in the Scottish Government, such as the chief medical officer, the chief scientist and the chief planner.

On amendment 103, it will surprise no one that the Green Party wants things to be done from the local level up. Rather than there being an exclusive focus on the central functions, it is important that there is a clear responsibility laid out for the area. I therefore take issue with Jamie Greene's view that the amendment is not needed. That approach will always be needed. There is no point in having central functions unless there is something to oversee.

Jamie Greene: I share the view that decisions can and should be made at a local level. However, should it not be for the chief forester to make decisions about how he organises his team structurally instead of having that imposed on him in primary legislation? That is why there is a concern around the creation of area foresters.

John Finnie: Whoever the person—he or she—who assumes that role might be, it is important that the Parliament gives a clear steer that local decision making is important. That could be followed by a more strategic approach.

I hope that the Scottish Government will support the creation of a national advisory group. That would be entirely consistent with decisions that it has taken in relation to other matters—the committee has dealt with issues around the National Council of Rural Advisers, for instance.

I will support amendment 105, although I have some concerns about subsection 1(b), which deals with the establishment of working groups. I hope that that can be looked at creatively, as a number of local fora exist that could fulfil some if not the

vast majority of those functions. Again, the proposal is entirely in line with the design that we are looking for. We want collaborative local working.

I will say no more about Claudia Beamish's amendment than that I fully support it and the direction that it would take us in.

Stewart Stevenson: I will pick up on wording again. Amendment 102 talks about the chief forester "assisting and advising" Scottish ministers. I might know what is meant by "advising", but I am not quite sure what is meant by "assisting". Amendment 104 says that the national advisory group will simply advise ministers—it does not use the word "assist". Amendment 105 talks about the ministers being assisted and advised.

Leaving aside the immense burden of the hugely complex—that is just my personal view—oversight that appears to be desired, what will happen when the pieces of advice from those different levels are in conflict with each other? There would be a mandatory requirement for advice to be taken. If we were to accept the proposals in total—

John Finnie: Would you not accept that that is day-to-day politics? Ministers are often compelled to make decisions on the basis of competing pieces of advice.

Stewart Stevenson: Of course, and ministers discharging their responsibilities under this legislation—and many other pieces of legislation—would wish to consult and take advice, because anything that helps ministers to do the best job that they can do is to be welcomed.

However, I am not clear why we should create a structure in which the national advisory group, in particular, can be seen to undercut and cut across the functions of a chief forester. I think that that is not a comfortable place to be legislatively. Local partnership groups could be in conflict with the national advisory group, and that is not particularly helpful. I would have thought that, if you were going to create structures like this, there should be empowerment of local decision making, as there is at the moment and as there would be even if we did not pass any of the amendments.

I just think that the construct is difficult; I am not necessarily tackling the wider issues of principle, which we will hear about from the minister. If we were to pass all the proposals, the construct could be a recipe for unhelpful conflicts. I also do not know what the word "assisting" means.

Mike Rumbles: I am always astonished by the contributions of my colleague Stewart Stevenson, and I am astonished that he does not know what the word "assisting" means. It is perfectly obvious to me what "assisting and advising" ministers is all about—but there we are.

I am also astonished to be in complete agreement with my colleague John Finnie.

John Finnie: Maybe I should check my notes.

Mike Rumbles: Obviously, he is also astonished by that. I am with him 100 per cent on everything that he has said on the issue, which is really important. The amendments reflect the evidence that we received at stage 1 and the stage 1 report that we produced, and I hope that the minister will accept them.

We have not heard the minister's response yet, but I understand that ministers can find a reason to reject any Opposition amendment through focusing on a particular word because it could cause confusion or difficulties and that they can persuade members to vote against such amendments. As I said, we have not heard the minister's response yet—indeed, I could be completely surprised by what he says; he could say that the amendments are really good and that the Government accepts them—but I would prefer to see amendments 102 to 105 and 107, 108 and 136 in the bill. If the minister thinks that they could be improved at stage 3, I would still prefer to see them included in the bill at this stage, because they reflect the evidence that we have received, the committee report that we produced, and probably—although we do not know this yet—the views of the majority of committee members. I hope that we will see the amendments included in the bill. If the minister thinks that they need to be tweaked, he can lodge amendments that we can all support at stage 3.

Peter Chapman: It appears that there is a lot of astonishment around the table. I reflect that to some extent, because I am quite astonished that I agree with a lot of what of Stewart Stevenson has said. I am not so astonished that I agree with my colleague Jamie Greene, as that is almost expected, but I agree that the chief forester position received wide support when the committee took evidence. Many stakeholders agreed that that is an important post to put in place. Therefore, I agree with amendment 102, but I do not agree with amendments 103 to 105. The process would be too bureaucratic and cumbersome, and it would add another level of complication. Too many layers can stop things happening.

Amendment 107 is okay, because it refers back to the chief forester, but I do not agree with amendment 108.

I welcome and support Claudia Beamish's amendment 136. It would be a fair addition to the bill, and there is a lot of support for it out there. The union people in particular are certainly keen to

see something along those lines included in the bill.

Fergus Ewing: I thank Rhoda Grant and Claudia Beamish for lodging their amendments, for the way in which they have spoken to them, and for the whole tone of the debate.

I will start off with a very clear response to Mr Rumbles's invitation. I have quite a lot to say, some of which is intended for the consumption of people around Scotland who work for Forestry Commission Scotland or Forest Enterprise Scotland. I want to place that on the record to provide reassurances to them, and that may take some time. However, for the sake of clarity, I make an undertaking to members that I will continue, as we did prior to stage 2, to work closely with all members prior to stage 3 with a view to going as far as we possibly can to meet members' desires and, in particular, to bring some of the proposals into the bill if we can. I start off with that undertaking—in this non-scripted part of my remarks—as I very much want to continue the way that we have been working thus far. We can make progress on many aspects.

11:00

I fully recognise the importance of ensuring that people who have the right professional skills, knowledge and experience are engaged in the development and the delivery of forestry in Scotland.

A concern about centralisation exists. Over the summer, I visited all the conservancies, and I heard that concern from individuals. I want to make it absolutely clear that we will not be bringing in people from the local offices to work in the centre. We value people who work in the conservancies. They work locally, that work is essential, and it is essential that they continue to do that work. Meeting them in person allowed me to see how important that was, so I am grateful for the opportunity to state that today.

I want to go further. I want to expand on the existing skills development mechanisms within Forestry Commission Scotland and Forest Enterprise Scotland, and continue to involve foresters and other professionals in the discharge of the Scottish Government's forestry function.

Our proposed structure is to establish a dedicated division and to retain an agency, which we will call forestry and land Scotland. Both will be part of the Scottish Government. That is as close to a lift and shift of the current arrangements as possible. We are transferring the functions of forestry commissioners to Scottish ministers and transferring the existing staff to undertake the functions.

The decisions on the new structures that I announced in May preserve—they do not disrupt or separate—the distinction between the two entities, Forestry Commission Scotland and Forest Enterprise Scotland. Therefore, we will retain two entities.

I am not suggesting that this has been the case today, but some criticism has been based on a false premise that there is one entity at the moment. There is not. There are, and there will continue to be, two entities.

Retaining the separation between the two parts maintains, as I think that Simon Hodge said in evidence, the valuable financial flexibilities that FES currently enjoys. For example, the ability to carry over funding from one year to another would be lost without the retention of FES in the agency format. That was a significant and important practical factor.

Throughout the process, the day-to-day forestry functions and operations should be disrupted as little as possible. Therefore, I restate to those with an interest that there will be no compulsory redundancies in FES or FCS as a result of devolution; local offices will remain as the vital source of regional knowledge, skills and delivery; and forestry decisions will continue to be taken by forestry experts. I specifically give those undertakings on the record today. They are very sincerely and freely given, because those are the right things to do.

Staff will remain as civil servants on transfer to the Scottish Government. Put simply, the same experts will be delivering the same functions as they do now, at a national level and locally.

A forestry devolution programme board involving senior staff from the Scottish Government and the Forestry Commission has been established to plan for and manage the transition. As part of that work, I am grateful for the positive leadership role that Simon Hodge, the chief executive of FES, and Jo O'Hara, the head of Forestry Commission Scotland, are showing in leading on the implementation of the new agency and new division projects. A lot of work has been going on, is going on, and will continue to be done behind the scenes, and rightly so.

The projects are based on skills retention, including identifying ways to continue to recognise and value engagement with professional bodies, and identifying jobs that require specific professional qualifications, such as in forestry. Staff interchange between the division and the agency, both of which will be part of the Scottish Government, will continue to be encouraged, as it is now between FCS and FES.

This next part is important, and I think that it deals substantially with Claudia Beamish's

amendment 136. At stage 1, I committed to providing a statement providing further details on how ministers will manage and administer their forestry responsibilities and the relationship between the dedicated forestry division and forestry and land Scotland. I confirm that I will make that statement available before stage 3. I want to do that, so that members have the statement that will cover those matters prior to stage 3.

When I say prior to stage 3, that obviously includes leaving sufficient time for members to consider the statement in order to decide whether further amendments would be required as part of the stage 3 debate. I want to make it clear today that I have decided to make that statement prior to stage 3.

Such an approach was supported by the committee at stage 1 and by stakeholders in their stage 2 briefings. Confor, for example, states that the details of a chief forester post, the division and forestry and land Scotland would be better set out in a statement "alongside the bill". I will come back to the amendment on that, because it is very important.

On Rhoda Grant's amendments 102 and 107, I am giving active consideration to having a chief forester role as a way of recognising the importance of specialist forestry expertise. I have been taking soundings from stakeholders and although there is widespread support for the idea of a chief forester or a similar role, there does not seem to be a common view on the role or its title. It seems to me that further work is required on what the role or purpose of that post would be. Some people envisage the post as having a regulatory function; other people envisage it in relation to skills and education and ensuring the importance of delivering those. In other words, different people have different concepts and ideas about what such a role would involve. In urging Rhoda Grant not to press her amendments, I will say that I am sympathetic to her proposal and I undertake to give it further consideration. I also undertake to have further discussions on that topic with members who wish to do so, including committee members and members who take an interest but are not on the committee, such as Claudia Beamish, prior to stage 3.

As for amendments 103 and 108 on "area foresters", I am not quite clear about their effect. We have five conservancies at the moment and we already have five conservators. The use of the word "conservator" is very important. It gives a sense of a calling and the ethos of those who work for the Forestry Commission. It is a great personal achievement to become a conservator and those who become conservators are themselves professional foresters who are proud of their calling. I am not quite clear what is meant by "area foresters" as opposed to "conservators" and how that would fit in, although I know that the amendments are well intentioned.

I have already made a commitment that the local office network will remain and that forestry decisions will continue to be made by forestry experts. I want to make a further comment about the proposal in amendment 102 to have a chief forester. I have had an opportunity to examine how similar roles have been established in Government. It is important to note that that research has revealed that the roles set out in statute are limited to the non-ministerial office holders as determined by the Scotland Act 1998—that founding statute of devolution. Those are the chief medical officer for Scotland, the keeper of the registers of Scotland, and other chief roles such as the chief planner and the chief economist. In other words, the type of role that I think we are speaking about is not set out in statute.

We also need to be mindful of which issues are reserved and which are devolved. The civil service is a reserved matter, and we need to be mindful of that when framing legislation. There are two types of chiefs at the moment—statutory chiefs and non-statutory chiefs—and we have to be careful about how we proceed. However, I think that we can find a way forward, working together, so that the people who have informed this debate—the stakeholders—can realise their objectives with a bit of further thought and work.

I would also respectfully point out to Rhoda Grant that other than the reference to assisting and advising, amendment 102 provides no clear definition of what the role of chief forester would be. In fact, it would allow Scottish ministers to "prescribe qualifications", so it would confer a backroom power on ministers to have a substantial role, which may not match the thinking of many of those who might want a chief forester to have a degree of independence from ministers. That is one further matter that needs to be explored.

Jamie Greene: Is there not a slight contradiction in what the cabinet secretary says? The fact that amendment 102 does not prescribe the role gives ministers some flexibility to work with protagonists to develop it. Amendment 102 is an important amendment, but all that it does is to ensure that the role is created, and there is widespread support for that.

Fergus Ewing: I understand Mr Greene's point, but I respectfully suggest that the way in which amendment 102 would amend the bill would mean that the chief forester would not be independent of the Scottish ministers. Perhaps many of the people who advocate there being a chief forester do so precisely because they would like that role

to be independent of the Scottish ministers. It is certainly the case that the role is not particularly well defined in amendment 102, other than the amendment saying that the role should involve "assisting and advising" the Scottish ministers.

However, I re-emphasise the point that I am sympathetic to the proposal and believe that further work together would result in us being able to overcome some of the technical objections. That is why I hope that Ms Grant and Ms Beamish will not press or move their amendments. Nonetheless, I have some further comments to make because of the wide range of topics that the amendments cover.

I wholeheartedly endorse the need for close engagement with stakeholders across all aspects of forestry. It is essential. I hope that I have illustrated by the work that we have done since the most recent Scottish election that we regularly engage with stakeholders nationally and locally on specific issues, for example through the reference group that was set up to advise on the delivery of Jim Mackinnon's recommendations, and on more general matters, such as through the forestry summits that I have hosted or the regional groups that provide local advice and input to the work of Forestry Commission Scotland and Forest Enterprise Scotland.

Effective engagement is essential. I undertake to give further thought to whether there is scope for incorporating some commitment to that effect in the bill. I am not yet convinced that that is the best way forward, because any Government will wish to ensure that there is local and national engagement with stakeholders. The Scottish Government as a whole cannot be accused of failing to do that. Nonetheless, I am happy to give the undertaking that we will give further consideration to the amendments. I do so because I am aware that people still have some issues.

I hope that my commitment to provide, in advance of stage 3, a statement on the organisational arrangements to help ministers to deliver their forestry functions will persuade Claudia Beamish that amendment 136 should not be moved at this point. I say that as someone who has engaged substantially with workforce representatives, with whom I had at least three meetings of substance over the past year or so, and who will continue to do so.

Claudia Beamish: If the statement is not to be in the bill—understandably, because it might need some adaption in future—will the cabinet secretary clarify what its status will be?

Fergus Ewing: I hesitated slightly because it is partly a legal question, but it would be a statement of ministerial intent similar to any ministerial statement. It is intended to clarify the questions that underlie amendment 136. I hope that that is helpful to Ms Beamish. The statement will certainly cover many of the areas on which she seeks assurances through the amendment.

There is another, important reason why I cannot support amendment 136. Constraining ministers' powers to commence legislation that Parliament has already approved strikes at the core element of any act. I am not aware of any precedent of such a provision in any bill that prevents the bill from becoming law once it is enacted. Once Parliament decides to pass a law, that is its decision.

I should say that I am informed that it is extremely rare in statute—I may have said that it has not occurred at all. I am not aware of any such example but I will just correct that point for that record.

11:15

It is essential for the effective operation of the legislative process that ministers have control over when they bring provisions into force. Amendment 136 refers only to two sections, but in effect it would mean that we could not practicably commence large parts of the act. For example, we could not commence part 4 without laying the report, otherwise two felling authorisation processes would be in place. That would subvert the very advice that the committee gave; it wanted there to be no gap in respect of the felling provision. That is a technical point, which needs to be considered in any event. We could be looking at delayed timescales for implementation and increased uncertainty for the sector and for staff. I am sure that that is not what anyone would wish to achieve.

The approach that I have been suggesting throughout stage 2 is one that illustrates the effectiveness of the parliamentary process. We are not seeking to score points but working together to get the best outcome. I have given what I hope are clear undertakings today, signifying that the matters raised are substantial and important and that I respect the views of members. I undertake not only to make a statement but to work specifically on the content and substance of the amendments from now until stage 3, in particular in relation to having a chief forester post, something to which I am sympathetic, but also in relation to the other matters that we have discussed today.

I hope, given my somewhat long contribution today—for which I apologise—that members will accept at face value that my undertakings to work with members over the coming weeks are genuine and sincere. On that basis, I urge Ms Grant not to press amendment 102 at this time.

Rhoda Grant: I appreciate members' comments, which were really helpful. My amendments are really designed to try to keep forestry rooted in the industry and the communities that it serves. I appreciate that there are layers in my amendments that may be a bit off-putting to some people, but those layers are designed to try to keep forestry well within the industry at not only the national level but the local level. I appreciate what people are saying about some of the layers and that they may be too complex. However, I hope that I can take the cabinet secretary up on his offer to look at putting in legislation something regarding the conservators and the like, which would keep that aspect local.

Stewart Stevenson had issues with the word "assisting". I realised very quickly that he was not assisting me with his comment. [*Laughter.*] If that helps to explain it a little better to him, I hope that he will take it in the spirit that it was meant.

The most important amendment is amendment 102, on the chief forester. I think that it was very clear in the evidence that we got that such a role was wanted by the industry and indeed by communities. The reason that the definition is vague is to allow that consultation to go ahead so that the role will be meaningful and supported by the whole industry and the communities. It is important to put that down on the bill as a marker. The definition can be changed at stage 3 to make it fit people's views and aspirations, but it is important to put it down today as a marker and then maybe consult on the other amendments in the group to see whether they could be shaped in a way that would assist with the post of chief forester and keep it locally placed.

I press amendment 102.

The Convener: The question is, that amendment 102 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Chapman, Peter (North East Scotland) (Con)
Finnie, John (Highlands and Islands) (Green)
Grant, Rhoda (Highlands and Islands) (Lab)
Greene, Jamie (West Scotland) (Con))
Mountain, Edward (Highlands and Islands) (Con)
Rumbles, Mike (North East Scotland) (LD)

Against

Lyle, Richard (Uddingston and Bellshill) (SNP)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Ross, Gail (Caithness, Sutherland and Ross) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)

The Convener: The result of the division is: For 6, Against 5, Abstentions 0.

Amendment 102 agreed to.

Amendments 103 to 105 not moved.

Section 65—Regulations

Amendment 106 moved—[Fergus Ewing]—and agreed to.

Amendment 107 moved—[Rhoda Grant].

The Convener: The question is, that amendment 107 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Chapman, Peter (North East Scotland) (Con)
Finnie, John (Highlands and Islands) (Green)
Grant, Rhoda (Highlands and Islands) (Lab)
Greene, Jamie (West Scotland) (Con))
Mountain, Edward (Highlands and Islands) (Con)
Rumbles, Mike (North East Scotland) (LD)

Against

Lyle, Richard (Uddingston and Bellshill) (SNP)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Ross, Gail (Caithness, Sutherland and Ross) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)

The Convener: The result of the division is: For 6, Against 5, Abstentions 0.

Amendment 107 agreed to.

Amendment 108 not moved.

Section 65, as amended, agreed to.

Section 66 agreed to.

Section 67—Interpretation

Amendment 109 moved—[Fergus Ewing]—and agreed to.

Section 67, as amended, agreed to.

Section 68 agreed to.

Schedules 1 and 2 agreed to.

Sections 69 to 71 agreed to.

Schedule 3—Modifications of enactments

Amendment 110 moved—[Richard Lyle]—and agreed to.

Amendment 111 to 114 moved—[Fergus Ewing]—and agreed to.

Schedule 3, as amended, agreed to.

Sections 72 and 73 agreed to.

Section 74—Commencement

The Convener: Amendment 136, in the name of Claudia Beamish, has already been debated with amendment 102. Claudia—do you intend to move or not move the amendment?

Claudia Beamish: I do not intend to move the amendment today, but I would like to make a brief comment, if that is acceptable.

The Convener: Yes—you may make a very brief comment.

Claudia Beamish: Thank you. I note what the cabinet secretary has said. I also note the comments from Jamie Greene, John Finnie, Mike Rumbles, Peter Chapman, and Rhoda Grant, which are on the record. I think that it is extremely important that the discussion continue because there appears to be some confusion in the minds of stakeholders and elsewhere. I ask the cabinet secretary to correct me if appropriate, but I think that he said that it would be a case of "lift and shift", as much as possible, of the arrangements of the agencies as they are now, when they are devolved. However, that is not the perception—I use that word with care—of some stakeholders who have discussed what will happen with me and others, so I have a concern about that.

I note the offer of a statement before stage 3, which I urge the cabinet secretary to make sure comes in good time, but there are still serious concerns. I intend to discuss the possibility either of a member of the committee lodging an amendment at stage 3 on a unified forestry agency, or my lodging a better-developed version of amendment 136, if we cannot make progress with the cabinet secretary—which I, as an optimist, hope we will be able to do.

The Convener: I do not propose to open up the matter to further debate, because we have already debated it, and the cabinet secretary has given an undertaking. I note Claudia Beamish's comments. I take it that you do not wish to move amendment 136.

Claudia Beamish: I do not wish to move it.

Mike Rumbles: I would like to move amendment 136, convener.

Amendment 136 moved—[Mike Rumbles].

The Convener: The question is, that amendment 136 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Chapman, Peter (North East Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Greene, Jamie (West Scotland) (Con))
Mountain, Edward (Highlands and Islands) (Con)
Rumbles, Mike (North East Scotland) (LD)

Against

Finnie, John (Highlands and Islands) (Green)
Lyle, Richard (Uddingston and Bellshill) (SNP)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Ross, Gail (Caithness, Sutherland and Ross) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)

The Convener: The result of the division is: For 5, Against 6, Abstentions 0.

Amendment 136 disagreed to.

Section 74 agreed to.

Section 75 agreed to.

Long title

Amendment 115 moved—[Fergus Ewing]—and agreed to.

Long title, as amended, agreed to.

The Convener: That ends stage 2 consideration of the bill. The bill will now be reprinted as amended, and will be available online and in hard copy at 8.30 am tomorrow. Parliament has not yet determined when stage 3 will take place, but members can now lodge stage 3 amendments at any time with the legislation team. Members will be informed of the deadline for amendments once it has been determined.

That concludes today's business.

Meeting closed at 11:27.

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