



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

RURAL AFFAIRS AND ENVIRONMENT COMMITTEE

Wednesday 23 February 2011

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RURAL AFFAIRS AND ENVIRONMENT COMMITTEE

5th Meeting 2011, Session 3

CONVENER

*Maureen Watt (North East Scotland) (SNP)

DEPUTY CONVENER

*John Scott (Ayr) (Con)

COMMITTEE MEMBERS

*Karen Gillon (Clydesdale) (Lab)

*Liam McArthur (Orkney) (LD)

*Elaine Murray (Dumfries) (Lab)

*Peter Peacock (Highlands and Islands) (Lab)

*Stewart Stevenson (Banff and Buchan) (SNP)

*Bill Wilson (West of Scotland) (SNP)

COMMITTEE SUBSTITUTES

Rhona Brankin (Midlothian) (Lab)

Jim Hume (South of Scotland) (LD)

Jamie McGrigor (Highlands and Islands) (Con)

Sandra White (Glasgow) (SNP)

*attended

THE FOLLOWING GAVE EVIDENCE:

David Barnes (Scottish Government Rural and Environment Directorate)

Richard Lochhead (Cabinet Secretary for Rural Affairs and the Environment)

Angela Robinson (Scottish Government Rural and Environment Directorate)

CLERK TO THE COMMITTEE

Peter McGrath

LOCATION

Committee Room 5

Scottish Parliament

Rural Affairs and Environment Committee

Wednesday 23 February 2011

[The Convener *opened the meeting at 09:32*]

Subordinate Legislation

Muntjac Keeping (Scotland) Order 2011

The Convener (Maureen Watt): Good morning. I welcome everyone to the committee's fifth meeting in 2011. I remind everyone to switch off their mobile phones and brambles as they impact on the broadcasting system.

Our first item of business is consideration of an affirmative instrument. I welcome to the committee Richard Lochhead MSP, the Cabinet Secretary for Rural Affairs and the Environment; Angela Robinson, policy adviser on non-native species; and Andrew Crawley, from the Scottish Government legal directorate.

This item enables members to ask questions about the content of the order before we have a formal debate on it. Officials can contribute under this item but cannot participate in the debate. The Subordinate Legislation Committee has made no comment on the order. I invite the cabinet secretary to make a brief opening statement.

Richard Lochhead (Cabinet Secretary for Rural Affairs and the Environment): Good morning. I look forward to spending the next few hours with the committee. I am here to ask the committee to approve the Muntjac Keeping (Scotland) Order 2011. If approved, the order will have the effect that it is an offence to keep any type of muntjac deer except under a licence. The Muntjac Keeping (Scotland) Regulations 2011 set out the conditions necessary to prevent an animal from escaping into the wild.

As the committee will be well aware from its consideration of the Wildlife and Natural Environment (Scotland) Bill, the Scottish Government's approach to invasive non-native species is guided by the internationally recognised three-stage approach. Prevention is given the highest priority as the most effective and least environmentally damaging intervention. That approach can be seen in the improvements that are being progressed in the bill and through this order.

No known populations of muntjac are established in the wild in Scotland and we would like to maintain that situation. The aim of the order,

together with the regulations, is to do precisely that. It will help to prevent muntjac from becoming established by requiring them to be kept only under licence in a secure place. The order will also enable ministers to use powers in the Destructive Imported Animals Act 1932 to deal with wild or escaped muntjac.

Muntjac deer are originally from Asia and are already an invasive non-native species in England and Wales. They are widespread in south and central England but have a patchy distribution between the Humber and the Scottish border.

Muntjac deer are destructive animals, or invasive species, to use the more modern term. They can have significant negative impacts in the wild on both biodiversity and economic interests. They browse on ground flora species, such as bluebells, that are not generally grazed by native herbivores and damage coppiced broad-leaved woodlands and crops.

Scottish Natural Heritage considers that, if muntjac were to be established in Scotland, they would pose a serious risk to the priority habitats of upland oak wood and mixed ash wood. In England and Wales, significant economic costs have resulted from damage caused to new forestry plantations, as well as to cereal and orchard crops. In addition, similar to other deer species, if muntjac stray on to roads, they can cause traffic accidents. This preventive order should ensure that muntjac do not cause negative economic and environmental impacts in Scotland.

Elaine Murray (Dumfries) (Lab): I would like a bit of background information. The paper says that there are known populations of muntjac in Fife. Presumably they are in a wildlife park or something of that nature. Is there any reason to keep muntjac in Scotland?

Richard Lochhead: That is the case. There are a couple of deer parks and so on in Fife that we understand contain the species.

On whether muntjac should be kept in Scotland, our approach is that, if they are to be kept in Scotland, they should be regulated and licensed. It is really up to the individual owners, but we want to ensure that we do not allow non-native species to interact with our wild populations in Scotland.

Elaine Murray: My feeling is that the extent of the licence fee may not be sufficient to discourage people from keeping muntjac.

Richard Lochhead: As a Government and as a regulator, we are concerned first to ensure that we protect Scotland's biodiversity and native species and prevent the other damage that I referred to in my opening remarks. Our approach is to ensure that there is proper regulation in place.

John Scott (Ayr) (Con): You cite bluebells as being part of the diet of the muntjac. The briefing note mentions it, too. However, bluebells are really only in evidence between April and June. What do they eat for the rest of the year?

Richard Lochhead: I am not an expert on the diet of the muntjac deer.

John Scott: Their diet is cited as a reason for not allowing them to breed, so I assumed that there were other things that they eat that are unacceptable.

Richard Lochhead: Coppiced woodlands are affected. As I have mentioned, cereal crops and orchard crops are also under threat because of the feeding and foraging habits of the muntjac.

John Scott: Apart from eating bluebells, they are really just the same as other deer.

Richard Lochhead: As I mentioned, one of the reasons why muntjac are seen as such a nuisance is the damage that they have caused south of the border. We are learning from what has happened there, where the population has expanded. That is why SNH has advised us that the species is highly damaging.

Liam McArthur (Orkney) (LD): A fairly high number of road accidents south of the border seem to be caused by muntjac. Is there something in the behaviour of muntjac that makes them more likely to be near roads?

Richard Lochhead: That is certainly the anecdotal evidence from south of the border. As I am sure many people are aware, all deer pose some kind of threat to road traffic in Scotland, but there does seem to be something about the behaviour of this species that has led to the statistics you see before you.

Angela Robinson (Scottish Government Rural and Environment Directorate): Muntjac exist in high density and breed all year round so, where they do exist, there is a higher likelihood of road traffic accidents. Twenty-five per cent of accidents involving deer in England are put down to muntjac.

The Convener: What is SNH's equivalent south of the border doing to control the outbreak?

Richard Lochhead: Shooting them, I expect. Measures are being taken south of the border but, because there is a sizeable population, it will be quite a task.

The Convener: If there are no further questions, we move to the formal debate on the order. I remind everyone that officials cannot participate in the debate. I invite the cabinet secretary to move the motion.

Richard Lochhead: It was brought to our attention during our consultation on the Wildlife and Natural Environment (Scotland) Bill that we should promote action on this issue as soon as possible rather than waiting for the new legislative framework to be put in place, hence the order being introduced at this stage.

I move,

That the Rural Affairs and Environment Committee recommends that the Muntjac Keeping (Scotland) Order 2011 be approved.

Motion agreed to.

09:40

Meeting suspended.

09:42

On resuming—

Reservoirs (Scotland) Bill: Stage 2

The Convener: Item 3 is consideration of stage 2 amendments to the Reservoirs (Scotland) Bill. Members should have in front of them their copies of the bill, the marshalled list of amendments and the groupings list. Richard Lochhead remains with us, as he will for most of today's meeting. I welcome his officials for this part of the meeting. I remind members that officials cannot participate in the debate.

Section 1—Controlled reservoirs

The Convener: The first group of amendments is on orders under section 1: consultation and procedure. Amendment 1, in the name of the cabinet secretary, is grouped with amendment 96.

Richard Lochhead: These amendments have been drafted in response to concerns raised by the committee and they address issues relating to how a controlled reservoir is defined under the bill.

Amendment 1 addresses recommendation 11 in the committee's stage 1 report. It ensures that, before making any change to the minimum volume threshold of 10,000m³, ministers must consult the Institution of Civil Engineers. That will ensure that any change is based on sound technical advice and is supported by the practitioners.

The Scottish Government agreed to lodge amendment 96 in response to a recommendation from the Subordinate Legislation Committee so that the power in section 1(4) should be subject to affirmative procedure.

I move amendment 1.

Amendment 1 agreed to.

Section 1, as amended, agreed to.

Section 2—Controlled reservoirs: supplementary

The Convener: The next group is on the meaning of "controlled reservoir". Amendment 2, in the name of the cabinet secretary, is grouped with amendments 3 and 4.

Richard Lochhead: I am delighted to speak to amendments 2, 3 and 4, which have been drafted in response to stakeholder advice and concerns raised by the committee relating to how a controlled reservoir is defined under the bill.

Amendment 2 addresses recommendation 12 in the committee's stage 1 report. It removes the

inclusion of any structural feature, such as pipes, which controls the collection of water into the reservoir. Amendment 3 is consequential to amendment 2.

Amendment 4 removes the exclusion of ash and silt lagoons from the bill so that they will now be subject to the requirements of the legislation. That has been deemed necessary following the catastrophic incident in Hungary last year and is thoroughly supported by stakeholders.

I move amendment 2.

Amendment 2 agreed to.

Amendments 3 and 4 moved—[Richard Lochhead]—and agreed to.

Section 2, as amended, agreed to.

Section 3—Reservoir managers

09:45

The Convener: The next group is on the meaning of "reservoir manager". Amendment 5, in the name of the cabinet secretary, is the only amendment in the group.

Richard Lochhead: In recommendation 8 of its stage 1 report, the committee raised concerns about whether the definition of "reservoir manager" captured all the appropriate parties. We have taken the opportunity to review the definition. Amendment 5 simplifies and clarifies how a reservoir manager is defined under the bill. It applies a clear test to all persons

"managing or operating a reservoir",

and that test applies to Scottish Water and to any other person, irrespective of their status. A public or charitable body would be a reservoir manager if it managed or operated a reservoir.

That approach ensures that someone who only rents or uses the reservoir is not defined as the reservoir manager in cases where they do not have the power to manage or operate it. An angling club or another organisation might use or lease the reservoir only for recreational purposes, and the amendment ensures that it is not made responsible for supervision and maintenance requirements under the bill, unless it has the power to operate the dam.

I move amendment 5.

Amendment 5 agreed to.

Section 3, as amended, agreed to.

Sections 4 and 5 agreed to.

Section 6—Guidance by SEPA: management of reservoirs

The Convener: The next group concerns guidance on the management of reservoirs. Amendment 6, in the name of the cabinet secretary, is grouped with amendment 7.

Richard Lochhead: Amendments 6 and 7 require the Scottish Environment Protection Agency to publish

“by such date as the Scottish Ministers direct”

guidance on the management of controlled reservoirs and guidance on how multiple owners of reservoirs should co-operate. The measures require SEPA to consult the Institution of Civil Engineers and others before publishing the guidance. The amendments ensure that the guidance is appropriate and technically well founded, and is agreed with the practitioners of the legislation. Such guidance will provide clarity on the new reservoir safety process, both for practitioners and for reservoir managers.

I move amendment 6.

Amendment 6 agreed to.

Amendment 7 moved—[Richard Lochhead]—and agreed to.

Section 6, as amended, agreed to.

Sections 7 and 8 agreed to.

Section 9—Controlled reservoirs register

The Convener: The next group is on the supervision of measures specified in inspection reports. Amendment 8, in the name of the cabinet secretary, is grouped with amendments 20, 40, 42, 45 to 47, 54, 56, 61 and 99.

Richard Lochhead: These amendments have been lodged to improve the process for the supervision of any safety measure that is specified in a reservoir inspection report. The reservoir manager must ensure that such safety measures are carried out under supervision. Amendments 40, 54, 56 and 61 give persons who are qualified to be inspecting engineers the responsibility for supervising safety measures in an inspection report. The bill as introduced places that responsibility on supervising engineers. That is a change from the current responsibilities under the Reservoirs Act 1975, and the amendments address concerns that were raised by a number of stakeholders about the appropriate roles for supervising and inspecting engineers.

Amendments 8, 20, 42, 45 to 47 and 99 introduce the concept of “other qualified engineer”. Such an engineer, who must be qualified to be an inspecting engineer, can be appointed by a reservoir manager to supervise the measures that are specified by the inspecting engineer. Avoiding the situation where the measures must be supervised by the inspecting engineer will allow

reservoir managers to benefit from competition between different tenders for the required work.

I move amendment 8.

Amendment 8 agreed to.

The Convener: The next group is on the recommendation by a supervising engineer that a reservoir should be inspected: notice to SEPA and inclusion in controlled reservoirs register etc. Amendment 9, in the name of the cabinet secretary, is grouped with amendments 10, 57 and 58.

Richard Lochhead: These amendments make minor changes to the process whereby a supervising engineer recommends inspection of a reservoir. Amendment 58 inserts a requirement on the supervising engineer to include in any inspection recommendation a date for when the inspection should take place. It also requires the supervising engineer to copy the recommendation to SEPA.

Amendments 9 and 10 are consequential to amendment 58 and require SEPA to include any such recommendations in its controlled reservoirs register. SEPA can then monitor whether the inspection has taken place. The amendments will ensure that SEPA holds a complete, holistic view of the current status of all reservoirs in Scotland.

Amendment 57 is a minor drafting change.

I move amendment 9.

Amendment 9 agreed to.

Amendment 10 moved—[Richard Lochhead]—and agreed to.

Section 9, as amended, agreed to.

Sections 10 to 13 agreed to.

After section 13

The Convener: The next group is on fees for registration and administration. Amendment 11, in the name of the cabinet secretary, is grouped with amendment 12.

Richard Lochhead: As was set out during stage 1, despite the cost of subsistence fees being accounted for in the financial memorandum, the power to charge such fees was omitted in error from the bill as introduced. Amendments 11 and 12 have been lodged to correct that omission. Amendment 11 inserts a power for the Scottish ministers to provide for SEPA to introduce any such charging scheme for both registration and an annual fee in regulations. Amendment 12 is a consequential, technical amendment.

I move amendment 11.

Amendment 11 agreed to.

Section 14—Registration: supplementary

Amendment 12 moved—[Richard Lochhead]—and agreed to.

Section 14, as amended, agreed to.

Sections 15 to 17 agreed to.

Section 18—First risk designation

The Convener: The next group is on risk designation by SEPA: initial designation, review and appeals. Amendment 13, in the name of the cabinet secretary, is grouped with amendments 14 to 19.

Richard Lochhead: These amendments address issues that were raised by stakeholders concerning the method by which SEPA awards and reviews risk designations. They build a safeguard into the bill so that SEPA must give risk designations as soon as is reasonably practicable, they clarify the date by which a risk designation takes effect after a review, and they specify that SEPA may charge only a reasonable fee in relation to any application for a review of a risk designation.

Amendment 17 allows the reservoir manager to appeal to the Scottish ministers if he or she remains unhappy with the results of SEPA's initial review of a risk designation. Given the importance of risk designation in determining the level of supervision and inspection that a reservoir will be subject to, the Scottish Government felt that it was important to ensure that reservoir managers will have recourse to an independent appeal if they still have concerns after the option for review of the first risk designation has been exhausted.

We have lodged amendment 18 in response to a request from the Institution of Civil Engineers that SEPA should seek advice from it before publishing any guidance on risk designation. That will ensure that the guidance takes account of the most up-to-date advice from the professional body representing appropriately qualified reservoir panel engineers.

I move amendment 13.

Stewart Stevenson (Banff and Buchan) (SNP): Would the cabinet secretary care to explain further what might be meant by the phrase "reasonable fee"?

Richard Lochhead: We would like SEPA to take cognisance in the level of fee that it applies that this is not a cost-generating exercise. We want SEPA to be conscious of that and therefore feel that it is important to mention it in the regulations.

Stewart Stevenson: In essence, the fee will cover the costs and no more.

Richard Lochhead: That is the intention.

Amendment 13 agreed to.

Section 18, as amended, agreed to.

Section 19 agreed to.

Section 20—Decision following a periodic review

Amendment 14 moved—[Richard Lochhead]—and agreed to.

Section 20, as amended, agreed to.

Section 21 agreed to.

Section 22—Review of SEPA's decisions giving risk designations

Amendments 15 and 16 moved—[Richard Lochhead]—and agreed to.

Section 22, as amended, agreed to.

After section 22

Amendment 17 moved—[Richard Lochhead]—and agreed to.

Section 23—Guidance by SEPA: risk designation

Amendment 18 moved—[Richard Lochhead]—and agreed to.

Section 23, as amended, agreed to.

Section 24—High-risk reservoirs, medium-risk reservoirs and low-risk reservoirs: further provision

Amendment 19 moved—[Richard Lochhead]—and agreed to.

Section 24, as amended, agreed to.

Sections 25 and 26 agreed to.

Section 27—Dissolution of panels etc

Amendment 20 moved—[Richard Lochhead]—and agreed to.

Section 27, as amended, agreed to.

Sections 28 and 29 agreed to.

Section 30—Application of Chapter 5

The Convener: Amendment 21, in the name of the cabinet secretary, is grouped with amendments 22 to 26. I point out that there is a small error in amendment 24 as it appears on the marshalled list. It should read "leave out from <reducing> to the second <is>".

Richard Lochhead: I am trying to work out whether that means that stage 3 amendments are in the offing.

Amendments 21 to 26 are technical amendments to address issues that were raised by stakeholders about how the definitions of abandonment and discontinuance are met. Abandonment and discontinuance are alterations to which chapter 5 of part 1 of the bill applies.

A reservoir can be altered so that it is incapable of filling with water without reducing its capacity. For example, a service reservoir that is filled by pipes could be prevented from filling merely by cutting or capping those pipes. These amendments will ensure that the definitions of construction and alteration in section 30 take account of that possibility. Chapter 5 will therefore apply when works affect the capability of a reservoir to hold water, regardless of whether its capacity is altered.

I move amendment 21.

Amendment 21 agreed to.

Amendments 22 to 26 moved—[Richard Lochhead]—and agreed to.

Section 30, as amended, agreed to.

Section 31—Notice to SEPA and appointment of construction engineer

10:00

The Convener: The next group is on construction engineers, inspecting engineers and supervising engineers, their respective duties and the timing of appointments and inspections. Amendment 27, in the name of the cabinet secretary, is grouped with amendments 29, 30, 33 to 35, 37, 49, 50 to 53, 55, 60, 98 and 100.

Richard Lochhead: The amendments make a number of changes to the respective roles and responsibilities of construction engineers, inspecting engineers and supervising engineers. Amendments 27, 29, 49 and 52 amend the bill so that, during alteration works, the supervising engineer is responsible for the supervision of the reservoir. As drafted, the bill transfers the responsibility for supervision of the entire reservoir to the construction engineer who is in charge of the works. However, following consultation with ICE, the Government feels that it is preferable to retain the expertise and familiarity of the supervising engineer during that period and to leave the construction engineer to be responsible only for the works.

Amendment 33 is a consequential change.

Amendments 34, 35, 37 and 98 relate to the appointment of an inspecting engineer.

Amendment 37 amends the times at which an inspection of a medium or high-risk reservoir should be carried out. The new provision will ensure that there are no inspections during a period of alteration when the reservoir will be under the supervision of a construction engineer. The other amendments remove any implication in the bill that the manager of a high or medium-risk reservoir must have an inspecting engineer appointed at all times. The inspecting engineer need only be appointed for each inspection.

Amendments 30, 50, 51, 53, 55, 60 and 100 are about the appointment and duties of supervising engineers. Amendments 50, 51 and 100 require the appointment of a supervising engineer at all times, except when a reservoir is being constructed or restored to use. The other amendments specify additional matters that the supervising engineer is to monitor and report on during his or her appointment.

I move amendment 27.

Amendment 27 agreed to.

The Convener: Amendment 28, in the name of the cabinet secretary, is grouped with amendments 36 and 67.

Richard Lochhead: The committee and stakeholders have raised concerns that, as drafted, the disqualification criteria for construction engineers are unworkable because of the small pool of specialist firms that deal with reservoir safety. The Scottish Government agreed to lodge an amendment at stage 2 to address those concerns.

Amendment 28 removes the disqualification of an engineer who has previously acted as the construction engineer for the same reservoir. It also removes the disqualification of an engineer who is professionally associated with a former construction engineer of the reservoir. We considered that similar issues might also apply to the disqualification criteria for inspecting engineers and referees, so we lodged amendments 36 and 67 to amend the relevant criteria in sections 43 and 59.

However, after further discussions with ICE, I will not move amendments 36 and 67 when they are called. ICE has subsequently confirmed its view that the disqualification criteria in sections 43 and 59 of the bill should be retained. That leaves the position consistent with that of the 1975 act, so that inspecting engineers and referees are as independent from the original construction engineer as they would be under the 1975 act.

I move amendment 28.

Amendment 28 agreed to.

Section 31, as amended, agreed to.

Section 32—Inspection, reports, supervision of works etc by construction engineer

Amendment 29 moved—[Richard Lochhead]—and agreed to.

Section 32, as amended, agreed to.

Section 33—Safety reports

Amendment 30 moved—[Richard Lochhead]—and agreed to.

Section 33, as amended, agreed to.

Sections 34 to 39 agreed to.

Section 40—Offences: construction or alteration

The Convener: The next group is on penalties, offences and civil enforcement measures. Amendment 31, in the name of the cabinet secretary, is grouped with amendments 32, 68, 72, 82 and 85.

Richard Lochhead: The amendments will change the maximum penalties for a number of offences that are set out in the bill. Amendment 31 will make reservoir managers who are guilty of failing to appoint a construction engineer under section 31(2)(a) liable to the lower penalty that is set out for summary convictions in section 40. Those are, for a manager of a high-risk reservoir, a fine not exceeding level 5 on the standard scale and, for a manager of any other controlled reservoir, a fine not exceeding level 4.

Amendments 32, 68 and 72 will increase to two years the maximum sentence that a reservoir manager can receive for more serious offences. Those offences are: failing to take measures that are directed in the interests of safety in a safety report; failing to comply with the requirements of preliminary or final certificates; failing to comply with a SEPA notice that requires appointment and notice of appointment of a construction, inspecting or supervising engineer; and failing to comply with a SEPA notice to comply with a direction on a safety or inspection report.

Amendments 82 and 85, which are a response to concerns that the Subordinate Legislation Committee raised, will ensure that, where regulations under section 80 allow SEPA to take further enforcement measures, any financial penalty that SEPA determines cannot exceed the maximum fine that could be levied in the criminal courts on summary conviction for the relevant offence.

I move amendment 31.

Karen Gillon (Clydesdale) (Lab): Will the cabinet secretary outline his rationale for reducing penalties through amendment 31?

Richard Lochhead: The basis for the changes is that there should be a ceiling on the fines that SEPA can impose. Currently, there is no ceiling, which we feel is inappropriate. The Subordinate Legislation Committee raised that point with us.

Another change relates to the situation south of the border. Some owners of large reservoirs might own reservoirs south and north of the border. We do not want there to be more severe penalties south of the border than in Scotland, as that might make owners think that it was more important to look after reservoirs south of the border. We therefore want to ensure that the penalties north and south of the border are aligned.

Karen Gillon: I am slightly confused. I took it from what you said that amendment 31 will lower the penalties for offences, rather than increase them, which gives me cause for concern. I do not have a problem with amendment 32, which will increase penalties for offences, but I understand the purpose of amendment 31 as being to reduce rather than increase penalties.

Richard Lochhead: We are talking about relatively minor offences compared to other offences that could be committed under the bill.

Karen Gillon: I understand that, but I want to know the rationale for reducing the penalties. If we have an offence in the bill and we are asked to reduce the penalty, I want to know what the rationale is for our doing so.

Richard Lochhead: We want the bill to reflect the scale of the offence. There are minor offences and more serious ones. The level of fine that can be imposed should reflect the nature of the offence.

Karen Gillon: Can you tell us what the difference is in the level of fines?

Richard Lochhead: The bill provides for the summary criminal procedure only, with a maximum penalty in the justice of the peace court of three months' imprisonment or a level 4 fine of £2,500. In the sheriff court, the maximum for a first offence is three months' imprisonment or the prescribed sum, which is currently £10,000, and for a second offence, it is six months or the prescribed sum. I will just find out the exact figures for comparison. *[Interruption.]* The previous statutory maximum fine was £10,000. If the offence were taken down to level 5, it would be £5,000, and if it were taken down to level 4, it would be £2,500.

Karen Gillon: Essentially, you are seeking to reduce the fines and remove the courts' ability to send someone to prison for these offences.

Richard Lochhead: We are just trying to ensure that what are deemed more minor offences have similar penalties.

Karen Gillon: I am trying to clarify what this amendment is seeking to do. At the moment, a person who commits this offence could, under the bill, go to prison or face a high maximum fine of £10,000. If it is made a level 4 offence, that person would pay a lower fine and would not be sent to prison. Is that right?

Richard Lochhead: Yes.

Karen Gillon: That is fine.

Amendment 31 agreed to.

Amendment 32 moved—[Richard Lochhead]—and agreed to.

Section 40, as amended, agreed to.

Sections 41 and 42 agreed to.

Section 43—Appointment of inspecting engineer etc

Amendments 33 to 35 moved—[Richard Lochhead]—and agreed to.

Amendment 36 not moved.

Section 43, as amended, agreed to.

Section 44—Inspections: timing

Amendment 37 moved—[Richard Lochhead]—and agreed to.

Section 44, as amended, agreed to.

Section 45—Inspections: duties of inspecting engineers etc

The Convener: The next group is on recommendations in inspection reports as to the maintenance of reservoirs. Amendment 38, in the name of the cabinet secretary, is grouped with amendments 39, 41 and 48.

Richard Lochhead: These amendments seek to deal with a concern expressed by ICE and clarify that the only maintenance measures that should be specified in inspection reports are those that the inspecting engineer considers to be necessary for safety. Such measures are compulsory under section 46(1) but, because of their on-going nature, they have been kept out of the compliance certification regime set out in section 46. An inspecting engineer can still make recommendations on maintenance but if the maintenance does not affect safety it will not be compulsory to follow the recommendation.

I move amendment 38.

Amendment 38 agreed to.

Amendments 39 to 42 moved—[Richard Lochhead]—and agreed to.

Section 45, as amended, agreed to.

Section 46—Inspection reports: compliance

10:15

The Convener: The next group is on minor technical amendments. Amendment 43, in the name of the cabinet secretary, is grouped with amendments 44, 69 and 87.

Richard Lochhead: These amendments seek to make a number of minor technical changes to sections 46, 65 and 83 in response to comments from the Law Society and others.

I move amendment 43.

Amendment 43 agreed to.

Amendments 44 to 48 moved—[Richard Lochhead]—and agreed to.

Section 46, as amended, agreed to.

Section 47—Appointment of supervising engineers etc

Amendments 49 to 51 moved—[Richard Lochhead]—and agreed to.

Section 47, as amended, agreed to.

Section 48—Supervising engineer and monitoring of reservoir

Amendments 52 to 58 moved—[Richard Lochhead]—and agreed to.

The Convener: The next group is on the visual inspection of the reservoir by the reservoir manager. Amendment 59, in the name of the cabinet secretary, is grouped with amendment 63.

Richard Lochhead: Amendments 59 and 63 seek to remove the onerous and bureaucratic requirement on reservoir managers to notify the supervising engineer of every visual inspection of a reservoir that they are directed to undertake. Amendment 59 seeks to replace that requirement with a lesser requirement simply to record inspections and to notify the supervising engineer only of anything identified during the inspection that might affect the reservoir's safety. Amendment 63 seeks to add a failure to notify safety matters to the list of offences in section 50.

I move amendment 59.

Amendment 59 agreed to.

Amendments 60 and 61 moved—[Richard Lochhead]—and agreed to.

The Convener: The next group is on the meaning of "draw-down". Amendment 62, in the name of the cabinet secretary, is the only amendment in the group.

Richard Lochhead: Amendment 62 seeks to clarify that supervision of any draw-down of the

reservoir by a supervising engineer is not required if it is done in accordance with the reservoir's routine operation.

I move amendment 62.

Amendment 62 agreed to.

Section 48, as amended, agreed to.

Section 49 agreed to.

Section 50—Offences: inspection, supervision, record keeping

Amendment 63 moved—[Richard Lochhead]—and agreed to.

Section 50, as amended, agreed to.

Sections 51 and 52 agreed to.

Section 53—Flood plans

The Convener: Amendment 64, in the name of the cabinet secretary, is grouped with amendment 65.

Richard Lochhead: Stakeholders raised concerns that, where there are a number of reservoirs in a cascade, the flood plans for each reservoir could contain a lot of duplication. They suggested that it would be better if it were possible to prepare a single plan for the cascade, as many of the issues to be addressed would be similar. The actions taken in the event of the failure of one reservoir in a cascade would likely need to be co-ordinated with actions at the other reservoirs in the cascade in the event of an uncontrolled release. The best way to prepare for that would be through the production of a single plan.

Amendment 64 allows for a single flood plan for one or more reservoirs in a cascade, irrespective of their capacity. That will reduce the costs on reservoir managers and remove any unnecessary duplication. Amendment 65 adds flood plans to the list of documents that reservoir managers must include under section 54 in the register of relevant documents. That will ensure that the reservoir manager is aware of relevant issues or difficulties that might exist when dealing with a potential failure.

I move amendment 64.

Amendment 64 agreed to.

Section 53, as amended, agreed to.

Section 54—Maintenance of records

Amendment 65 moved—[Richard Lochhead]—and agreed to.

Section 54, as amended, agreed to.

Section 55—Display of emergency response information

The Convener: Amendment 66, in the name of the cabinet secretary, is in a group on its own.

Richard Lochhead: The committee and a number of stakeholders raised concerns about the requirement for the name, address and contact details of the supervising engineer to be displayed on the emergency information boards to be erected at each controlled reservoir. The concerns raised were primarily about the privacy of the supervising engineers and the possibility of malicious calls.

The Scottish Government has considered those concerns and has lodged amendment 66 to remove that requirement and replace it with one to display SEPA's contact details. SEPA can then contact the supervising engineer if an incident has occurred, as SEPA will hold engineers' contact details in the register. I hope that that addresses the committee's concerns and does not lead to any malicious calls to SEPA.

I move amendment 66.

Amendment 66 agreed to.

Section 55, as amended, agreed to.

Sections 56 to 58 agreed to.

Section 59—Appointment of referee

Amendment 67 not moved.

Section 59 agreed to.

Sections 60 to 63 agreed to.

Section 64—Offence: failure to comply with notice under section 63(2)

Amendment 68 moved—[Richard Lochhead]—and agreed to.

Section 64, as amended, agreed to.

Section 65—Appointment of engineer by SEPA

Amendment 69 moved—[Richard Lochhead]—and agreed to.

Section 65, as amended, agreed to.

Section 66 agreed to.

Section 67—Enforcement notice: safety and other measures

The Convener: The next group is on civil enforcement measures: review and appeals. Amendment 70, in the name of the cabinet secretary, is grouped with amendments 71, 76 to 81, 83, 84, 86, 88 to 90 and 97.

Richard Lochhead: Amendment 70 inserts an order-making power for the Scottish ministers. The power allows reservoir managers to be given the right to apply for a review of a SEPA enforcement notice under section 67, and to appeal to the Scottish ministers after such a review. Amendment 97 makes any such order subject to draft affirmative procedure, and amendment 71 modifies the offence provisions in section 68 to take account of any right of review or appeal.

Amendments 76, 78, 80, 83, 86 and 88 simply clarify that appeals against decisions made by SEPA to impose civil enforcement measures under chapter 9 of the bill can be made to the Scottish ministers.

Amendment 79 allows regulations under section 76 to provide for appeals to the Scottish ministers after a SEPA review.

Amendments 77, 81, 84 and 89 remove specific requirements on SEPA to publish guidance on appeals under specific sections in chapter 9. Those requirements are replaced by a new duty, imposed by amendment 90, on the Scottish ministers to publish guidance on the process of making appeals under all relevant sections in chapter 9.

I move amendment 70.

Amendment 70 agreed to.

Section 67, as amended, agreed to.

Section 68—Offence: failure to comply with notice under section 67(2)

Amendments 71 and 72 moved—[Richard Lochhead]—and agreed to.

Section 68, as amended, agreed to.

Sections 69 and 70 agreed to.

Section 71—Stop notices

The Convener: The next group is on the power to give stop notices. Amendment 73, in the name of the cabinet secretary, is grouped with amendments 74 and 75.

Richard Lochhead: Where a reservoir manager is carrying out an activity that causes a significant risk of an uncontrolled release of water from a reservoir, but that activity is not an offence, SEPA is currently unable to issue the reservoir manager with a stop notice. Amendments 73 and 74 address that issue by widening the scope of the stop notice power. SEPA would be able to issue a stop notice where it considers that an activity is an offence; SEPA would also be able to issue a stop notice where an activity is not an offence, provided that it reasonably believes that the activity presents a significant safety risk.

Amendment 75 requires SEPA to consult ICE before it issues a stop notice in relation to an activity that is not an offence, and to notify the Scottish ministers at the earliest opportunity after issuing the notice. The amendment also requires that the steps specified in any such notice be steps to remove or reduce the risk of an uncontrolled release of water.

I move amendment 73.

John Scott: If someone were to release water, when would it be an offence and when would it not be an offence? I do not quite understand.

Richard Lochhead: SEPA has advised us that there are examples of activities that are not offences—they are not illegal—but which could impact on reservoirs. One example is speedboating, which could cause waves that overtop the dam and cause general erosion, leading to various consequences. In certain combinations of circumstances, activities that are not an offence could impact on the safety of a reservoir. In such circumstances, the amendments in this group give powers to SEPA.

John Scott: To stop speedboating, if it could cause damage—

Richard Lochhead: In specific combinations of circumstances, that could lead to dangerous situations arising.

John Scott: Fine, thank you.

Amendment 73 agreed to.

Amendments 74 and 75 moved—[Richard Lochhead]—and agreed to.

Section 71, as amended, agreed to.

10:30

Section 72—Stop notices: procedure

Amendments 76 and 77 moved—[Richard Lochhead]—and agreed to.

Section 72, as amended, agreed to.

Section 73—Stop notices: compensation

Amendment 78 moved—[Richard Lochhead]—and agreed to.

Section 73, as amended, agreed to.

Sections 74 and 75 agreed to.

Section 76—Enforcement undertakings

Amendment 79 moved—[Richard Lochhead]—and agreed to.

Section 76, as amended, agreed to.

Section 77 agreed to.

Section 78—Fixed monetary penalties: procedure

Amendments 80 and 81 moved—[Richard Lochhead]—and agreed to.

Section 78, as amended, agreed to.

Section 79 agreed to.

Section 80—Further enforcement measures

Amendment 82 moved—[Richard Lochhead]—and agreed to.

Section 80, as amended, agreed to.

Section 81—Further enforcement measures: procedure

Amendments 83 and 84 moved—[Richard Lochhead]—and agreed to.

Section 81, as amended, agreed to.

Section 82 agreed to.

Section 83—Further enforcement measures: enforcement

Amendments 85 to 87 moved—[Richard Lochhead]—and agreed to.

Section 83, as amended, agreed to.

Sections 84 and 85 agreed to.

Section 86—Recovery by SEPA of expenses

Amendments 88 and 89 moved—[Richard Lochhead]—and agreed to.

Section 86, as amended, agreed to.

After section 86

Amendment 90 moved—[Richard Lochhead]—and agreed to.

Section 87—Publication of enforcement action

The Convener: The next group is on the publication of enforcement action. Amendment 91, in the name of the cabinet secretary, is grouped with amendment 92.

Richard Lochhead: I see that the section numbers are catching up with the amendment numbers, which means that I have to pay very close attention.

The Subordinate Legislation Committee raised concerns that the bill as drafted did not allow the Scottish ministers any control over what information SEPA may publish in the case of non-compliance by reservoir managers. The Scottish Government agreed to strengthen those powers

and has lodged amendments 91 and 92 to achieve that.

Amendment 91 will give Scottish ministers the power to direct SEPA by order to publish information in relation to enforcement action that SEPA has taken in response to non-compliance by a reservoir manager, where SEPA has had to appoint an engineer or arrange for measures to be undertaken in the interests of safety.

Amendment 92 will give Scottish ministers the same power to direct SEPA to publish information where SEPA has issued a stop notice or a fixed monetary penalty or has imposed further enforcement measures.

Amendments 91 and 92 will strengthen the publication powers in section 87, which will result in a stronger deterrent against non-compliance.

I move amendment 91.

Amendment 91 agreed to.

Amendment 92 moved—[Richard Lochhead]—and agreed to.

Section 87, as amended, agreed to.

Sections 88 to 96 agreed to.

Before section 97

The Convener: The next group is on grants. Amendment 93, in the name of the cabinet secretary, is the only amendment in the group.

Richard Lochhead: The committee raised a number of concerns at stage 1 about the financial impact of the bill on small businesses, angling clubs and individuals. The concerns related largely to the potential cost of any structural work that might be required to make reservoirs safe and the cost of preparing flood plans.

The Scottish Government agreed to consider whether provision could be made for financial assistance for reservoir managers who cannot afford to implement the requirements of the bill. Amendment 93 will give Scottish ministers the power to issue grants to reservoir managers. The grants may be made to managers of medium or high-risk reservoirs that are not currently regulated under the 1975 act for the purposes of assisting or enabling them to comply with any obligations under part 1 of the bill.

The grants will be subject to such conditions as the Scottish ministers think appropriate. It is expected that providing any such grants will be a temporary measure and will not be required until 2015 at the earliest, when the previously unregulated reservoirs are expected to be brought under the auspices of the bill.

I believe that amendment 93 will address the committee's concerns and I welcome the committee's support for it.

I move amendment 93.

John Scott: I welcome your consideration of our report and the bringing forward of grants to mitigate the effects on owners. What level of grant might be available? What effect will that have on the financial memorandum? I notice that you used the phrase "as the Scottish ministers think appropriate". Is that an open-ended commitment? I would like clarification of that.

Richard Lochhead: That is a fair question, but all I can really do at this point is indicate what we would take into account in determining the level of grant, rather than say what the level of grant would be, which we will decide in due course.

The level of grant would depend on the risk posed by each reservoir, the structural integrity of the dam and the level of maintenance that would have to be undertaken. Those factors would have to be taken into account in determining the level of grants. Until SEPA has given a risk designation to the reservoirs that are not currently regulated, we simply will not know how many of them are high or medium risk and what condition they are in, which would determine the level of work required to make them safe.

Liam McArthur: I have a similar question. Like John Scott, I welcome the approach that has been taken. We certainly wrestled with the issue, and I do not think that we came up with a magic bullet for dealing with it, but what the cabinet secretary proposes looks like a fair stab at it. Are you working with a ballpark figure for the likely liability? Will the criteria for payback be the mechanism whereby you ensure that the liability to Government is not open-ended? Although I think that all of us on the committee welcome amendment 93, we need reassurance that the burden on future Governments will not be likely to escalate quickly.

Richard Lochhead: Again, I am unable to give a ballpark figure. We should certainly take on board the points that you make. There is a bit of work to be done before we use the enabling power to introduce a scheme in the next few years. The intention would be to contribute towards the capital costs of work that has to be undertaken, so a contribution of some form towards those costs is the most likely outcome of the kind of grant scheme that we are thinking about. However, we will discuss the scheme with stakeholders, the committee and others to determine its exact nature.

Peter Peacock (Highlands and Islands) (Lab): I welcome amendment 93. The Government has moved on the matter in an appropriate way, giving

ministers wide discretion to do the right thing in the right circumstances. That is entirely correct, given the evidence that we have received.

John Scott: The cabinet secretary mentioned funding to cover capital costs. Would the grants cover repair costs, which are not usually treated as capital costs?

Richard Lochhead: Our intention is to be sympathetic towards that.

Amendment 93 agreed to.

The Convener: The next group is on general guidance on part 1. Amendment 101, in the name of Peter Peacock—[*Interruption.*] Yes, we have a break from the cabinet secretary. Amendment 101 is grouped with amendment 102.

Peter Peacock: A fair amount of the evidence that we took at stage 1 revolved around guidance. Witnesses required clarity on the bill's implications. Amendment 101 simply tries to ensure that, as time goes on and events evolve, there will be clarity on the interpretation of the bill and that the responsibilities of all concerned will be spelled out.

Under the bill, there will be many new managers of small reservoirs, and they will be required to comply with the new and necessary measures that are set out in it. It will be important to avoid confusion and ensure that there is clarity for everyone during the transition from the current situation to the new provisions under the bill.

I have here a substantial piece of guidance, which I am happy to lend to members to read. It relates to the 1975 act, and it took about 25 years to get to its current stage. It demonstrates how complex the interpretation of such acts is.

Amendment 101 tries to ensure that a similar approach will be taken to the one that was taken towards building up guidance under the 1975 act over those 25 years. Although there will not be a need for specific guidance because of the way that the act will commence and because various regulations and other secondary legislation will come into play further down the line, there needs to be a document that explains the bill and how it differs from the current situation. As time goes on, it could be added to—as in the case of the guidance under the 1975 act—as the secondary legislation is introduced.

That approach would be particularly important for owners who are brought into the system because of the bill. The base document could set out what the legislation expects and be added to by the secondary legislation and guidance over time. That would happen from about 2014 or 2015 onwards. It seems to me that there will be sufficient time between now and the

commencement of some of the provisions for that guidance to be produced.

I am aware that the experience of reservoir managers—particularly Scottish and Southern Energy, which is one of the biggest, most strategic and most significant reservoir managers and operators in the country—with regulation in general is that, unless there is a statutory requirement to produce guidance, uncertainty can arise and there is potential for an ad hoc and haphazard approach to interpretation. Amendment 101 seeks to ensure that the regulations and other secondary legislation that come into play will be accompanied by guidance so that people working in the field have absolute clarity.

I fully accept that amendment 101 may not be formulated perfectly, and I am happy to address any concerns that the minister has. Indeed, if he wants to adopt the principle and do something at stage 3, that will be fine. If he wants to support amendments 101 and 102, that will be even better. However, I will listen to what he has to say.

Amendment 102 is simply consequential on amendment 101.

I move amendment 101.

10:45

Richard Lochhead: Peter Peacock raises important issues. I am happy to respond to amendments 101 and 102. I congratulate him on getting them in under the wire for today's deliberations.

Committee members will be aware that the bill is technical in nature and contains a large number of delegated powers. The bill creates the framework for a new reservoir safety regime, but its full and effective commencement will require subordinate legislation to set out the procedures and many of the details.

The bill already contains a number of guidance provisions for SEPA and ministers in relation to specific parts. I acknowledge that comprehensive guidance on interpretation of the act will be essential to assist reservoir managers, panel engineers and SEPA with their understanding of the duties and responsibilities under it, as it commences. In light of that, I assure the committee that the Scottish Government intends to commission such guidance to support the new regime and will consult fully SEPA, the Institution of Civil Engineers and other key stakeholders, such as some of the companies that Peter Peacock mentioned, before producing it. That comprehensive guidance will be supplemented by the specific SEPA and ministerial guidance for which specific parts of the bill already provide.

Amendments 101 and 102 require the publishing of holistic guidance by a certain date after royal assent. That may set a deadline that comes well before key elements of the bill are commenced, which would jeopardise the quality of the guidance and might render it unfit for purpose at the time. It would be much more sensible to produce guidance for each part of the bill as it is commenced and as the supporting secondary legislation is further developed.

For those reasons, I ask Peter Peacock to withdraw amendment 101 and not to move amendment 102. However, if the member still feels that it is necessary for the bill to refer to such guidance, I will be happy to speak to him and to the committee about a stage 3 amendment.

Peter Peacock: I welcome the minister's comments and accept his assurance that the Government will commission guidance and consult a wide range of parties. I also take the point that the deadline may be too tight. I will not press amendment 101, but I will take the opportunity to discuss the matter with the minister or his officials prior to stage 3, to see whether some reference may be included in the bill to strengthen it and to give the reassurance that others are seeking.

Amendment 101, by agreement, withdrawn.

Sections 97 and 98 agreed to.

After section 98

The Convener: The next group is on SEPA: ministerial directions. Amendment 94, in the name of the cabinet secretary, is the only amendment in the group.

Richard Lochhead: Amendment 94 simply requires SEPA to act in accordance with directions that are provided by Scottish ministers, while carrying out its functions under the legislation. That gives Scottish ministers the power to direct SEPA as to the manner in which it accomplishes its obligations under the bill.

I move amendment 94.

Amendment 94 agreed to.

Sections 99 to 105 agreed to.

After section 105

The Convener: The next group is on consequential amendment and repeals. Amendment 95, in the name of the cabinet secretary, is the only amendment in the group.

Richard Lochhead: Amendment 95 is consequential on the repeal of the Reservoirs Act 1975 for Scotland. It repeals or replaces references to the 1975 act in other acts, where appropriate, with references to the bill.

I move amendment 95.

Amendment 95 agreed to.

Section 106 agreed to.

Section 107—Orders and regulations

Amendments 96 and 97 moved—[Richard Lochhead]—and agreed to.

Section 107, as amended, agreed to.

Section 108 agreed to.

Schedule—Index of defined expressions

Amendments 98 to 100 moved—[Richard Lochhead]—and agreed to.

Schedule, as amended, agreed to.

Section 109—Commencement and short title

Amendment 102 not moved.

Section 109 agreed to.

Long title agreed to.

The Convener: That ends stage 2 consideration of the Reservoirs (Scotland) Bill. I suspend the meeting for five minutes.

10:51

Meeting suspended.

11:01

On resuming—

Agricultural Support

The Convener: The next item is to take evidence for the committee's inquiry into the future of agricultural support in Scotland. I welcome David Barnes, deputy director of agriculture and rural development in the Scottish Government. Mr Barnes is here to support the Cabinet Secretary for Rural Affairs and the Environment, who will remain with us for the bulk of the committee's work today.

I invite the cabinet secretary to make a short opening statement.

Richard Lochhead: Thank you for giving me the opportunity to discuss with the committee the future of agricultural support in Scotland, and to make a few opening remarks.

A couple of years ago, the Scottish Government set out its vision for farming—a vision that included supporting the sector, in recognition of the conditions that it faces and the public benefits that it produces. The task for Brian Pack and his committee was to advise the Government on how to turn that vision into policy measures. I again thank Brian Pack and his inquiry team for the excellent report that they produced.

The forthcoming European Union negotiations will be crucial to the future of Scottish farming. By holding the Pack inquiry when we did, we have been able to get Scotland's views out there and into the minds of Europe's policy makers, while the shape of the future common agricultural policy is still up for grabs. In that respect, the inquiry has been a massive success; it has put Scotland at the forefront of the CAP debate in Europe. Commissioner Ciolos referred to the report in his speech at the Oxford farming conference. He said:

"The importance of public support for so many Scottish farmers, underlined by this report, is shared in most of Europe".

However, the Pack inquiry also recognised that more work is needed to develop further some of its recommendations. We acknowledge that and are working closely with Brian Pack and stakeholders to take forward the work before we adopt a formal position on many of the issues that the report has identified.

Nonetheless, we have identified certain principles that we see as flowing from the Pack report and have already expressed our position on them. To start with, it is essential that there is a fair and proportionate share-out of the CAP budgets. We hear a lot about the new member states' demands to improve their allocations from

the pillar 1 budget, but Scotland receives the fourth lowest allocation of pillar 1 funding in Europe, with only Estonia, Romania and Latvia getting less. Pillar 2 allocations also need to be addressed. The United Kingdom, and Scotland in particular, receive unfairly low allocations. In fact, Scotland receives a lower allocation per hectare than any member state in Europe and any other part of the UK.

The next principle is that there is an on-going justification for pillar 1 direct payments. Those payments are crucial for Scottish farming, especially given the special challenges that we face in the part of Scotland that has less favoured area status. However, we must recognise that direct payments need to change. Payments that are based on what someone was producing a decade ago can no longer be justified; instead, they should be linked to farming activity and to delivery of public benefits.

If, however, we are to move away from the historical basis for payments we need to consider alternatives. The Pack report identified that a simple area-based payment would not work for Scotland because it could cause significant redistribution in the wrong direction, particularly in the LFA. Pack therefore recommended that future support be based on LFA status, with a top-up fund within pillar 1 as part of the solution. The top-up would be linked to delivery of public benefits, such as reduction of carbon emissions and improved biodiversity. We would all agree with the Pack inquiry that area-based payments on their own could have substantial flaws. None of us wants a system that penalises active farmers but pays out to people who have a lot of land but do no activity. The top-up fund is Brian Pack's suggested response; however, a great deal more work is needed to develop that concept.

We need to be fleet of foot in how we approach all this. Although we have to develop the top-up fund proposal, we also need to be prepared for, and to be ready to react to, whatever develops elsewhere in Europe. We firmly believe that direct payments should go to those who are actively farming—a position that has support right across Europe. The trouble is in arriving at an agreed definition of active farming. As the committee will be aware, the Pack inquiry made a recommendation in June last year to address the so-called slipper farmer issue. It recommended changing cross-compliance and the good agricultural and environmental condition—GAEC—guidance on undergrazing. Unfortunately, the EU auditors take such an inflexible view that it proved very difficult to avoid hitting unintended targets. Nevertheless, we remain determined to address the problem and I look forward to further debate at Europe level.

I have mentioned that we face special challenges in the LFAs. One of those challenges is the risk of land abandonment in the most vulnerable areas. Eighty-five per cent of Scotland's agricultural land is classified as being an LFA and two-thirds is classified as rough grazing. We see the use of limited coupled payments, in specific circumstances, as being a way to address the problem by stabilising livestock numbers on marginal land.

In any discussion of the CAP, we all agree on the need to simplify it. Getting into the nuts and bolts of it, simplification is not always as easy as it sounds; nevertheless, it is very important. It is also essential that the EU audit system be reformed to deliver controls on CAP payments that are proportionate and represent value for money. Those are issues on which the Scottish Government and the UK Government have a common view, although there are some key issues on which we disagree strongly.

In my view, it is clear from Caroline Spelman's speech at the Oxford farming conference that the UK Government is likely not to be able to deliver for Scotland's farmers. Its flawed position of phasing out direct payments and retaining coupled payments would be potentially disastrous for Scotland's agricultural sector and our rural economies. I will continue to press the UK Government on that because the real negotiations are now very close and the outcome of those negotiations will have a major impact on Scotland, where the CAP plays a vital role in supporting our agricultural sector.

It is imperative that we build on the excellent work of the Pack inquiry, which has received widespread recognition and respect throughout Europe. It has put Scotland at the forefront of the CAP debate: we must seize that opportunity in order to secure a deal that meets Scotland's needs. Most of Europe shares views that are similar to ours, not to that of the Department for Environment, Food and Rural Affairs, so we are in the main body of the kirk, so to speak.

Nevertheless, we cannot be complacent and must get the details right for specific needs. The future of farming in Scotland is at stake and our voice must be heard. We will not necessarily get everything that we want, and it may be challenging, but it is important that we have a vision of the future of Scottish agriculture that we can unify around in Scotland and press home with Europe and the UK Government. I believe that, thanks to the Pack report, we are well placed to achieve that.

The Convener: Thank you. Stewart Stevenson will start the questioning.

Stewart Stevenson: The cabinet secretary referred to Caroline Spelman's speech at the Oxford farming conference, which highlighted the difference between the UK's position and the Scottish Government's position. The Scottish Government, along with the other devolved Administrations, made a submission to the UK Government on CAP reform. Have we had a response to that joint submission, which represents the views of the three devolved Administrations?

Richard Lochhead: The simple answer is no. We have not had a response to that submission.

Stewart Stevenson: Do you expect to receive a formal response?

Richard Lochhead: We have been assured that there will be a response from the UK Government, giving some feedback to the Scottish Government and the other devolved Administrations on why the UK Government has felt unable to support some of the points that we made.

Stewart Stevenson: Given the comments that were made in a speech at the same conference by the European commissioner whom you mentioned, would you press the UK Government to ensure that, in its representations to Europe, it makes clear the fact that there is a significant divergence between the needs of England, which are represented only by the UK Government, and the needs that are represented in the joint document from the devolved Administrations?

Richard Lochhead: That is an important point. During the negotiations—albeit that they are at an early stage—the demands and messages that are sent out by each member state will help to set the tone for the next two years. That is why we have made our views known not only to the UK Government, but directly to the European Commission. As well as sending the views of the devolved Administrations to the DEFRA secretary of state, Caroline Spelman, we have communicated them directly to the European Commission. When I spoke to Commissioner Ciolos on Monday at the agricultural council—briefly and in the margins—he acknowledged that he is aware of the divergence of views within the UK and he told me that Caroline Spelman had also made that point to him. So, I am confident that our message about what Scotland wants is hitting home not only through the Pack report, but through our direct communications with the Commission. It is about what we would like to see in the new CAP to meet Scotland's needs and the fact that we do not agree with some of the messages that are coming from the UK Government.

Stewart Stevenson: Have you or another Scottish minister been part of the UK delegation at the agriculture and fisheries council, or have you attended simply as an observer? If you have been attending as an observer, would it not be substantially more useful for you to be a key part of the delegation and able to speak on behalf of Scotland directly?

Richard Lochhead: That is an important question. How can we maximise Scotland's influence over the future of agricultural policy in Europe? That question should be on the lips of everyone in Scotland who cares about the future of our rural communities and Scottish agriculture. The best way to impact on the future of the CAP is to be at the heart of the negotiations in order to ensure that Scotland's interests are safeguarded. Although we are not there in our own right as a member state, we want to maximise every opportunity to influence the UK's position and to attend the relevant negotiations.

I am, however, concerned that although UK Government ministers can attend events in Scotland and elsewhere in the UK and promise support for the views of the industry, Governments or whoever, what really matters is what UK ministers say when they are in the room, behind closed doors, at the heart of the negotiations over the next CAP. It is not just about attending the Council of Ministers, which the Scottish Government, with the co-operation and agreement of the UK Government, is able to do; it is also about getting into the room where the bilaterals take place between the Council presidency, the commissioner and each individual member state one at a time. For fisheries negotiations, Scottish ministers are able to get into that room and participate in the negotiations, but for agriculture negotiations we are unable to get into the room and are prevented from doing so by the UK Government.

I challenge the UK Government that, if it is able to attend events in Scotland and to deliver speeches to the Scottish sector in which it says that Scotland's views will be expressed during the negotiations, it should be perfectly comfortable with Scottish ministers being in that room, contributing to the negotiations and working with the UK Government to get the best deal for the various sectors and countries within the UK.

John Scott: What evidence do you have that it is unlikely that the UK ministers would take Scotland's views into account?

Richard Lochhead: I have plenty of evidence that the UK Government's position on the future of the CAP is at odds with many of the objectives that we seek in Scotland.

John Scott: What sort of timescales are you talking about?

Richard Lochhead: I would like Scotland to attend all negotiations on agricultural issues in Europe. The timescale for the nitty-gritty negotiations will become clear, but I would like the UK Government to assure us as soon as possible that Scotland can be part of the UK delegation at those negotiations.

11:15

John Scott: Have you discussed that with the relevant UK ministers? Have you made a request for that to happen? I am somewhat at a loss to know what our position in Scotland is. You are very critical of the UK Government's position and of the fact that it has not responded to the submissions from the Celtic countries, but we still do not know what the Scottish Government's position is, especially given that you have not responded to the Pack report, unless I missed that. There is therefore something of an inconsistency in that you are being critical of one level of government but your Government has not responded.

Richard Lochhead: We have laid out clearly the key principles that we want to see reflected in a new common agricultural policy. I do not believe that any country currently has any detail on delivery of some of the policy measures from those principles because until now the debate has been about the shape of the new common agricultural policy. I am sure that you will accept that a lot of work remains to be done on delivery of the various measures that we would like to be put in place. That is the situation with the UK Government, the Scottish Government and, I am sure, with all the member states in Europe.

John Scott: In that case, how can you say—as you did at the National Farmers Union conference last week—that you are diametrically opposed to everything that Jim Paice said the day before? How can you justify having said that, given that you have just acknowledged that there will need to be flexibility in the discussions and that ministers have already said that there will be? How do you already know that you are diametrically opposed to Jim Paice?

Richard Lochhead: First, I will correct your assertion. As you know from the speech that I delivered at the NFU conference, I said that there was much that I agreed with in Jim Paice's speech. He is the UK DEFRA minister and he was at the same event. However, there are some fundamental differences between the Scottish Government's policies and those of the UK Government. For example, the UK Government's policy is to make the abolition of pillar 1 a key

negotiating point. I accept that that might not be achieved overnight, but it is one of the UK Government's negotiating points for the future of the common agricultural policy. That is not the Scottish position. We see a role for pillar 1 direct support in Scottish agriculture.

The point that the UK Government wants to make part of the CAP negotiations is that there should be

“a very substantial cut to the CAP Budget”.

Note that it says “very substantial”. It is not recommending just a reduction but “a very substantial” reduction. That is not the position in Scotland. We do not believe that the negotiating point should be about

“a very substantial cut to the CAP Budget”,

which would inflict a lot of damage on many rural and remote communities in Scotland.

Another negotiating point for the UK Government is, as far as I can make out—apart from a smaller budget and a reduced role for pillar 1—to move as much as possible of the remaining budget into pillar 2 of the CAP. Again, that would not be to our industry's benefit, nor would it be in the interests of the public benefits that we want to be delivered. We need a healthy pillar 1 budget. I accept that there is going to be a big debate over the EU budget and that we must be prepared for all eventualities, but our negotiating position is that we want a healthy pillar 1 budget and a healthy amount of direct support, along with an on-going role for pillar 2, of which Scotland has a disproportionately small share—as the committee knows and as I said in my opening remarks. We would prefer pillar 2 to be healthier because we do not get our fair share at the moment.

John Scott: I will come on to talk about that in a second. You will be aware that our former parliamentary colleague George Lyon gave evidence to the committee a fortnight ago. He said that Caroline Spelman had said under questioning that she had no intention of phasing out pillar 1 support until 2030. Jim Paice also guaranteed last week in his speech at the NFU conference that there would be no problems with pillar 1 payments for the next seven-year period. I suggest that you might be raising hares and that there is less of a difference between the UK position and the Scottish position than you are suggesting.

Richard Lochhead: The UK Government's submission to the European Commission contains a timescale for imposing the very substantial reduction in the CAP budget and sets out what is, in effect, a phasing out of pillar 1 over the next seven years between now and 2020—

John Scott: Pillar 1 is guaranteed for seven years. My recollection of Jim Paice's speech is that it would happen after seven years.

Richard Lochhead: The submission talks about the next financial framework, which is for the period 2013 to 2020. I am sure that there is a lot to debate in that respect, but that is what the submission says.

John Scott: I think that he used the phrase "guaranteed for the next seven years".

Richard Lochhead: In any case, many of us, including most farmers in Scotland, can see the very clear message that the UK Government is sending to Brussels.

One fundamental point to be made in response to your question is that any negotiation on the CAP should be based on the outcomes that we want for Scottish and, indeed, for European agriculture. At the moment, my impression, which is shared by many others in Scotland, is that the motivation for the UK Government's position in the agricultural negotiations is budget-driven. I believe that we must look at the outcomes that we want and that we must do our best to match available budgets to efforts to achieve those outcomes. At the moment, the UK Government's number 1 message to Brussels is, "Reduce the budget, reduce the budget, reduce the budget". On the other hand, Scotland's position is "Let's deliver food security, keep the benefits that Scotland enjoys from agricultural support and a CAP and do the best we can to make that happen with the available budget".

John Scott: That is a matter of interpretation. I certainly think that there is a risk of misrepresentation here—

The Convener: Do you want to come in on this, Peter?

Peter Peacock: Before I ask my question, I have to say that I am faintly amused by John Scott's approach. Fourteen or 15 months ago, another Government that was in power down south made a very similar policy statement. I opposed it—and continue to do so—but I remember that at the time John Scott was fiercely critical of the approach. Remarkably, he seems to be defending the approach of the new Government—

John Scott: It is entirely different to that of the previous Government.

Peter Peacock: It is a most remarkable conversion and I hope to hear more about the Scottish Conservatives' policy and whether, like us, they differ from their UK colleagues on this matter. That, though, might be for another occasion.

I have long held the view that the UK Treasury, sitting behind whatever Government might appear over time, tries to assert its view that the budget ought to be reduced. Indeed, it has been a consistent aspect of UK policy for as long as I can remember and it is quite important that we disentangle from the debate some of the UK Government's traditional posturing—I mean that in a positive rather than a negative sense—early in negotiations to try to shift the ground its way without any intention or belief that what it is doing will actually succeed in getting to its end point. Do you think that that is part of what is going on here? Is the UK Government simply trying to shift the argument a bit?

Secondly, picking up John Scott's point, I have to say that my reading of the Government's position is that, notwithstanding its policy intention, it wants to shift away from direct support in the long term. Although I have strong reservations about that, I acknowledge that it is a long-term aim. To what extent do you expect the UK Government to negotiate for any reduction in the coming period? Is it simply part of a wider effort to try, over what will be a long time, to shift the debate on to its territory?

Richard Lochhead: You make a very good point. The UK Government's submission to the European Commission puts a lot of emphasis on cutting the budget in order to help the UK tackle its deficit. My impression is that it is a very serious negotiating point. I do not think that the UK Government is simply going through the usual rigmarole of making its points before the real negotiations actually start. Thankfully, however, the UK Government appears to be in a very small minority in holding such views. Time will tell, of course, but that is where we are at the moment.

As for all this talk about seven years, I have to say that it does not seem so long since 2004—seven years ago—and we should think about that in relation to the timescale that the UK Government has laid down for, as it seems to be suggesting, phasing out pillar 1. I know that it does not say as much in black and white, but when it talks about phasing out pillar 1 and then about making a massive reduction in the budget over the next seven years, it sounds to me as if it would much rather phase out pillar 1 in seven years, which is not that far away.

Scottish agriculture is far from being in a position in which the market will fill the gap and deliver profitable agriculture without direct support. Of course, the UK Government's position is to shift support from pillar 1 into pillar 2, which is competitive, and it is clear that it will be much more difficult to sustain agriculture throughout Scotland with only competitive pillar 2 schemes.

Peter Peacock: In following that up, I hope that I do not intrude too much into territory that is to be discussed. The week before last, we received very good evidence in a round-table session on how the policy approach in Scotland has become sophisticated over the years: it is probably among the most sophisticated approaches in recognising that programmes of support—whether through pillar 1 and more greening of pillar 1, or pillar 2—are to achieve a series of benefits. Food production is a key benefit, but it is not the only one. There are water quality, biodiversity, flood protection and climate change, for example.

To what extent is the view shared that this is not about agricultural support in the old sense, but about a much wider suite of public benefits, and that therefore the argument in European discussions about budget share ought to change to being about the wider range of public benefits and not about seeing support as farming subsidies in the old sense? Is that argument winning through? I apologise for asking that additional question, but it seemed like the logical thing to do.

Richard Lochhead: It is clear that, at this early stage of the negotiations, many countries are speaking about the need to deliver more public benefits from agricultural support, and I think that most people in Scotland would support that. I support it, and Brian Pack made that point in his inquiry as well.

My view, which has been reiterated by Brian Pack and many people in Scotland, is that the primary purpose of agricultural support should be to deliver food production. However, given many of the global debates and many of the debates that have taken place in Scotland, we must ensure that that food production is sustainable. Therefore, the debate on the greening of direct support—not just of pillar 2 support—is important because in order to justify on-going direct support, with all the global challenges that exist, we must show that there will be a range of public benefits from it in order to keep agriculture in Scotland viable and active.

Liam McArthur: You will be relieved to hear that I will not retread the ground that John Scott has covered, save to say that I share some of the misgivings about noises that have come from the UK Government. They have been subsequently clarified, but you will perhaps acknowledge that it is unfortunate that the electoral cycle means that areas in which there are perhaps tensions and disagreements will be amplified in the run-up to May. That can offer up potential risks in the EU negotiations.

Have you had direct contact with ministerial counterparts in the other member states? If so, to what extent, and what has been the feedback? I sound a cautionary note about talking about

Scotland's interests. I know that John Scott will come to the issue of flexibility shortly, but you will be well aware that there are many and varied interests in Scotland when it comes to trying to come up with a system that is based on principles that do not simply rob Peter to pay Paul and thereby lead to serious problems in parts of the country. I make no apology for expressing concern about some of the implications of recommendations in the Pack report for my constituency of Orkney, where agriculture obviously remains a fundamental part of the local economy. It would be helpful to have your observations on how, in securing Scotland's interests through the process, we can secure the interests of all parts of Scotland rather than the interests in particular parts of the country.

11:30

Richard Lochhead: You raise another important point. To answer your first question, when I was in Brussels on Monday we took the opportunity to set up a meeting between me and the Polish minister. Poland is taking over the EU presidency for the second half of this year. We felt that it was a good idea to build bridges with the Polish minister so we had a bilateral meeting, which was helpful, given that we are at the early stages of the CAP negotiations. We discussed the key principles, and Poland is clear that it wants on-going support.

It was good to speak to a major country such as Poland, which will take over the presidency. Our tactics will be not only to influence the UK Government's position but to deal directly with the European Commission and to speak directly to other member states. That three-pronged approach is a good way for Scotland to influence the debate in Europe.

On what Scotland's interests are, the important point—I believe that we have the UK Government's support for this—is to ensure that, whatever the outcome of the CAP negotiations, the flexibility is provided for Scotland to match the delivery of agricultural policy to Scotland's needs. You rightly highlight our first-class agricultural sector in the Orkney Islands. Of course, Orkney, the hills of Scotland and our best-quality land all have different needs in terms of agricultural support. Because we are a very diverse country we need there to be flexibility in implementing the CAP. As you are aware, we have had a degree of flexibility so far and we want that to continue with the new CAP post 2013.

John Scott: Before I ask about flexibility, I make the point that there appears to be, at best, a fundamental misunderstanding on your part of what is being proposed. Perhaps that is leading to your comments about being diametrically opposed

to everything that the UK Government is proposing. As I understand it, the proposal is not that single farm payments will be phased out by 2020 but that single farm payments will be guaranteed until 2020, and that phasing out will be considered thereafter. What you suggest and what I understand to be the situation are two completely different things.

Richard Lochhead: The UK Government's submission to Brussels states:

"There must therefore be a very substantial cut to the CAP Budget during the next Financial Framework."

As we know, the next financial framework is from 2014 to 2020. I am not sure how you can square that comment, which is in a formal submission from the UK Government, with a guarantee that there will be pillar 1 payments up to 2020 and, in particular from Scotland's perspective, that there will be a healthy pillar 1 budget.

I am not saying that the UK Government has stated in black and white, "We want to scrap pillar 1 now," but I am saying that its negotiating position can only lead us to that conclusion.

John Scott: I presume that John Swinney cannot guarantee pillar 2 payments either.

Richard Lochhead: That is true.

John Scott: So you cannot guarantee anything.

Richard Lochhead: That is true, but we know that the UK Government has also said that a lot more of the remaining budget should go into pillar 2, so if there is a very substantial cut to the CAP budget before 2020 and the UK position is that what is left should be directed towards pillar 2, in Scotland the logical conclusion is that the UK Government is trying to negotiate the phasing out of pillar 1 or is at least sending out the message that it wants to phase out pillar 1 as soon as possible.

John Scott: I disagree with your interpretation of the situation.

My question is about flexibility. In the last round of CAP reform, member states were granted a huge amount of flexibility and Scotland benefited from the fact that regional implementation was allowed. The Scottish Government has stated that it wants such regional flexibility to be available in the current CAP reforms and, self-evidently, so do I. What discussions has the Scottish Government had about the need for regional flexibility in implementing this round of CAP reform? Does the Government expect to have the same amount of discretion as the previous Scottish Executive had—or more or less discretion than it had—when it decided how to implement the last round of CAP reforms in 2004?

Richard Lochhead: Achieving flexibility for Scotland in the post-2013 CAP has been at the heart of all our discussions and communications with the UK Government and the European Commission. Indeed, the devolved Administrations made the point very early on in the letter that went to the UK Government and the European Commission that we wanted that flexibility.

On what we will achieve, I am confident that Commissioner Ciolos is supportive of taking into account the diverse nature of agriculture across Europe and within member states. Clearly, I want Scotland to pitch for as much flexibility as possible. Scotland has a distinctive agricultural profile, which is very diverse for such a small country in comparison with other European states. We need flexibility if we are to meet all the different needs in Scotland's communities.

John Scott: How can Scotland secure a better share of the pillar 1 allocation? You say that pillar 1 may not exist, but I think that it will still exist after 2013. It is right and proper that Scotland achieves a better share of the pillar 1 allocation from the UK than we currently receive. What discussions have you had on that with UK Government ministers and, indeed, with the other devolved Administrations? My understanding is that Northern Ireland, for example, does not seek a better allocation or a redistribution of the pillar 1 allocations because it already has a very high pillar 1 allocation within the UK context, due to the intensive nature of Northern Ireland agriculture. What progress are you making on that within the UK context?

Richard Lochhead: That is a very good question. A lot of our energy so far has gone into ensuring that there is a healthy pillar 1 budget in the first place.

John Scott: As has a lot of my energy.

Richard Lochhead: I take the point that if there is a reduction in the pillar 1 budgets, it is even more important that we get a fair distribution formula, because we will want to maximise for Scotland the remaining smaller European pot.

The German MEP who is now in charge of the European Parliament's next report on the issue has made the point that there should be a threshold for the distribution of agricultural support below which no country should fall. If I recall correctly, he said that the threshold should be 65 per cent of the European average. The suggestion is therefore that no country should fall below 65 per cent in that regard, which would help Scotland, because we are below 65 per cent.

If we were an independent member state of the European Union and that threshold were to be adopted, we would automatically come up to the 65 per cent, which would bring financial benefit to

Scotland. However, we are not an independent member state but part of the UK member state. The challenge that we therefore face is how any new formula would be implemented across the UK. Clearly, because the UK is the member state, the calculation would be across the UK and not just for Scotland.

John Scott: Yes, but given that we are not heading down the route of being a member state on our own, the challenge is for Scotland to get up to the 65 per cent level within the UK context. I presume that that is what you are pressing for, given that the UK receives the EU average of pillar 1 receipts and that, in a regional sense, Scotland receives the fourth lowest allocation.

Richard Lochhead: One of our objectives was to ensure that Scotland's circumstances—its average amount of agricultural support per hectare—mattered. That must be negotiated. We are a long way from knowing exactly what will be proposed to ensure an equitable distribution of agricultural support in Europe, but we are conscious of the situation.

John Scott: You would not be unhappy if the committee charged you with negotiating up that support on Scotland's behalf in the UK context.

Richard Lochhead: That would be a good point to pursue. It would be even better to pursue ensuring that Scotland was an independent state in Europe, so that we could automatically have such support.

John Scott: To be fair, we might not have unanimity on that, even within the committee.

The Convener: The cabinet secretary referred to a floor of 65 per cent. What is Scotland's percentage at the moment? In monetary terms, what difference would achieving 65 per cent make? Does the cabinet secretary or David Barnes have those figures?

Richard Lochhead: David Barnes is helpfully pointing out the figures to me. The average EU rate for direct payments is €271 per hectare and 65 per cent of the EU average is €176 per hectare. The average UK payment rate is €247 per hectare and the Scottish payment rate is €125 per hectare. Given those figures—and although we are talking about the next CAP and the wider debate—we would benefit substantially from a 65 per cent threshold, because we have €125 per hectare rather than €176 per hectare.

John Scott: That is a ratio of 5:9. We could seek to increase the rate significantly—that is interesting.

We agree that Scotland's share of the pillar 1 allocations in the UK is inadequate. The pillar 2 situation is obviously worse. As you said, we have the lowest pillar 2 allocation in Europe—that is well

known, much raised and much discussed in the committee and is much regretted. How will that anomaly be addressed? What hope do you have of addressing it? What criteria could be adopted for allocating the rural development budget more fairly?

Richard Lochhead: That is another crucial point, which highlights that previous agriculture ministers have negotiated poor deals for Scotland. We lose out not only on pillar 1 but substantially on pillar 2. I repeat that we receive the lowest pillar 2 support per hectare in the UK and in the whole of Europe. Scotland is bottom of the league of 27 countries and is behind England, Wales and Northern Ireland.

John Scott: I appreciate the analysis, but how do we address it?

Richard Lochhead: That is one of the key points that we have raised with the UK Government and the European Commission. I would be happy to write to the committee on that. I am sure that Commissioner Ciolos expressed sympathy with ensuring that pillar 2 payments are more equitable across Europe in the future. I am not sure whether the detail of how that might be achieved has been produced, but the Commission has made a broad reference to identifying the issue.

John Scott: Notwithstanding the likely reduction in budgets in Europe, given Scotland's almost unreasonable allocation from pillars 1 and 2 in the past, could Scotland be, on balance, better off at the end of the process in 2013, if fairness is restored? That is notwithstanding your obvious concern that we will not be better off.

Richard Lochhead: I am an optimist, but even I think that that view is very optimistic, if the UK Government gets its way. Scotland receives more than £600 million of support through the common agricultural policy. If that budget was reduced substantially—potentially by several hundred million pounds or euros—it would be challenging for Europe to adopt a distribution formula for agricultural funding that benefited Scotland and made up the difference. Your point is important, in that we must exploit every opportunity to ensure that Scotland gets a fair share of European agricultural funding.

John Scott: Absolutely.

11:45

Bill Wilson (West of Scotland) (SNP): Some of my questions seem to have been asked by someone else.

Peter Peacock: I apologise.

The Convener: As long as they have been asked; we are not too precious, are we?

Bill Wilson: No.

Cabinet secretary, will you spell out in slightly more detail what objectives, other than food production, you would like the CAP to prioritise and how you would like them to be prioritised?

Richard Lochhead: That goes to the crux of the debate on the next CAP. The future policy post 2013 will be guided by consideration of what public benefits we expect to get from agriculture in Europe and how we should prioritise and target funding to ensure that those benefits are delivered. You have gone right to the heart of the debate on the new CAP.

In his report, Brian Pack spoke about the five securities: water, food, energy, climate change and biodiversity. Generally speaking, looking at the global challenges and where Scotland is, we agree that those are the five areas that we must address. Clearly, land managers, farmers and crofters have a key role to play in helping Scotland to meet those five big challenges. That is the outcome that we should be looking for from future agricultural support. One way of achieving that would be by greening pillar 1 so that we get more public benefits that justify pillar 1 direct support. Brian Pack suggested using top-up funds to green pillar 1 and, in his proposal, Commissioner Ciolos talked about a general greening of pillar 1, so there is a similarity between what the Commission is saying and what Brian Pack proposed could be a solution in Scotland. Pillar 2 has a role to play, as well.

Those are the kind of public benefits that we are looking for. We want to have sustainable food production that addresses all those benefits. If we have to produce food using less energy and fewer inputs—many of which, such as fertiliser, are imported—and in a lower-carbon way, we must ensure that the system of agricultural support reflects that.

Bill Wilson: Top-ups might be an option. Another would be to demand more conditions on the basic pillar 1 payments. Do you have a preference, or could both options be combined?

Richard Lochhead: Top-up funds bring the added benefit of ensuring activity. One of the big debates in Scotland is about how we ensure that agricultural support goes only to producers who are genuinely active. We have struggled with that dilemma, and there is no simple answer to it. We are still looking for ways to ensure that, with the next CAP, support goes only to producers. Top-up funds are one of the ideas that we now have. If a farming enterprise gets a basic area payment and has the opportunity to apply for top-up funds as

part of pillar 1, not just pillar 2, that will influence behaviour and link support to activity.

Bill Wilson: I was thinking of ecological or biodiversity issues. Would you offer top-up funds, or would you say that certain biodiversity conditions had to be met for someone to qualify for the payments at all? There are two slightly different routes that you could take.

Richard Lochhead: You are right that different routes are available. That is because agriculture in Scotland is so diverse. Brian Pack split Scotland into less favoured area and non-less favoured area, but because Scotland is so diverse, we have to find ways of tailoring the support to the different circumstances around the country. The circumstances in Orkney might be different from those in Dumfriesshire. It is a case of deciding whether we want to have uniform conditions that have to be adhered to all round the country or to have available top-up funds that might be more suitable in areas such as Orkney, with different ways of delivering support elsewhere in the country. We must have the tools in the box that match Scotland's circumstances. Top-up funds would give that bit more flexibility.

Bill Wilson: Are you ruling out having certain minimal biodiversity conditions that everyone would have to meet?

Richard Lochhead: We already have agricultural and environmental conditions that anyone who receives support through the common agricultural policy has to meet. I agree that those have to be looked at as part of the new common agricultural policy post 2013. We need to consider whether they are appropriate for the 21st century and for the new environment in the world post 2013. I am not saying that those do not have to be considered; I am saying that a good way of delivering support is to link it to activity and to some of the public benefits that we want if we are to address those five securities.

John Scott: Another priority that came up in the round-table discussion was land abandonment and tailoring CAP reform to Scotland's particular needs in relation to that. I declare an interest, which I should have done hours ago, as a farmer and as a former hill farming convener of the NFUS. I apologise for not doing that sooner. Are you pressing the UK Government and Commissioner Ciolos on avoiding land abandonment as much as possible? Many sheep stocks have already gone off, and sheep stocks are the last type of farming to go in such situations. Are you pursuing that issue?

Richard Lochhead: How we avoid further land abandonment in Scotland is clearly another important part of the debate. That is our primary justification for on-going pillar 1 support and

support in less favoured areas in Scotland, so the issue is very much at the heart of the debate. Figures show that more than 6 million hectares in Scotland could be farmed in one form or another but, at present, about four and a half million hectares qualify for agricultural support. So, in theory, an extra one and a half million hectares could have more agricultural activity. If we want to meet Scotland's objectives of being a food-producing nation and maintaining food-producing capacity in a world in which the amount of land that is available for food production is declining and the population is increasing dramatically, we will clearly want to make optimal use of Scotland's land for food production—as well as meeting the other challenges that I spoke about earlier, such as carbon sequestration.

John Scott: I agree with all of that.

Elaine Murray: The question that I was going to ask has been asked twice by other members, so I will ask a different one.

There is an argument along the lines that because food production achieves a market return—although in some cases it is not necessarily the market return that it ought to receive—pillar 1 support should be directed to those public goods that do not have a market return. For example, farmers should perhaps be rewarded for reducing the carbon footprint of their farming methods or for increasing biodiversity. The extreme version of that is that food production should not receive support, which should go to other public goods that go alongside food production, such as dealing with land abandonment and the role of sheep, or keeping the environment in an appropriate condition in certain parts of Scotland. What is your response to that? It is not exactly an extreme argument, but it is a different approach to pillar 1.

Richard Lochhead: You raise a fundamental point. One key justification for pillar 1 support is that there is market failure, because the market does not return to the primary producer a fair share of every pound that is spent on food. That is the ultimate justification for pillar 1 support, which we must provide if we want to ensure that we have food production in our country and do not have to rely on imports. Market failure relates not only to the other public goods, but to food production in Scotland. As you will know from the dairy sector in your constituency and as we all know from our experiences, that is a key issue.

I agree, however, that we should and must find ways of incentivising agriculture to reduce its carbon footprint and of rewarding it for doing so. We know that 20 per cent of emissions in Scotland come from the agriculture and land use sectors, so we want to ensure that agricultural support delivers public benefits such as a reduction in the

carbon footprint. That should be central to the way forward.

Elaine Murray: I am playing devil's advocate to an extent. That different approach would result in farmers receiving support, but not directly as a result of food production, taking into account the various obstacles to receiving market value for food production, rather than—

Richard Lochhead: The difference is that pillar 1 provides direct support, which goes to all farmers who achieve certain conditions for agricultural activity; pillar 2 support can also provide some of the incentives that you are speaking about when it comes to people being more prepared for the market and taking some environmental measures. If that more competitive approach were to be the focus of agricultural support, it could lead, in some parts of Scotland, to the sort of land abandonment that we have just been discussing.

Until the market delivers for food production and food producers in Scotland, there is a strong—

Elaine Murray: Whose responsibility is it to ensure that the market delivers for food producers?

Richard Lochhead: That is a good question. It is the responsibility of us all. It is the responsibility of Governments. The UK Government has power, and it has pledged to introduce some measures to address the situation as a supermarket adjudicator, so as to empower the primary producer a bit more. It is also the responsibility of the rest of the supply chain to ensure that the primary producer is protected. Otherwise, the measures that are taken will be counterproductive, and they will destroy the very people who are relied upon for the raw materials that underpin the food sector. The responsibility is shared. At the moment, as we all know—

Elaine Murray: There is a responsibility on the part of the producers downstream from the primary producer to support the industry. That is where things are falling to pieces—that support is not happening. In a sense, through public subsidies, the public subsidise the big businesses, which do not pay the farmers enough, to put it bluntly.

Richard Lochhead: Yes. As a society we have to do a lot more to ensure that the primary producer gets the reward from the marketplace.

Elaine Murray: What is your view on modulation? The view was presented to us that modulation should be removed—that we should no longer be modulating from pillar 1 to pillar 2.

Richard Lochhead: Brian Pack points out in his report that there is no need for modulation under the post-2013 CAP. That is a valid view, given that

we will be starting from a different place with the post-2013 policy.

We will have to reach a view on the issue in Scotland. It is too early to say whether there should be modulation or not, but according to one scenario it is not necessary, as we are essentially starting with a new common agricultural policy. There is now more of a case for ensuring that we have strong pillar 1 support. It will not necessarily increase from where we are now, unless we experience various win-wins, so the case for modulation might be weaker.

Elaine Murray: There are issues around food security—although, as you know, we waste £1 billion-worth of food every year in Scotland. In some sense, what we are trying to achieve to support food production has to be tied in with other strategies such as zero waste, which actually recognise the value of food, rather than treating it as a commodity that can be thrown away.

Richard Lochhead: Yes. We have to ensure that the public are engaged in the future of agricultural policy and in the whole debate around the future of food. Food waste has been a key part not just of our waste policy but of our national food policy. As society grows increasingly aware that land is becoming more and more precious, particularly land that can produce food, and as the world population rockets—such that the demand for the food that we import will presumably also rocket, meaning that it could become more expensive—it is even more important that we can produce our own food in this country.

The Convener: “Land abandonment” is a term that is thrown about. Do we have any idea of figures relating to land abandonment? You said that 4.5 million hectares has payments on it and 1.5 million hectares does not. Has that 1.5 million increased over the years and has the 4.5 million declined? Do we have any figures on that? If you cannot supply them just now, perhaps you could supply them in writing after the meeting.

12:00

Richard Lochhead: I would not like David Barnes not to have the opportunity to contribute, so I will hand over to him in a second. Clearly there are a couple of factors in land abandonment. One is land that is simply not farmed. The other is the agricultural support mechanisms that we have, which historically have led to some naked acres—land where there is effectively no agricultural activity that still qualifies for support. We could say that that land has in effect been abandoned in some way. I invite David Barnes to elaborate on that.

David Barnes (Scottish Government Rural and Environment Directorate): It is quite hard to

get an absolutely accurate picture from the data sources that we have. By looking at the agricultural census data, we can look at the net change in the amount of land that is said to have agricultural activity on it. Clearly we are talking about livestock areas. If we compare the total area of farms in Scotland recorded in the census as having cattle and sheep on them in 2005 and in 2010, we can see that it has gone down by about 120,000 hectares. That is a net effect. Some holdings were previously registered as having cattle and sheep but are now registered as having none. Equally, some were previously registered as not having cattle and sheep but are now registered as having some. We can read that from the census data.

What is difficult to tell is the impact within a holding. For instance, holdings might be registered as having cattle and sheep, but we hear anecdotally of producers who are pulling away from the high hill and concentrating activity more on the inby land and the close hill. It is hard to identify that from the census sources. We are aware that we perhaps need to think about our sources of statistics on that.

A point that we are trying to make strongly to UK and European colleagues is that the situation in Scotland is very different from the situation in other parts of the UK and Europe. Land abandonment is not an issue for England and, therefore, it is easy for it to drop off the radar screen of UK Government colleagues. Whether through the cabinet secretary talking to UK ministers or officials talking to UK officials, we are constantly trying to alert our colleagues to the fact that land abandonment is not a theoretical issue but a real issue for Scotland. Measures to cope with it are a genuine negotiating priority for us.

The Convener: Given the change to the set-aside rules and the increase in the value of cattle and sheep, do you detect a stabilisation in land abandonment?

David Barnes: It is too early to say. We have certainly seen signs of stabilisation of cattle numbers after some years of gradual decline. It is a bit early to see whether there is a change in the land use pattern. Of course, livestock numbers and prices and land use do not necessarily go hand in hand. We could have a larger national herd or flock that is concentrated in a smaller area. We could see intensification in certain areas and extensification and abandonment in other areas.

Richard Lochhead: The only point that I would add to what David Barnes said about land abandonment is that we all know that 85 per cent of Scotland is a less favoured area and that about two thirds of Scotland is suitable only for rough grazing.

Livestock is therefore the only way in which the productive potential of land can be turned into food. We support Brian Pack's point on the case for limiting headage payments in less favoured areas to keep sheep and cattle—or as he puts it, lambs and calves—in certain parts of Scotland. When land is utilised and food is produced, it underpins the rural economy and helps to keep people in the area. In many parts of Scotland, grazing also leads to clear environmental benefits.

John Scott: I share your sentiments on headage payments, but how will that be funded? Is funding for headage payments likely to be available—for sheep and cattle in particular? You have said that funding will be scarce, so where will the headage funding come from?

Richard Lochhead: The beef calf scheme will be in operation until 2012, and we would like to negotiate the continuation of such schemes. As Brian Pack says in his report, schemes should be more targeted. He also makes a valid point that headage payments should be pitched at a level that ensures that people are not keeping animals simply for the subsidy. The payments are there to make the keeping of livestock more viable. We must not return to a situation in which some payments were high enough for some people to farm simply for the subsidy, rather than because they needed some support to farm.

John Scott: I was wondering which pocket that money would come from, but I suspect that you will not be able to answer at this point.

Richard Lochhead: It would have to come out of Scotland's allocation.

The Convener: Bill, did you have a question on headage payments?

Bill Wilson: I am not sure that my question has not already been answered. I think that John Scott has stolen my question.

John Scott: I beg your pardon.

The Convener: Liam, do you want to come in?

Liam McArthur: I will come to headage payments in a second, but I want to ask the cabinet secretary about market failure, which he was discussing earlier with Elaine Murray. As Peter Peacock said, our round-table discussion a couple of weeks ago brought out several interesting and challenging ideas. The name of Peter Cook will be very familiar to the cabinet secretary. He was brought in as an adviser on some of the problems experienced in relation to the Scotland rural development programme and pillar 2. He offered some insights into pillar 1—and we may have found why he was picked to do the SRDP thing and not what became the Pack review.

In his submission, Peter Cook says:

"We generally make the mistake of judging the impact of subsidy by looking at the current situation i.e. the average beef and sheep unit makes no profit without subsidy. But this ignores the fact that markets are dynamic – the benefit of subsidy is lost over time as farmers compete for stock and land and inputs and build the value of the subsidy they receive into the price they pay. The removal of subsidy would be painful, but would change the cost structure."

I would be interested to hear the cabinet secretary's observations on Peter Cook's diagnosis. Mr Cook was candid enough to admit that his comments would probably not go down very well in the farming community. Nevertheless, his ideas were interesting.

Richard Lochhead: Peter Cook is right to suggest that any farming enterprise will involve complex dynamics—which will include the role played by direct support. We have a diverse industry, and there will be different dynamics in different parts of the country. I expect that the dynamics in a farming enterprise in the hills of Mull are different from those in a farm in Aberdeenshire, for instance. The challenge will always be to come up with an agricultural support mechanism that caters for all the different circumstances. I am not sure that we will ever quite get there, but we have to get as close as we can.

For primary producers, the main issue at the moment is market failure. Peter Cook refers to the pain of any transition from having direct support to not having direct support; that pain would be so great in Scotland that I do not think that any of us would want to go there. It would be a racing certainty that many farming enterprises would collapse and become unviable. Some would survive—of course they would—but in certain parts of the country there would, in effect, be a clearance of farms. I do not think that any of us wants that.

Liam McArthur: My interpretation is that Peter Cook was arguing not that there is no market failure—self-evidently, there is—but that the extent of it differs in different sectors and, over time, the subsidy that is allocated to address it simply gets factored into the cost structure, leading to the self-perpetuating notion that, without that subsidy, the whole thing would collapse.

If it is accepted—as you seemed to suggest in your opening remarks—that the further we move away from the period on which the historical payments are based, the less justifiable that basis is and that some form of area-based payment is inevitable, how will the transition be made? Brian Pack suggests that it could be done in a big bang, which would get it over and done with. Alternatively, its introduction could be staggered, which, in unwinding the system, would make

visible to people what is coming down the track so that they could make adjustments accordingly. That does not seem a million miles away from what Peter Cook suggested, albeit that he expressed it in a more extreme way than many in the industry would be comfortable with.

Richard Lochhead: That reminds me of one of the points that Caroline Spelman made to the Oxford farming conference. She said that one of the reasons why we can happily do without direct support is the fact that we can introduce competitive measures that will enable producers to continue and be viable. However, she did not say what any of those measures would be. She seems to take the view that food security will not be harmed because there is lots of food out there—across the world—and that, if we introduce other measures to ensure that farming enterprises remain competitive without direct support, that will be fine, too; so, we can all move away from pillar 1 support into a new future. However, she does not say what the competitive measures are that would fill that gap.

Also, one of the reasons for giving direct support is the fact that, in Europe, we ask our producers to meet higher standards, and direct support is a way in which we can compensate them for meeting higher environmental and animal welfare standards. Without that support, at the moment, with the market failure and without a guarantee that supermarkets and retailers would stand by indigenous producers no matter how much more they had to charge for their produce because they had lost pillar 1 support, we will have our food supplied from overseas and there will be a reduction in food producing capacity in Scotland.

Liam McArthur: The notion that there is a value attached to what you have identified—the animal welfare and environmental standards that must be met in production—is not reflected in the price in the marketplace, which is an issue that we fail to get around. We have decoupled the payments from production and we are now going to move from historically based payments to some form of area-based payments. However, as long as consumers continue to buy on the basis of price, irrespective of what they tell pollsters about their intentions, that will remain an issue. Is it something that taxpayers should address through the mechanisms that are used at the moment? One of the benefits of decoupling payments was that it allowed farmers the visibility to farm to the market. However, the opportunity to give consumers a better understanding of the costs of producing what they buy was overlooked, and that still seems far too blurred. There is still no real understanding of how much it costs to produce the food.

Richard Lochhead: I totally agree with that important point. The consumer is probably the most important part of the jigsaw, but they are just one part of it—everyone in the supply chain is another part of the jigsaw in this big puzzle that we are all trying to solve.

12:15

The market must deliver for the primary producer—we are talking about the primary producer getting the right support. However, at the moment, even if the consumer were to want to reward the primary producer, that reward may not go into the primary producer's pocket. Somehow, we must solve that. The primary producer is left with a big gap in their income, which is why we need direct support.

You are completely right that, until the consumer understands what they are paying for when they buy food—what lies behind its production, how it is produced and the high standards that it is required to meet—the market will not deliver what it should. Even when the market delivers what it should, it might not deliver it to the primary producer—it might deliver it to someone else in the supply chain, particularly the supermarkets and retailers. So, we are still left in a position in which farming enterprises would be unviable without direct support.

Liam McArthur: I suspect that, in criticising Caroline Spelman again, you were trying to goad John Scott into responding. You glossed over whether you see the transition being best effected by the big bang that Brian Pack talked about or whether a more phased introduction of the move away from historically based payments would be a more reasonable approach to take.

Richard Lochhead: Brian Pack makes the point that, because direct payments are made on a historical basis just now, we should move as fast as possible to a new regime. I agree with that, but we must then define what is meant by “as fast as possible”. Pack makes the point—which we all agree on—that, if the transition takes a few years, which is one possible scenario, there must be help for new entrants from day one of the new CAP. We must have the ability to help new entrants. I cannot sit here and say that there will be a big-bang, overnight change to the new regime; the picture will become clear over the next year or two. Because we do not know exactly what the new regime will be, we do not know how long it will take to implement. Nonetheless, we all agree that there must be some change from day one of the new CAP.

Liam McArthur: I certainly agree with your point about new entrants. However, as the committee has found in recent years, in working

through the budget process, the funding has been there for new entrants but it has not been drawn down for a variety of reasons. I presume that there will be flexibility to address some of the issues around new entrants, which are not necessarily financial but more about the criteria for unlocking the funding that is already available.

Richard Lochhead: Yes. It has been a big challenge to identify measures that will have a positive impact on attracting new entrants into agriculture. You will remember that, back in 2007, we said that we were willing to allocate up to £10 million in each year of the SRDP to new entrants and that, if there was no requirement for that money, it would go into other parts of the SRDP or whatever—and we now face cuts to the SRDP. However, that issue is nothing compared with changing the basis of direct support. I am sure that new entrants would much rather have their share of the £600 million a year that is going into agriculture in Scotland through direct support than the £70,000 that we are allowed to offer them under European regulations through the SRDP. The fundamental point is that we need to fix agricultural support full stop.

John Scott: On market failure, it would be worth re-emphasising that Jim Paice and Caroline Spelman intend to address that—as you said, cabinet secretary—through the appointment of a supermarket adjudicator. That is the first step in the right direction for a very long time and will be achieved within a very short time of there being a new Lib Dem coalition at Westminster.

The Convener: A Lib Dem-Tory coalition.

John Scott: Exactly. The previous Labour Government had 13 years to do that but refused to do it or could not do it—I am not sure which. The point is that the market failure is now beginning to be addressed, and I am sure that that will have the cabinet secretary's full support.

Richard Lochhead: It will have our full support as long as it has teeth and is effective, and we want it to be delivered as soon as possible. We need the UK Government's support on other issues, too—for instance, some of the European proposals that are coming out of the high-level working group on dairy. There are debates to be had on those.

John Scott: Indeed. On a point of correction, Bill Wilson, our scientist on the committee, is right to point out that, when I had a quick stab at mental arithmetic regarding pillar 1 support in the Scottish context of the EU framework, I should have said five sevenths instead of five ninths. David Barnes is smiling knowingly. I want it to be recorded in the *Official Report*, please, that Scotland receives five sevenths of the required support.

My question is about the Pack report. When we touched on that before, the minister rather skated round the issue. When will you respond to it? Will the response be before or after the election?

Richard Lochhead: We have responded. I have laid out publicly on more than one occasion what we agree with in the Pack report and where we think that more work is required.

John Scott: Has there been a written response? I have not seen a published response.

Richard Lochhead: I am happy to write to the committee with a response to the Pack report if you would find that helpful. There is an on-going, evolving debate about how we deliver the principles that we have signed up to in the Pack report. I know that there is a political point to be made—that a report has been produced and we should pin our colours to the mast on every single issue—but no country would detail at this stage how everything will be delivered on every single issue. As the report states, much more work needs to be done on how its recommendations can be delivered. We also have to remain fleet of foot regarding developments in Europe.

At least we now have a blueprint to guide us on the best outcomes for Scotland. It is an evidence-based report that we can take to the UK Government and the European Commission and use to back up our case for change. It is heartening that, as the commissioner and his officials sit in their offices in Brussels and look across Europe, with hundreds of millions of people, millions of farmers, 27 countries and the nations and regions within the countries, they know what Scotland wants, they have read the reports from Scotland, and they are up to date with the ideas that are coming out of Scotland. That is a good place for us to be.

John Scott: Have they received documentation from you in that regard, or have they just seen the report? Does Brian Pack speak for Scotland, or does the Scottish Government speak for Scotland? That is the fundamental point. You are telling us that you do not want to constrain yourself because you want to be fleet of foot and have a negotiating position that is, in essence, "We want the best for Scotland." Of course, we all want the best for Scotland. Is Brian Pack's submission to Europe our position in Scotland, or is there a Government position? Have you had correspondence with Europe?

Richard Lochhead: In all our correspondence with Europe and everyone else, we have referred to the Brian Pack report, explaining what we have signed up to and agree with, and indicating where a lot more work needs to be done.

The committee should remember that at this stage in the CAP negotiations we are trying to

shape the big picture and direction of travel. We are not trying to design the detailed delivery of measures; we are just trying to say what kind of measures we need for Scotland. Once we have an agreement from Europe on the direction of travel, we can work on the fine detail, the legalities and the very bureaucratic effort that we will no doubt have to put in place in Scotland to ensure that the measures are delivered on the ground—although we will try to keep the bureaucracy to a minimum.

We are in a good place and the right place, and we are ahead of many other countries. There is a lot of evidence that that is the case.

John Scott: Thank you.

The Convener: Members have exhausted the main points that they wanted to raise, so I thank the cabinet secretary and David Barnes for their attendance throughout today's meeting. It would be helpful if you forwarded to the clerks any further written evidence that has been requested. It would be good to check the figures that you gave on pillar 1 and where Scotland lies in relation to other European countries. If you had the same sorts of figures for pillar 2, it would be helpful for us to have them before we complete our report.

That concludes the public part of today's meeting. I thank everyone for their attendance.

12:23

Meeting continued in private until 12:36.

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