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Pàrlamaid na h-Alba

Official Report

# RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE

Wednesday 22 May 2013

Session 4

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## RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE
**18th Meeting 2013, Session 4**

**CONVENER**

*Rob Gibson (Caithness, Sutherland and Ross) (SNP)

**DEPUTY CONVENER**

*Graeme Dey (Angus South) (SNP)

**COMMITTEE MEMBERS**

*Jayne Baxter (Mid Scotland and Fife) (Lab)
*Claudia Beamish (South Scotland) (Lab)
*Nigel Don (Angus North and Mearns) (SNP)
*Alex Fergusson (Galloway and West Dumfries) (Con)
*Jim Hume (South Scotland) (LD)
*Richard Lyle (Central Scotland) (SNP)
*Angus MacDonald (Falkirk East) (SNP)

*attended

**THE FOLLOWING ALSO PARTICIPATED:**

George Burgess (Scottish Government)
Richard Frew (Scottish Government)
Jo Green (Scottish Environment Protection Agency)
Kenneth Htet-Khin (Scottish Government)
Joseph Kerr (Scottish Government)
Calum MacDonald (Scottish Environment Protection Agency)
Bridget Marshall (Scottish Environment Protection Agency)
Neil Watt (Scottish Government)
Paul Wheelhouse (Minister for Environment and Climate Change)

**CLERK TO THE COMMITTEE**

Lynn Tullis

**LOCATION**

Committee Room 1

# Scottish Parliament

## Rural Affairs, Climate Change and Environment Committee

*Wednesday 22 May 2013*

[The Convener *opened the meeting at 09:30*]

## Regulatory Reform (Scotland) Bill: Stage 1

**The Convener (Rob Gibson):** Welcome to the 18th meeting in 2013 of the Rural Affairs, Climate Change and Environment Committee. Members and the public should turn off their mobile devices because leaving them in flight mode or on silent can affect the broadcasting system.

We have two witness panels on the Regulatory Reform (Scotland) Bill. We will hear first from the Scottish Government's bill team and then from the Scottish Environment Protection Agency. I welcome the bill team. Neil Watt is the bill manager and is from the better environmental regulation policy, environmental quality division—I hope that you can remember that—Bridget Marshall is from the better environmental regulation policy, environmental quality division; and George Burgess is deputy director for environmental quality in the Scottish Government. Neil Watt will give a brief introduction.

**Neil Watt (Scottish Government):** Thank you for inviting us here. I will briefly set out why the Government has introduced the bill, what it will do and the benefits that it will bring.

Delivery of the bill is a cross-Government effort. We are here primarily to discuss the parts of the bill that the committee is looking at—the economic duty provision in part 1 and the environmental regulation provisions in part 2. Before I go into that, I will set the scene a little and tell you about the joint working approach that the Government is taking with SEPA to deliver the bill and the wider programme that it supports.

The team here includes Bridget Marshall, who was seconded to our division from SEPA to ensure that operational needs have been incorporated from the start. George Burgess, Bridget and I all work in the environmental quality division. There is a collective effort both in policy development and in operational delivery; we have been collaborating on the programme for a number of years to maximise the skills and experience in both organisations and to deliver more effective outcomes.

The bill is only one part of the better environmental regulation programme, which also includes changes to SEPA's future funding model and other elements of its transformational change agenda. The better environmental regulation programme is about delivering environmental outcomes more effectively and helping SEPA to become the sort of regulator that Scotland needs for the future.

The programme is not about less regulation or loosening of environmental regulation; rather, it is about effective regulation in protecting the environment. We are working towards a more flexible and responsive culture, where regulation is based on risk and performance rather than on anticipated routine activity. By applying the principles of better regulation to environmental protection, the programme will streamline the legislative framework and SEPA's regulatory activity.

Put simply, the environmental regulation part of the bill does four things. First, it introduces a new statutory purpose that recognises the broader role that SEPA now has. That will set SEPA's environmental protection role within a wider context of sustainable economic growth, including health and wellbeing.

Secondly, it enables a new simplified and integrated framework for environmental regulation that will bring together the arrangements for regulation of water, waste, pollution prevention and control, and radioactive waste in a single permissioning structure under a single standardised procedure.

Thirdly, it creates a new enforcement framework. The bill will enable the introduction of a wider range of penalties and enforcement measures that SEPA can use directly—such as financial penalties and enforcement undertakings—to tackle poor performance and non-compliance.

Fourthly, the bill will provide the criminal courts with a broader range of sentencing options, including publicity orders for the worst cases of environmental offending.

A wide range of interests have been consulted on the bill's provisions and we continue to engage directly with stakeholders to identify and address issues and concerns and to try to build consensus on the way forward. The legislation will not lead to significant additional costs to the Government and will be associated with delivery of efficiencies for SEPA and for operators.

In conclusion, the bill and the wider programme that it supports will help to deliver multiple benefits, including benefits for the environment, as SEPA will be able to draw on a broader range of enforcement tools and the courts will have a wider range of sentencing options for those who blatantly disregard their environmental obligations.

There will be benefits for business, particularly those that adopt good environmental business practices through simpler permissions and guidance, and more targeted support and advice. There will be benefits for communities, as SEPA will be able to focus more resources on the greatest environmental harms or risks, and there will be benefits for SEPA, as the bill will help it to take a more proportionate and outcome-focused approach to regulation. The bill will lead to fairer and more effective and efficient protection of the environment.

Thank you. We are happy to answer questions.

**The Convener:** Thank you. We all have to dip into what is a fairly new area to the committee. I will kick off the questions. What was the rationale for undertaking a number of separate consultations?

**Neil Watt:** We undertook the first consultation in May last year. That quite detailed consultation was on the environmental permissioning framework and the enforcement measures. We wanted to give sufficient time for stakeholders to consider the proposals fully.

The May consultation outlined the background to SEPA's purpose and how we thought that that could be simplified and made more in line with SEPA's current role in environmental protection. In the May consultation, there were quite a lot of comments on that issue. We decided to include it in a further consultation, which was on SEPA's future funding arrangements. That issue is outwith the scope of the bill, but because of the level of interest, we wanted to reflect the views that we had received in the earlier consultation and give sufficient time for that to be developed.

**The Convener:** Some provisions in the bill have not been consulted on. What are they and what informal feedback has been sought or received on them?

**Neil Watt:** The main parts of the bill were included in the two consultations—the May consultation and the October consultation. Minor parts of the bill were not formally consulted on, but we informally consulted relevant stakeholders on them. The minor parts include vicarious liability, contaminated land, and air quality. If those are the parts of the bill to which you are referring, I can answer more questions on them. However, the vast majority of the bill was included in the formal consultation exercises.

**The Convener:** We will have further questions on the minor parts of the bill.

Individual responses were not made easily available. Is that consistent with the Scottish Government's principles of better regulation—transparent, accountable, proportionate, consistent and targeted?

**Neil Watt:** Do you mean the responses to the consultations?

**The Convener:** Yes.

**Neil Watt:** I understand that they have, as is practice, been made available via the Scottish Government library. This week, we are in the process of putting all the responses to all the consultations on the Scottish Government's website, although we have not—other than from the Scottish Parliament information centre—received any requests for them.

**The Convener:** I am sure that people are used to going to the electronic medium to get such things.

**Neil Watt:** As I said, we will have the responses online this week. I am happy to take the committee's feedback on the issue.

**Nigel Don (Angus North and Mearns) (SNP):** Good morning, colleagues. I want to pick up on an issue to which I think we will refer several times, which is the apparent multiplicity of objectives. As drafted, there appear to be at least two duties on SEPA, one of which is to achieve sustainable economic growth. The other is sustainable use of natural resources. Those two duties could immediately conflict—never mind our worrying about any other principles. Does that concern you as much as it concerns me? How will the hierarchy of principles be sorted?

**George Burgess (Scottish Government):** I think that you are referring to section 38, which establishes the general purpose of SEPA. The section sets out SEPA's purpose in one place and does so more clearly than it is defined in the current legislation.

SEPA's primary purpose, if you like, is to exercise its functions for the purpose of protecting or improving the environment, including managing natural resources in a sustainable way. It then has, as far as is consistent with that, the purposes of improving the health and wellbeing of the people of Scotland and achieving sustainable economic growth.

We might contrast that with the current statutory provision, in which the only purpose that is given to SEPA is to protect and improve the environment, which relates only to its pollution control functions. It is quite odd. When SEPA was set up and established, it was given a whole batch of functions, but apart from that one provision, little sense was given in statute as to what it was about, or what it was supposed to be exercising its functions for.

Over the years—SEPA colleagues might be better able to comment on this—the way in which SEPA has operated has been, in fact, to take account of sustainable development of the environmental, economic and social elements all together. I see what is written in section 13 as SEPA's general purpose as acknowledging the reality of how it carries out its work.

**Nigel Don:** Yes. I am sure that that is true, and nothing that I want to say is to be critical of what is necessarily going on at present, although I think that, as constituency MSPs, we all run into some doubtful decisions every now and again.

However, I am still concerned that whatever the first principle is, the second principle will always be subordinate to it. That implies that, if the primary duty is to look after the environment, the moment the environment is damaged, sustainable economic growth goes away. Surely that is not what we want. How are we going to resolve, in a statute that is designed to clarify what is going on, how the principles sit on top of each other so that people can actually make decisions?

**George Burgess:** What has been set out is that protecting and improving the environment is the primary purpose, and that SEPA must achieve the other purposes in so far as they are consistent with that primary purpose. That is a step ahead of the position that we currently have, where the only statutory purpose is to protect and improve the environment.

We need to remember that the purpose exists at a high level. There will be other regimes—for instance, in relation to the water environment controlled activities regulations—in which individual pieces of legislation will set out in rather more detail exactly how SEPA must undertake that balancing act. That situation is already familiar to SEPA. The bill provides a background to SEPA's operations; bringing together the economic, environmental and social elements in a way that does not apply at present will give SEPA rather more comfort that how it currently exercises its functions is, in fact, in line with statute.

**Nigel Don:** May I push this, convener?

**The Convener:** Yes. After that, Claudia Beamish wants to come in with a supplementary question.

**Nigel Don:** Given that we live in an increasingly litigious environment, and given that it might become easier for groups and individuals to go to court on environmental issues, which increasingly seems to be the legal situation, is not there a risk that a group or an individual could take the position that we currently have, where protection of the environment is the top line, and say in court, "If you are doing anything significant to my environment"—I am not talking about trivial things—"the sustainable economic growth should be struck, because the top level is protection of the environment"?

**George Burgess:** I suggest that that risk—there probably is such a risk—is greater under current statute, in which the only purpose is to protect and improve the environment—

**Nigel Don:** Forgive my interrupting you. I would not dispute that but, given that we are rewriting the law, surely we should be doing it so that the hierarchy is organised so that we are quite clear that we can do some of the lower-order things. In other words, it should not be a hierarchy. It needs to be an "and, and, and" or an "or, or, or" rather than a "this, then perhaps that".

**George Burgess:** It would probably be more difficult for SEPA to operate if the three elements—the economic, the social and the environmental—were simply left as equal parts.

SEPA is the Scottish Environment Protection Agency, and protection and improvement of the environment is its top priority. We feel that the hierarchy that we have set out is the right one for SEPA, because it acknowledges the three legs of sustainable development and puts them in what we believe is the correct order.

09:45

**Claudia Beamish (South Scotland) (Lab):** Good morning to you all. I will take you back to the remarks that were made about not having formally consulted on some areas. Can any of you explain why it was decided not to consult formally on air quality and contaminated land? Frankly, I find that quite surprising, from the perspective of communities, if nothing else.

**Neil Watt:** On air quality, the provision in the bill relates to our reporting requirement with regard to the local air quality mapping system for local authorities. We have consulted informally with local authorities, scientists and the Scottish pollution control co-ordinating committee, and the requirement is generally deemed to be a less useful one that gets in the way of the more meaningful reporting requirements. The intention is to consult on that formally, but in practical terms we have a good opportunity to include it in the bill. We intend to consult those groups fully in the coming summer.

**George Burgess:** On contaminated land, the bill seeks to address an issue that has emerged from consideration of communities' concerns. The committee will be aware of the situation at Dalgety Bay, where there is radioactive contamination of the foreshore. SEPA has powers to declare that land to be contaminated land. One of the concerns that the community expressed to us and to SEPA

was about the blight of having a declaration of contamination with no real mechanism for that to be closed off at the end of the period. The provisions in the bill therefore come directly from the concerns of communities. They attempt to address the concern that if SEPA—in that area of land or another area—has to go down the route of formal designation, the area will be forever labelled in that way. The bill attempts to provide a mechanism so that, once the contamination has been dealt with and there is no longer a problem, there is a way to say, "Okay. That's finished and dealt with, so we can close that off."

There has been no consultation on that measure, except some informal consultation of professionals who are involved in that work. The provision very much comes from hearing and seeking to respond to the concerns of communities.

**The Convener:** I remind members and the panel that the minister wrote to us at the beginning of this week to say that contaminated land will be the subject of a set of amendments at stage 2, as will an environmental crime task force and, potentially, a national litter strategy. I guess, from the evidence that has been received informally, that those two things have emerged in the way that you have just explained.

**George Burgess:** Yes.

**Nigel Don:** I return to the practicalities with regard to the duties. How will SEPA and Scottish Natural Heritage implement the duties? Would that be done through pre-planning advice and looking at planning applications? How will those duties play out?

**Neil Watt:** I know that the committee is taking evidence from SEPA separately today and from SNH later. I think that they would argue that, in a general sense, they already contribute to the Government's purpose. I do not want to pre-empt what they say, but I have looked at their written evidence. I think that you are referring to the duty in part 1 that will be placed on regulators to contribute to sustainable economic growth. I understand that that will be underpinned by a code of practice, which will deal with exactly that kind of issue and which will be developed with input from the regulators. I can really only give you that general answer. You also mentioned planning.

**Nigel Don:** I was thinking that all kinds of things go on out there. SEPA is involved day to day in things that go on in the real world, but there are also lots of development proposals. Clearly, SEPA and SNH will want to be involved at the planning stage. I suspect that the answer that I am looking for is about a code of practice. As a parliamentarian, that always worries me, because I wonder how much should be in the bill and how much should be in a code of practice. However, that is probably the answer.

**Neil Watt:** The code will be consulted on and will receive parliamentary scrutiny in the coming year.

**Bridget Marshall (Scottish Environment Protection Agency):** To clarify, SEPA will not be under the duty in part 1. There is an exemption so that a regulator that is under a similar duty under other legislation is not subject to the general economic duty in part 1. The proposal is to write into SEPA's purpose the requirement to consider sustainable economic growth, so SEPA will be under a similar duty under part 2, and therefore part 1 will not apply to it. I hope that that is clear.

**Nigel Don:** I am clear about the issue, but I am not clear as to what you said, although I am sure that the *Official Report* will be. Are you implying that SEPA will have the general economic part of its duty throughout its activities?

**Bridget Marshall:** Yes.

**Nigel Don:** That will be a result of the changes that are being made, even if SEPA is applying something that was previously set up under a different regime.

**George Burgess:** Yes. The new purpose that we are providing for SEPA, which is in section 38, applies across the board to all SEPA's functions. That includes its functions of dealing with regulation, such as application for permits and the like, but it will extend to SEPA's involvement in the planning regime, for instance. That is in contrast to the current statutory provision in which, as I said, the only hint of purpose that is given to SEPA relates exclusively to its pollution control functions, which are a much narrower subset. As Bridget Marshall explained, there is a general duty on all regulators in part 1. The interaction between that and other duties, such as the new general purpose that is being set out for SEPA, is resolved in part 1, so that we do not end up with conflicting sets of duties on bodies such as SEPA.

**Richard Lyle (Central Scotland) (SNP):** I want to double-check the purpose of the provisions in part 3 on planning authorities' functions relating to charges and fees and street trader licences. Do those provisions relate to fairs or just to street trader licensing? When we talk about the environment in that regard, does that include noise?

**George Burgess:** I will pick up your questions in reverse order. Noise will certainly be an aspect of the environment that can be regulated; it is an element that can be controlled under the existing pollution prevention and control regime.

On street trader licences, I should confess that, in a previous role I was responsible for civic

government licensing. The provision on that is to deal with the current complexities under which mobile burger vans and the like need to get food hygiene certificates in each local authority area in which they operate. That is not thought to be in line with the practices of better regulation. The bill will allow such vans to be checked out in one area and get their certificate, which will be effective across the country.

**The Convener:** I point out that our committee is not dealing with part 3—another committee is dealing with that.

**Richard Lyle:** It was just a simple question while we have the people here. If you will allow me two seconds, convener, I would like to ask whether funfairs come under the part of the bill that this committee is not dealing with.

**George Burgess:** Funfairs are dealt with under the Civic Government (Scotland) Act 1982, probably under public entertainment licenses rather than street trader licences, which is what is referred to here.

**Richard Lyle:** It was just for clarification. Thank you.

**Graeme Dey (Angus South) (SNP):** I want to return to a particular subject, if I may. At the risk of labouring a point that Nigel Don raised, I would like some assurance on this issue. Can the panel conceive of a situation in which an argument is advanced for reordering the hierarchy, or in which pressure might be applied on the basis that economic growth must take precedence in particular circumstances? In such circumstances, can we be assured that such pressure would be resisted and that environmental protection would always be the priority?

**George Burgess:** That is why section 38 is written in the way that it is, with a clear hierarchy in place. As I have said, it acknowledges the three elements of sustainable development—the economic, the environmental and the social—and gives primacy to the environmental leg. We consider that to be right and appropriate for a body such as SEPA, which is an environmental protection agency, after all.

**Neil Watt:** We are also alluding to any tension between the three elements. Such tension already exists and SEPA manages it daily. As George Burgess said, the new purpose is set out in statute and it gives primacy to the environmental protection role.

**Graeme Dey:** That is fine. I just wanted that to be clear and on the record. Thank you.

**Alex Fergusson (Galloway and West Dumfries) (Con):** I think that Bridget Marshall has answered the first part of my question, which is how we expect the organisations involved to be able to balance the duties that the bill will impose on them with those that other legislation has imposed on them. I think that you answered that by saying that it will be fine—obviously, that is a paraphrase.

To turn that round a bit, do you think that the organisations involved will find it as fine as you think it will be? I am really asking whether there will be unforeseen consequences; obviously, if they are unforeseen, they have not been foreseen. Might there be any difficulties of that nature?

**Bridget Marshall:** By "organisations", do you mean those that SEPA regulates?

**Alex Fergusson:** No, sorry. I mean SEPA, SNH and the Food Standards Agency.

**Bridget Marshall:** To reiterate the point that we have already made, we are used to that balance and we do not foresee anything untoward arising that we do not already manage on a daily basis.

**Alex Fergusson:** If that is all to be managed, I presume that the outcomes will have to be measured or reported on, but there is no provision in the bill for such reporting.

**George Burgess:** SEPA is already subject to duties to provide annual reports on its functions, so I think that we can expect future annual reports to address the outcomes to which you refer.

**Alex Fergusson:** You expect SEPA to report the outcomes of the new duties in its annual report.

**George Burgess:** Yes.

**Alex Fergusson:** Okay. Thank you.

**The Convener:** We move on to part 2. Jim Hume has a question.

**Jim Hume (South Scotland) (LD):** Good morning, ladies and gentlemen.

I believe that chapter 1, on environmental regulation, would give Scottish ministers the power to bring forward secondary legislation to update SEPA's duties for purposes such as

"protecting and improving the environment"

and "preventing deterioration ... of ecosystems". Those are very broad terms, because we could argue that since man has walked on Scotland's land he has naturally affected ecosystems. We have large industries in whisky, aggregates and farming. How will that package of provisions work in practice, given that those industries have many different permits for different regimes?

10:00

**George Burgess:** At the moment, we have a series of different regulatory regimes of different

vintages with different provisions, some similarities and some bits that simply do not match up. To be frank, that is confusing for SEPA, the people who are regulated and Government. Part 2 will allow us to bring those regimes together and simplify them for the benefit of everyone concerned, so that farmers and distillers do not have to sit with a fistful of permits all written in different ways that are not necessarily consistent with each other under different regimes, but can have a single permit.

As far as European regulation—which, of course, is important in this area—will allow, it will also give the flexibility to make regulation more proportionate. At the moment, our water environment regulations allow for tiered regulation. Some of the most important things require a permit; lower-level things simply require registration with SEPA; other things can be done simply as long as some general binding rules are followed. There is a great deal of flexibility there, but we do not have that in some of the other regimes, so part 2 will allow us to spread the benefits from one regime to the others. It really should be better for all concerned.

**Jim Hume:** Okay. That sounds good.

We consider the financial implications—positive or negative—of any legislation. Perhaps you think that costs could be saved. Have estimates been made of whether the bill will be cost positive or cost negative to industries?

**Neil Watt:** We made it clear from the start that we expect there to be efficiencies for SEPA and for those whom it regulates. At a basic level, fewer permits means less administration. The ability to apply for permits online will save time as well.

**Jim Hume:** I am thinking not about time but about money. I am thinking about helping industries and cutting their costs, which are many and varied.

**George Burgess:** SEPA's time translates, of course, into money for the companies. Because the costs of the regulatory regime are met through SEPA's charging scheme, if it costs less overall for SEPA to administer the new arrangements, less cost will be passed on to the regulated entities through the charges.

**Jim Hume:** I will try to get as much detail as possible out of you. Has any estimation been made of how much industries throughout Scotland would save?

**Neil Watt:** It is hard to answer your question specifically right now, but I will try to answer it in a different way. The feedback that we had from the consultation was positive on the measure, pending the detail, how it is implemented and how SEPA engages with business on its implementation. We are aware of the need to work closely with the regulated bodies on the detail. Only when we are working on the detail and producing the guidance will we be able to attach cost estimates to it. However, there is an acceptance that it will have a positive impact for SEPA and those whom it regulates.

**Jim Hume:** Do you foresee doing that work before stage 3?

**Neil Watt:** That would be challenging. I am less familiar with SEPA's guidance. We can look into it, if that would be useful to the committee.

**Jim Hume:** It would be.

**The Convener:** We would like to know whether part 2 will be cost neutral. One assumes that, with a smaller budget, SEPA will have to maintain its income. Will charging for permits be a means of maintaining that income?

**George Burgess:** Part 2 is certainly not cost positive. It is not a cash-generating measure for SEPA. If it provides for efficiencies, there will be less work for SEPA to do and less resource will have to be expended on it, which should flow through to less expense to the regulated parties. It is certainly not a measure to try to find new ways to extract money from businesses.

**Graeme Dey:** To develop that theme, if SEPA's budget is reduced, in effect it still has to deal with a potential shortfall in income. Would there not be a temptation for it simply to maintain the charging regime at the current level in order to maintain its income, even though less work might be entailed?

**George Burgess:** I do not think that that is the way in which SEPA operates. SEPA will be better able to respond later, but the history over the past couple of years, when charges have been frozen, demonstrates that it is looking at ways to ensure that what it does is efficient as well as effective. It is not looking at ways to screw every last pound out of those whom it regulates.

**Neil Watt:** Going back to principles, we are moving from an activity-based system to a risk-based system. It will be difficult to compare, because SEPA will not be regulating everything that it regulates under the current system. It is accepted that by moving to the new model, SEPA will be able to make savings in how it operates and also in terms of the requirements for those whom it regulates.

**Bridget Marshall:** Although SEPA's charging schemes are not part of the legislative package, SEPA and the Government have consulted on proposals for reforming those charging schemes. The proposals were on moving to a risk-based, more flexible form of charging. There is a big commitment by SEPA and Government to work on

charging with stakeholders over the next year, as the proposals develop.

**The Convener:** Let us move to chapter 2.

**Angus MacDonald (Falkirk East) (SNP):** Good morning, panel. I turn to the additional powers for SEPA and powers of enforcement, such as fixed monetary penalties and non-compliance penalties. In which cases do you envisage that SEPA would use fixed and variable monetary penalties? What process would SEPA use to identify whether to impose a fixed or variable penalty and the appropriate level of penalty?

**Bridget Marshall:** The new enforcement measures that are being made available to SEPA will be within a framework of guidance from the Lord Advocate, who has a discretion around the disposal of offences in Scotland. He will provide guidance to SEPA about which offences are appropriate for fixed and variable penalties. Anything that I say is within the context of guidelines that will be developed with the Lord Advocate and which will set the framework for the use of the new enforcement measures by SEPA.

The fixed penalty is meant for very low-level, primarily administrative offending. The fines are set at a relatively low level in the bill. The proposal is that the maximum amount is level 4 on the standard scale, which is £2,500. We consulted in the May consultation on levels of around £500 for individuals and £1,000 for companies.

In the context of the Lord Advocate's guidelines, we expect that SEPA will use those fines for genuinely administrative offences relating to failure to supply data as a requirement of a permit, or perhaps for supplying false information. In other words, they will be offences in which no real environmental harm has been caused and which relate to the nuts and bolts of the administrative system.

The variable penalty is different. We have proposed in the bill that the maximum amount of the variable penalty will be £40,000. That will be set by order, so the amount has yet to be determined. It could be less than £40,000. The variable monetary penalty is to be used in cases of low-level—in terms of the offender's attitude and behaviour—offending. It is supposed to be used for companies and individuals that are generally compliant or perhaps confused about their financial obligations, in cases when there is no real criminal intent or deliberate intent not to comply with the environmental regulation, and when a low level of harm has been caused. The variable penalty is not intended to be used when there is either criminal intent or deliberate intent, or when any significant harm is caused. SEPA will continue to refer such cases for prosecution to the procurator fiscal.

Variable penalties are intended to be used in the middle ground. We refer some offences to the procurator fiscal but criminal sanctions are not necessarily proportionate and a gap has been identified. If the regulator is given the ability to serve such a penalty, that provides an extra deterrent for generally compliant businesses. We are talking about offences such as those around failure to comply with conditions. It is hoped that variable penalties will enable such situations to be dealt with in a much more proportionate manner, and much more quickly than if they were referred through the criminal courts.

**Angus MacDonald:** Is there a proposed ceiling for non-compliance penalties?

**Bridget Marshall:** As a response to the variable monetary penalty, someone can offer an undertaking to carry out certain activities. For example, instead of paying the fine, they can offer to undertake restoration of the environment from all the harm that they have caused. If they fail to comply with that undertaking, the non-compliance penalty comes into play, so it is of limited application in that sense. However, there is no ceiling in the bill on what the non-compliance penalty could be and we have been in correspondence with the Subordinate Legislation Committee on proposing a stage 2 amendment that would plug that gap.

**Angus MacDonald:** That is good.

As we know, operators are driven primarily by profit and loss and I note in the bill the regime for the imposition of fines for organisations and individuals. What measures are planned to prevent an offending operator from simply folding their operation, ignoring the fine and leaving local authorities and communities with the bill for cleaning contamination? Is it not worth considering requiring operators who apply for a licence to lodge a bond against failure to comply with a risk assessment?

**George Burgess:** That sort of system already exists in part of our regulatory regime. The pollution prevention and control regulations provide for SEPA, as part of the fit-and-proper-person test, to require financial provision to be put in place—it can take the form of a bond or a financial guarantee or some other mechanism. That will be available across the spectrum of regulated areas. It will be more appropriate in some areas than others—landfill is an obvious example in which we would want to ensure that sufficient safeguards are in place.

**Angus MacDonald:** Yes, not just landfill but waste transfer facilities, too.

**Nigel Don:** My point is not about subordinate legislation, although you might have expected it to be. On the idea of variable monetary penalties, am

I right in thinking that SEPA would only have to be satisfied on the balance of probabilities that an offence had been committed?

**Bridget Marshall:** You are right; that is the proposal in the bill. We have considered the issue long and hard. Similar sanctions are in place in England and Wales under the Regulatory Enforcement and Sanctions Act 2008—there they have a criminal burden of proof. We looked at that model and we thought about the context in which sanctions are being applied in Scotland, which is a very different legal context from that in England and Wales.

10:15

We felt that, on balance, the civil burden of proof was the right burden of proof in Scotland in relation to the sanctions. One of the major reasons for reaching that conclusion was to make a clear distinction in the bill between the role of the fiscal and the role of SEPA. They have distinct roles when it comes to the prosecution of offences. SEPA refers reports to the procurator fiscal, who considers the sufficiency of evidence in the context of making a public interest decision on whether to prosecute. SEPA does not have that role.

That contrasts with the Environment Agency in England and Wales, which is also the prosecuting authority. The Environment Agency deals with a criminal burden of proof in relation to criminal offences, and it is well used to deciding matters according to the sufficiency of evidence test. We felt that it would be clearer if the bill reflected the distinction in Scotland between the role of SEPA and the role of the fiscals.

We considered the issue in the context of the entire range of enforcement measures that SEPA has. SEPA has an existing ability to serve enforcement notices and revocation and suspension notices, all of which have a burden of proof at the civil level. We felt that the new enforcement measures sat within the package of enforcement measures that SEPA is dealing with. It was right that the burden of proof was a civil one.

We closely considered the human rights implications. For those of you who are familiar with article 6 of the European convention on human rights, it is more about the process around rights of appeal. It is very important to have a strong appeal route in relation to the sanctions. It seemed from our review that the civil burden of proof is sufficient to supply adequate protection with regard to the way in which the measures are to be used and implemented by SEPA.

SEPA already has the ability to serve civil sanctions in relation to emissions trading, and the burden of proof in relation to that is a civil one. We also considered a range of regulators that serve financial penalties, including the Office of Fair Trading, the Financial Services Authority and the Scottish Information Commissioner. It is quite usual in the regulatory context for there to be a discretion to serve financial penalties that have a civil burden of proof. We did not think that that was out of step in relation to other systems.

**Nigel Don:** Thank you for that wide-ranging response; it is very helpful to have that on the record. I cannot help having a feeling that my local farmers will say that the provisions give SEPA a way of implementing a fine without having to prove very much. Perhaps the net result will be to have a relatively low-level way of enforcing something and extracting a penalty, if I may describe it that way, and then to have a very large jump from that to going through the courts. There could be a huge burden of proof, the fiscal has to be involved and there are significant costs for SEPA and any other organisation involved.

I understand your rationale for having a low-level approach of that sort, which makes a great deal of sense, but we then finish up in a position where the average farmer or operator will think that SEPA will use that approach as often as it can, because it knows that going through the courts takes a huge amount more effort. SEPA will not want to do that, so the farmers think that they will keep being nudged using the other approach. That will be their reaction.

**Bridget Marshall:** We are entirely aware of that, and that is the downside of the system that we propose. There is also the allegation that we will put our weak cases through the route that involves SEPA imposing a sanction, rather than referring them to the criminal court. The safeguard around that approach lies in the guidelines that the Lord Advocate will give us, as well as in the way in which SEPA will implement it.

We thought long and hard about the matter. The point at which SEPA will make a decision on whether it will impose a penalty or refer a case will be quite late in the day, once the investigation has been carried out. It will be very difficult to make decisions about the extent of the environmental harm or even the culpability of the person involved until quite a late stage. We felt that there might be little practical difference between the evidence that SEPA gathers when it imposes a measure and the evidence that is gathered when it refers cases.

**Graeme Dey:** I want to return to the issue of administrative-type offences. I understand that, at present, such low-level issues are dealt with on a site-specific basis. That means that a company that operates six sites and fails to provide the appropriate data or to report in the appropriate way is not dealt with as a significant offender,

because no cumulative view is taken of its actions. Is there anything in the new proposals that addresses that, and if there is not, should not there be?

**Bridget Marshall:** Are you saying that we do not look at the pattern of offending as a whole?

**Graeme Dey:** SEPA seems to treat companies on a site-by-site basis. Is there anything in the bill that will address that?

**Bridget Marshall:** That would not necessarily be addressed through the bill; it is more of an implementation issue. SEPA will implement the measures in question on a much more national basis. We currently have regional peer review groups that look at what officers recommend be done on a site. In future, it is proposed that governance will be done nationally, so we will look at the way in which companies operate across Scotland in a much more rigorous way than we do at present. However, I think that that is more of an implementation issue than one that should be dealt with in the bill.

**Graeme Dey:** But it is an issue that you are aware of.

**Bridget Marshall:** Yes.

**Graeme Dey:** Okay. Thank you.

**George Burgess:** One of the bits of flexibility that the bill's regime provides for is what we have termed "corporate permits", whereby rather than a single body having a series of permits for individual sites, it would be possible to deal with them all together in a single permit. That might be a way of dealing with the sort of issue that you mentioned. There are upsides and downsides to that, as came out in the consultation, but the flexibility is there to adopt such an approach.

**The Convener:** We move to chapter 3, on which Jayne Baxter will lead off.

**Jayne Baxter (Mid Scotland and Fife) (Lab):** Good morning. Chapter 3, which relates to court powers, sets out provision for compensation orders, fines and publicity orders. How effective are the existing remediation powers? Under the current system, are there examples of cases in which fines have been imposed that have failed to offset the financial benefits that have been accrued by committing an offence?

**Bridget Marshall:** As you know, fines—like sentencing—are largely for the criminal courts, so it is hard to comment in any detail or to express particular views on them. Fine levels in the environmental field are generally felt to be low, as I am sure that the committee recognises. Last year, the average fine was just under £6,000, which is higher than it has been in previous years, so we feel that we are moving forward in a positive way, even if progress is not as rapid as some of us would like.

A package of measures is required on fines in Scotland. We have been working on some of those measures for a number of years. In recent years, through the Judicial Studies Committee, SEPA, along with the Crown Office, has trained sheriffs, and the Crown Office has developed specialist fiscals to prosecute environmental crime. Since 2011, there has been a specialised wildlife and environmental crime unit in the fiscal service that can get to grips with environmental law and present it to the criminal courts in an extremely positive way.

A number of measures apart from legislative measures can be taken to improve fine levels for environmental crime. In recent years, we have had the success story of fines of £90,000 and £200,000 being imposed, which we would not have believed possible even five years ago. I think that we are seeing a sea change in the approach to environmental crime.

**Jayne Baxter:** Thank you for that useful and comprehensive answer.

**Claudia Beamish:** Could any of you explain the issue further to me, as a layperson? Obviously, the issue of fines is for the procurator fiscal. Do I detect that you are pleased that there are more robust fines for very serious environmental crime? Waste crime, for instance, is extremely serious—I will perhaps leave it at that. I am concerned about whether the level of fines reflects the seriousness of crimes. Is there ever an opportunity to have dialogue with the procurator fiscal, or would that not be appropriate?

**Bridget Marshall:** To correct that, the issue of fines is for the sheriffs and the criminal courts, rather than the procurator fiscal. As I explained, we have worked with the Judicial Studies Committee and the Crown Office on a package of measures that will improve the specialism of sheriffs and fiscals in relation to environmental crime.

To tackle serious criminality in the environmental field—which is certainly there, particularly in relation to waste—SEPA has developed its own expertise and its relationships with other stakeholders, including the police, to enable us to take an intelligence-led approach to such criminality.

**Jayne Baxter:** Does the proposed £50,000 cap on compensation orders in respect of costs incurred in

"preventing, reducing, remediating or mitigating the effects of ... harm to the environment"

adequately reflect the potential associated costs?

**George Burgess:** That deals with only one set of provisions. Compensation orders have existed as part of criminal court powers since 1980. Because of how compensation orders were set up, their use in relation to environmental offending when there is no clearly identifiable victim has been limited.

Section 26 is trying to ensure that the criminal courts can use the compensation order mechanism to get money into the hands of a local authority or other body to help to remedy the damage. The limits that have been set are in line with the existing powers of the courts in relation to compensation orders, but there are other mechanisms for remediation—the offender can be required by the court to remediate the damage or SEPA can do the work and claim back the costs.

**Jayne Baxter:** Is there scope to use a range of sanctions—for example, a compensation order and the other measures—alongside each other?

**George Burgess:** There is. The provisions are quite complicated. We need to ensure that there is not an almost double recovery in them. If money has already been extracted from the offender or work has been done, they cannot be made to pay twice for the same offence. It is certainly possible for a combination of sanctions to be used.

**Neil Watt:** We have had quite a lot of feedback from stakeholders on the package of enforcement measures. We accept that we need to outline more clearly and in basic terms what is involved. We are facilitating an event on 11 June to bring together stakeholders to discuss exactly that issue; we hope that there will be more clarity after that.

**Angus MacDonald:** I would like more clarification about the terms "sustainable development" and "proportionate". Does the Government expect the bill to have a positive impact on sustainable development?

**Neil Watt:** Yes. That question could be answered in a number of ways. The requirement for SEPA to have regard to sustainable development exists alongside the new purpose. That requirement remains from the Environment Act 1995.

It is also important to look at what the parts of the bill that the committee is looking at do. In SEPA's purpose, the bill retains the reference to sustainable development. The integrated framework will have a positive impact on how businesses perform and how they comply with environmental regulation, and the enforcement tools will have positive impacts for communities in relation to tackling the most serious environmental risks. It is fair to say that the bill will have a positive impact on sustainable development.

10:30

**George Burgess:** I am afraid that our accompanying documents rather use the formulaic phrase of having

"no negative impact on sustainable development."

That is probably one area in which we are rather underselling what the bill does. As Neil Watt said, we see it as making a much more positive contribution to sustainable development.

**Angus MacDonald:** The bill mentions sustainable development and uses the word "proportionate". Sustainable development could mean different things to different people depending on their perspective on economic development and whether they are the Government, the regulator, the developer, the urban resident or the rural resident.

The word "proportionate" could also mean different things to different people. How will it be defined? It could be taken to refer to costs by operators, the employment of the best available techniques by the regulator, the drive for economic growth by the Government and perceived damage to the environment by communities.

**George Burgess:** I am struggling to remember where in the bill the word "proportionate" appears. I think that we would describe the system as one that is aiming to be more proportionate. Perhaps the member can point me to a particular use of the word.

**Angus MacDonald:** I am afraid that I do not have the bill with me.

**George Burgess:** Maybe we can pick up the issue outwith—

**The Convener:** You can always write to us.

**George Burgess:** That will be fine. As has been mentioned, in relation to sustainable development and the purpose, ministers are required to provide guidance to SEPA. Rather more can be set out there than is necessarily appropriate for inclusion in the bill.

**Claudia Beamish:** The policy memorandum that accompanies the bill states:

"The primary purpose of the Bill is to improve the way regulation is developed and applied, creating more favourable business conditions in Scotland and delivering benefits for the environment. It will protect our people and environment, help businesses to flourish and create jobs."

We discussed that earlier, but I mention it again to clarify my question. What assessment was made of protecting our people and environment and helping businesses to flourish and create jobs in relation to sustainable development, to ensure that we are on the right track?

**Neil Watt:** I am just trying to organise my thoughts on your question. We are talking about the balance between the Government's purpose—the national focus—and the global commitment to sustainable development. The Government's purpose is clear on the relationship between the two. We are very much focusing the bill and the wider programme on the contribution that regulators including SEPA can make to both elements. That is part of the Government's purpose, as outlined in the performance framework.

**Claudia Beamish:** Perhaps I was not clear, but I am particularly asking about the assessment in relation to our people as well as the environment. Communities are subjected to, say, noise from opencast mining or air pollution in Glasgow. I mention Perth as well, because it was in the news this week. It is important that we are clear—I would like to be clear, anyway—about what assessment was done in relation to sustainable development.

**George Burgess:** A number of assessments have been provided along with the bill. The provision on SEPA's purpose, for example, has gone from being something that talked about only the environmental aspects to something that much more clearly brings in the social aspects that we discussed. In cases to do with air quality and noise, the environmental and social aspects often go hand in hand.

There are other areas in which the environmental, social and economic aspects might point in different directions. I am thinking of, for example, conflict over different uses of a water body—between water sports such as canoeing, and hydroelectric facilities, for instance. The new provision about purpose will allow such matters to be taken into account, instead of the focus being on one element, potentially to the exclusion of others.

**Neil Watt:** Impact assessments were undertaken on the various parts of the bill and were fed into the policy memorandum, from which Claudia Beamish quoted. They are available on our website, and they highlight positive impacts of the proposals in the bill.

**Claudia Beamish:** Do they relate to Scotland's people and communities?

**Neil Watt:** Yes—the equality impact assessment is an example of that.

**Claudia Beamish:** I will check that.

**Neil Watt:** I can forward the assessments to the committee.

**Alex Fergusson:** I think that I heard Mr Watt say that one or two minor items in the bill were not consulted on, including vicarious liability. I put it to you that that is not a minor issue for an employer who might find himself or herself vicariously liable.

**Neil Watt:** I agree. It is certainly not minor. I suppose that I was talking about the length of the bill—

**Alex Fergusson:** Will you explain why that was not consulted on?

**Neil Watt:** The position is similar to the position on SEPA's purpose. There are references to vicarious liability on pages 15 and 24 of the larger, May consultation document. It is not that we did not mention the issue in that original consultation; we just did not ask a specific question on it. The proposals in the bill reflect the valuable feedback that we got from stakeholders on that important point. I make it clear that I was not belittling the issue. I suppose that I was thinking about the size of the reference to the subject in the bill in comparison with larger sections.

**Alex Fergusson:** Did you receive submissions that mentioned vicarious liability?

**Neil Watt:** Yes. A lot of the submissions in response to the original consultation mentioned the issue. I can forward the references, if that is useful.

**Alex Fergusson:** I will be able to find them, if I need to do so.

**The Convener:** I thank the bill team for its evidence. We will have a short break before we hear from SEPA.

10:37

*Meeting suspended.*

10:42

*On resuming—*

**The Convener:** I welcome the witnesses from SEPA: Calum MacDonald is executive director; Jo Green is corporate support manager; and Bridget Marshall is head of legal operations. Bridget Marshall was on the previous panel—you know what questions we will ask; we will see whether you agree with yourself. I invite Calum MacDonald to make opening remarks.

**Calum MacDonald (Scottish Environment Protection Agency):** Thank you for inviting us to give evidence. I welcome the opportunity to make a short opening statement.

As the committee heard earlier, SEPA has been directly involved in developing the Regulatory Reform (Scotland) Bill and the wider, better environmental regulation programme, jointly with the Scottish Government, as is illustrated by the fact that Bridget Marshall is supporting the

evidence giving by Scottish Government officials as well as by SEPA. Jo Green is SEPA's lead on the joint working with the Scottish Government.

I suspect that the committee is pretty familiar with what SEPA does, so I will not spend too much time on that. However, I want to say a little about our direction of change. I will explain why and how we are changing and, in particular, how part 2 of the bill will support us in that regard.

Key aspects of our change agenda have been and continue to be about: delivering and, where possible, improving our services while living within our means; ensuring that environmental regulation is not unnecessarily burdensome for businesses; focusing our efforts on the issues that matter most; working more in partnership with others; and delivering more by way of measurable results for the environment, communities and the economy.

Engagement with stakeholders has played a vital role in the development of SEPA's change proposals and we are fully committed to continuing that engagement as the proposals develop further. Our stakeholders have told us a number of things, one of which is that they want a simpler, clearer, more joined-up and outcome-based approach to environmental regulation. The bill will facilitate that.

The scope of the activities that we regulate will not increase or decrease significantly as a result of the legislation. It is more about improving how we regulate the existing range of activities.

10:45

An important part of being an effective regulator is to understand the people and organisations that we regulate and why they are—or are not—compliant. We deal with a wide range of operators, from serious environmental criminals at one end of the spectrum to environmental champions at the other, with many in between.

We want to work with those that we regulate to encourage and support compliance, and we will provide information, advice and guidance where appropriate. However, we also need an effective approach to enforcement. The proposed new enforcement tools will enable us to take a more proportionate and effective approach to the lower-level offences in particular.

We recognise the responsibility that is being placed on us by being given the new enforcement tools, and we will work with the Lord Advocate, who will issue us with guidance on how we should apply those enforcement measures. We will also engage our stakeholders on changes to our enforcement policies.

There will still be an important role for the criminal courts. As part of our change agenda, we want to do more to target operators engaging in criminal activities or those whose negligence leads to significant impacts on the environment and communities and whose actions undermine legitimate businesses. We very much welcome the provisions aimed at giving the courts a wider range of sentencing options.

As has already been mentioned this morning, the bill produces a statutory purpose for SEPA. We welcome the broad primary purpose of protecting and improving the environment and the fact that that includes managing natural resources sustainably. We also welcome the fact that the statutory purpose recognises the contribution that we already make and will continue to make to the health and wellbeing of communities and the economy. We very much believe that our work can—and already does—deliver multiple benefits for the environment, communities and the economy.

Many of the mainstays of Scotland's economy, such as the established industries of tourism, agriculture and the food and drinks sector, depend on Scotland's high-quality air, land and water. Effective regulation can stimulate business innovation, and achieving compliance—or going beyond it—can be a powerful marketing tool for business.

We recognise that the way in which we work can help to create the right conditions for new investment in business. Overall, part 2 will give us the right tools and flexibility to target our resource and effort where it is most needed.

I hope that you find that opening statement useful. We are happy to answer your questions, and I am sure that Jo Green and Bridget Marshall will pitch in where appropriate. If there are any questions that we are unable to answer fully today, we will be more than happy to answer them in writing.

**The Convener:** We have a limited time in which to ask questions so I hope that we can have short questions and succinct answers. Nigel Don can set a good example.

**Nigel Don:** Good morning to the newcomers and welcome back to Bridget Marshall. I think that it is the first time that the same person has appeared on the agenda under two different titles. It is wonderful.

In anticipation of your new approach to regulation, what will you do within the organisation to align your practices with the principles and processes that you hope to have under the legislation?

**Calum MacDonald:** We have been undergoing a change agenda at SEPA for a number of years. That continues, and the issues that will come to us

via the bill will help us towards completing the journey. We are training our staff for the new enforcement tools that will become available, and we are taking a hard look at our structure to ensure that it is fit for purpose.

**Nigel Don:** I can see that, if the legal environment is simpler, it will make life easier for everybody, but do you anticipate that you really will get greater efficiency and output out of the bill?

**Calum MacDonald:** Yes, we are confident that we will get efficiencies from the bill. The main driver behind the bill is not to achieve cuts; it is to make us better regulators. It will enable us to redistribute and redirect our resources to the things that matter most and to where the biggest environmental risk is. The redistribution, retraining and redirection are the most important things.

**Nigel Don:** So there is every prospect that, for example, the farmer down the road from me who has to have a visit and who gets charged £600 for a licence just to remove a gravel bank that his father and his grandfather moved might not have to have a visit or pay £600 for something that everybody knows needs to be done.

**Calum MacDonald:** There are specific questions around gravel banks, which my colleague Jo Green might help to answer. We have engaged seriously and effectively with the National Farmers Union on that particular issue, and we are working towards finding a more proportionate way of dealing with it. We are required to regulate it, and in discussions with the industry we are trying to find a sensible way of doing that that is not unnecessarily burdensome on the businesses and farmers involved.

Would Jo Green like to add anything to that?

**Jo Green (Scottish Environment Protection Agency):** Specifically on dredging, we have changed our approach, so if you need any clarification—

**Nigel Don:** Forgive me, but I raised that particular example merely so that you could give me a general answer, which I am sure is what we want to hear. Let us not worry about the specifics today.

**Graeme Dey:** On a theme that is similar to Nigel Don's theme, I want to take you back to a point that I raised with the first panel and the example of a company that operates a series of sites and is not adhering in reporting and administration to what is required of it across those sites. Currently, the sites are treated individually. In practice, what scope will there be for you to look at the cumulative issue and to address it? As a cumulative issue it is quite important, whereas on individual levels the issue is relatively trivial.

**Calum MacDonald:** I agree with what is behind your question. In his answer earlier, George Burgess started to touch on the possibility of a single permit for an organisation that covers several sites. That approach would give us more scope, or even more scope, to deal with the sort of issue that you are talking about.

I can comment on how we deal with that situation currently. If we have problems on a particular operator's site, that rings alarm bells on how it operates the other sites, and we will look closely across the sites. However, that is a question of how we organise ourselves rather than what is in the legislation.

**The Convener:** We will move to questions on chapter 1.

**Claudia Beamish:** Good morning to those to whom I have not yet said good morning.

What difference will the provisions make to the work of SEPA's enforcement officers? You have already highlighted training. How will SEPA's enforcement officers apply an ecosystem services approach in practice? Is that likely to be easier or harder than under the current regime?

**Calum MacDonald:** We are considering how we might apply the ecosystem services approach to regulation. There are particular challenges in that, and the thinking is not fully developed at the moment. I am therefore not in a position to describe in detail what that might look like in future.

On the difference that the provisions will make to our officers who are involved in enforcement, for me they will principally give a much wider range of enforcement tools to deal with the wide range of offences that are before us. The enforcement tools that are currently available to us are quite restricted, and there is a significant gap between the use of enforcement notices and a report to the procurator fiscal for a prosecution in court. The bill helps to fill that gap and enables us to deal with some of the lower-level offences in particular in a way that does not require full prosecution in the courts.

**Claudia Beamish:** I appreciate that work on the relationship between the provisions, SEPA's work and the ecosystem services approach is in development, but could you say something about that for us, please? How is it developing?

**Calum MacDonald:** I will let Jo Green have the first crack at that, but I might come back in.

**Jo Green:** That is an area of strong interest for us. We know that the environment provides a lot of natural services that are important to communities and the economy in Scotland. The difficulty for us is that it is an emerging approach, so thinking

about how it might apply to individual regulatory decisions is a bit down the road.

We are considering how we might engage better with development planning in the planning system, and we have started to think about an ecosystem services approach to river basin management planning and some of the measures around it. We are thinking more about the strategic plans that we deal with and how we might embed some of the thinking in them.

**Claudia Beamish:** Are the changes in the bill likely to be cost neutral? How is the work of SEPA that we have discussed today measured? With the previous panel, we heard about the annual report, but what other measurement is there of specific streams of work?

**Jo Green:** To add to my previous answer, there is an additional reporting requirement on SEPA under the Public Services Reform (Scotland) Act 2010 to report specifically on how we are contributing to sustainable economic growth. That already exists.

More broadly, we have some baseline information as we shift towards the new approach. We monitor the environment and we have information on the number of complaints that we get. We also have information from our inspections and the compliance results.

We therefore have a body of baseline information. As we proceed, we will keep that under review and see what the impact of the shift is. The whole point is to have the flexibility to go out and get measurable results. In future corporate plans, we should see much clearer targets and the results of our work to go for them.

**Claudia Beamish:** I should probably know the answer to this next question, but I do not. Is the information that you have just talked about publicly available on your website and, if not, will it be in future?

**Jo Green:** We report annually on compliance but, from early 2015, our website will have on-going or regularly updated information on inspections. That will set out who we have inspected, the inspection frequencies for certain areas and what the compliance results are on an on-going basis. That will be much more easily accessible.

As part of our change agenda, we are interested in citizen engagement or citizen science. We have a partnership of bodies under Scotland's environment web but, in future, we want to get communities to report to us about issues in their areas much more.

**Claudia Beamish:** I probably should not have asked two questions at once, but I also asked whether the changes are cost neutral.

**Calum MacDonald:** They are cost neutral. We are not seeking additional resource to enable us to do the work. We will redistribute the resource that we already have.

I can add briefly to Jo Green's answer about reporting. Our annual report is comprehensive and it covers the corporate targets that we have set ourselves. In addition, we report annually on our enforcement activity, such as the number of prosecutions that we have instigated and the number of enforcement notices. We also report annually on the level of compliance in the full range of activities that have licences or permits from us.

**The Convener:** It would be fair to say that members receive a nearly weekly update on your activities, including things such as successes in the courts.

**Calum MacDonald:** Good—I am glad to hear it.

**The Convener:** That is in addition to the statutory returns and is helpful.

We come to chapter 2 and powers of enforcement. Jim Hume has questions on that.

**Jim Hume:** Convener, can I ask a supplementary question, before I go on to that?

**The Convener:** Whyever not?

**Jim Hume:** I explored charges with the previous witnesses. Mr MacDonald, you say that the bill will be cost neutral, but with the previous witnesses I tried to eke out whether there could be a positive cost implication for industries such as whisky, farming and aggregates—I think that those are the ones that I mentioned. Obviously, simplification possibly means that less manpower will be required. Do you foresee the bill resulting in reduced charges for licences?

11:00

**Calum MacDonald:** I do not want to pre-empt the results of our consideration of a new charging scheme for SEPA, but I suspect that there will be some winners and some losers. We want our approach to be based on risk, so the level of both our charges and our activity will be based on the risk to the environment. We will put more effort into the processes that present more environmental risk and less effort into the ones that carry less risk.

Overall, I would see the changes to the charges that we make to industry as being broadly neutral. For me, the main gains will come from there being less delay—we will be slicker in processing applications, which will mean the industry is presented with less in the way of delay. The costs of complying should also be lower as a result of the flow-through of the legislation.

**Jim Hume:** Let us move on to chapter 2. How will SEPA ensure a consistent approach across the organisation to the application and level of penalties?

**Calum MacDonald:** There is the Lord Advocate's guidance, which Bridget Marshall mentioned earlier. We will also have robust internal governance arrangements. People should not be concerned about officers going out on inspection and imposing fines. That will not happen—it cannot happen. There will be governance arrangements to ensure that decisions are made consistently and at an appropriate level in the organisation.

I suspect that in the early days of the fines, many of the decisions will come to me as executive director. They will not be made by officers in the field. We will make sure that robust arrangements are in place.

**Jo Green:** I can put the new enforcement tools in context. Our approach is all about achieving the right outcomes. Sometimes that needs enforcement tools; sometimes it does not. It is really important that we are clear on that.

One example, which I think that you are possibly aware of, is the work that we have done on diffuse pollution in priority catchment areas. In those extensive walkovers, we found 5,000 breaches of the regulations, but we did not take enforcement action. Instead, we worked with the sector and farmers through a campaign to provide advice to get their performance back up.

Some of the figures are very encouraging. We are revisiting farmers and, in the 277 repeat visits carried out to date, 75 per cent of farms have remedial measures in place—the improvements have been achieved. We have not had to revert to enforcement tools, but they are a critical backstop for us as a regulator.

**Jim Hume:** Mr MacDonald, you made the point about decisions on fines coming across your desk. Ultimately, you are responsible for a huge amount. Will a certain level of fine come to your desk, or will it be all of them? I presume that the vast majority of fines are small scale.

**Calum MacDonald:** The more significant ones will certainly come to me. Below that, there will be robust governance arrangements so that individual officers cannot just make decisions willy-nilly and we drive consistency and proportionality.

**Jim Hume:** That is fine; we have explored that point.

The Reservoirs (Scotland) Act 2011 also enabled enforcement to be undertaken. What is SEPA's view on whether the application of that act has worked?

**Bridget Marshall:** The 2011 act contained the ability to put in place enforcement undertakings. No regulations have yet been made under those enabling powers, so there is no experience in Scotland of enforcement undertakings.

There is significant experience in England and Wales of enforcement undertakings. The Environment Agency was given them for a limited range of offences under the Regulatory Enforcement and Sanctions Act 2008 and it has agreed about 99 enforcement undertakings in a two-year period. It has found them a very helpful tool in achieving enforcement outcomes.

Interestingly enough, those powers have been used mainly to enforce the Producer Responsibility Obligations (Packaging Waste) Regulations 2007 for administrative-style offences that involve not environmental harm but obligations to recycle waste. As companies can gain a significant financial benefit from not complying—there is a cost to complying with the packaging regs—the Environment Agency has found those powers very useful. It is easy to calculate the amount of financial benefit that a company has gained from failing to comply, so the agency has been able to accept enforcement undertakings that remove that financial benefit. Such undertakings have been important in levelling the playing field in that area of law.

**The Convener:** We move on to chapter 3, on court powers.

**Graeme Dey:** My question is probably directed at Calum MacDonald. Can you provide examples from your experience of where the fines imposed have failed to offset the financial benefits that were accrued by committing the offence? How will the new regime be an improvement?

Beyond fines, will the £50,000 cap on compensation orders that we discussed earlier be sufficient in helping to complete the deterrence regime?

**Calum MacDonald:** I think that Bridget Marshall comprehensively answered the question about fines earlier. There is a general feeling—not just in Scotland—that environmental offences do not attract the level of fines that we might otherwise wish for. However, the trend is definitely moving in the right direction. As Bridget Marshall explained, we have made efforts in the legal community to raise the profile and awareness of the importance of our environment. The recent fines of £90,000 and £200,000 are prime examples of that.

We are also seeing an increase in the number of cases in which community payback orders are applied. I speculate here, but I suspect that we are getting close to the point of applying a custodial sentence for environmental offences. To the best of my knowledge, there has been only one

custodial sentence for an environmental offence in Scotland, but I suspect that that is close to coming back again.

That is my experience of fine levels. Perhaps Bridget Marshall can say something further about compensation orders.

**Bridget Marshall:** On the cap for compensation orders, the member is right that, in many cases of remediation, £50,000 will not go very far. However, my understanding is that the cap is in line with rules in the criminal justice system and that it came from the justice side of Government. All that we can say is that compensation orders will be useful in some circumstances and will probably be used most often for the removal of waste that has been fly-tipped. In those circumstances, £50,000 will go some way. The compensation will be able to be paid to SEPA or the landowner, so it will be useful in that context.

**Graeme Dey:** To sum up, do you feel that the direction of travel is appropriate and is sending out the right message to those who would play fast and loose with the environment?

**Calum MacDonald:** Yes. That is my one-word answer to that.

**The Convener:** We move on to chapter 4 and vicarious liability.

**Richard Lyle:** Good morning again. Vicarious liability was mentioned some time ago. Will the witnesses give us evidence of cases in which SEPA was unable to prosecute an employer under the old regime but will now be able to do so? How many times has that happened? How many convictions have there been in other regimes where employers have been found vicariously liable?

I should give notice that I have another question after that one.

**Calum MacDonald:** I will ask my lawyer to answer that one.

**Richard Lyle:** It is a good job we have them with us.

**Bridget Marshall:** Yes, we are useful for something.

The concept of vicarious liability was introduced recently in two acts, but perhaps the one that members will be most familiar with is the Wildlife and Natural Environment (Scotland) Act 2011, for which I understand the vicarious liability provision was introduced by a stage 2 amendment. I am not aware of any prosecutions in which the provision has been used, but we can certainly find out about that if the committee is interested.

On the context in which SEPA will use vicarious liability, most of our prosecutions are against companies. In circumstances in which an employee has carried out an act such as illegal dumping of waste, SEPA has to track back and collect a significant amount of evidence that demonstrates that the company did not adequately supervise, train or support its staff.

The vicarious liability provision is therefore about shifting the burden of producing the evidence away from SEPA and towards the employer, and ensuring that employers have a strong ethos of environmental responsibility and that they properly train, supervise and support their staff. A due diligence defence is attached to the provision, which means that if the employer can demonstrate to the court that it has taken reasonable steps and that it did not know that the offending was taking place, then it has a defence. What that means is that the employer will have to present that evidence, rather than the burden being on SEPA and its having to track back to find the criminal responsibility being with the employer. We have a number of examples in which employees' acts have meant that SEPA has had to spend a significant amount of energy on an investigation to track back and attach the criminal liability to the employer.

**Richard Lyle:** Thanks for that. Can we turn to the cause of significant—

**The Convener:** Before we do so, Alex Fergusson has a question on vicarious liability.

**Alex Fergusson:** I am grateful, convener. The thorough explanation that Bridget Marshall has just given highlights potentially quite a change of emphasis and a burden for employers in all this. Is that not quite a shift in burden not to be consulted on?

**Bridget Marshall:** Perhaps that is a question that you should have put to the Government—

**Alex Fergusson:** I did—or rather, I will.

**Bridget Marshall:** —rather than to SEPA.

**Alex Fergusson:** Okay, fair enough.

**Richard Lyle:** On the issue of significant environmental harm, are there any examples of offences where significant environmental harm has been caused but the courts have been unable to respond appropriately? How many times has that happened?

**Bridget Marshall:** The significant environmental harm offence arose from consideration of the fact that most of the offences in the environmental field are around regulatory non-compliances, so are about not complying with the regulatory requirements. In that sense, the offences do not focus on harm or damage to the environment. In a discussion with the specialist fiscals, they made the point that it is difficult to lead evidence in

relation to regulatory offences around the environmental harm caused. In many cases, particularly when we are talking about failure to have a permit, they are left presenting evidence about the failure to obtain a permit when in fact those concerned would not have been given a permit in any event for the activity that was being carried out in a particular location. However, that aspect somehow gets lost in the presentation to the court. So it is very much about making environmental harm, and significant environmental harm, the focus of the offence.

A good example of when significant environmental harm is caused is when large-scale illegal landfills are developed in locations in which SEPA would never permit them to be. In such circumstances, the new offence will make it possible to lead on the harm to the environment that has been caused rather than the failure to have a permit. It will enable us to present environmental harm evidence to the courts in a powerful way.

11:15

We perceived that there was a gap, apart from under the Environmental Protection Act 1990, in which there is a harm offence in relation to waste. In all the other regimes, there is no offence that enables us to focus on the environment. I have some examples that bring that home, one of the best of which is an explosion of cement powder at a cement batching plant that was operated under a PPC permit. As a result of the explosion, 5 tonnes of cement were released into the atmosphere, which caused pollution of widespread scale and effect.

The operating company was charged with breaching a condition of the permit that required emissions to be free from visible emissions of particulate matter. The breaching of that condition of the permit was the only thing that came anywhere near being an offence for which we could refer the company to the fiscals. That was entirely inappropriate, given that it was such a significant environmental event that would never have been permitted. However, we were left having to demonstrate that the company breached that particular condition, which was not to do with the significance of the harm that was caused or even the type of event that took place.

I hope that that is a helpful example of why we think that the significant environmental harm offence is necessary and why it will improve our ability to prosecute companies for causing such harm.

**Calum MacDonald:** I agree with Bridget Marshall that, rather than for cases in which environmental harm has already happened, the new offence will be particularly useful in cases in and around the field of illegal landfill sites, which are a growing problem.

**Angus MacDonald:** You will not be surprised to learn that I have a couple of questions about waste management offences. The first, which is for Calum MacDonald or Jo Green, is about the proposed inclusion in the bill of partnerships. At present, how many partnerships in which one of the licence holders might not be regarded as “fit and proper” hold licences to transport controlled waste? Has any estimation been made of the number of licences that might be captured by the new provision?

**Calum MacDonald:** I do not think that we can give you specific figures. I suspect that there will be a considerable number of waste carrier registrations that involve partnerships. I do not think that there is any doubt about that.

Bridget, do you have anything to say about the partnerships issue that might help to address Angus MacDonald’s question?

**Bridget Marshall:** No, other than to clarify that what is proposed is largely a technical, legal amendment to ensure that we can look at a partnership—as well as the individual partners within it—as a legal entity.

**Angus MacDonald:** Okay.

I would like to broaden out the issue of waste management and pick up on a earlier question by my colleague Graeme Dey. I know that I am not the only constituency member to have issues with some waste management companies, but we need to be aware that we do not protect one section of the environment at the expense of another section of the environment, and that those citizens who live in what might be referred to as a blighted area have a right to seek improvements to their living environment. Development plans and Government policies need to take that into consideration. Areas with an industrial history appear to be targeted for what some might describe as less attractive developments that often give rise to environmental issues.

For example, the national waste strategy encourages development in proximity to similar pre-existing facilities or in established industrial locations. As you will be aware, that can and has caused difficulties in my constituency. Current planning rules allow for changes of use without any public consultation and with only cursory notification to SEPA. The location of waste management facilities—in particular, waste transfer stations—in industrial areas also encourages the transport of waste over long distances, which is contrary to the national waste plan. To get to the point, is there provision in the

bill to help prevent the location of waste transfer stations next to or near residential areas?

**Calum MacDonald:** I am not sure that the bill will help with decisions about the location of facilities; that is more of a land use planning issue. The bill will, however, give us a better range of tools to deal with sites that are in close proximity to housing. If I were to pick one sector where the bill's provisions will be most helpful, it would be the waste sector. The range of tools available and the flexibility that the changes to the system will give us will allow us to apply more effort to exactly the type of circumstances that you have described.

**Angus MacDonald:** To follow on from that, should the burden of proof not be moved to the operator for it to prove that it is not responsible for a reported event and its operation suspended until it can provide that proof to SEPA? As I understand the process, at the moment SEPA has to gather evidence of a breach of licence conditions and, until it does so, the operator is free to continue in action.

**Calum MacDonald:** Bridget Marshall might want to have a stab at that one.

**The Convener:** A rapid thrust.

**Bridget Marshall:** Yes. That is true in terms of referring a report to the procurator fiscal. It depends on the significance of what the operator is doing. SEPA might take other action as well; it might issue an enforcement notice or some sort of suspension notice that stops the operator carrying out the activity or parts of the activity while the report is referred and until its non-compliance is brought back into compliance. There is a range of enforcement tools that SEPA uses in different—and proportionate—ways and which have different effects, depending on what needs to be achieved in the circumstances.

**The Convener:** We move rapidly to chapter 5, which amends the Environment Act 1995.

**Graeme Dey:** Do you anticipate that SEPA will find itself contending with a conflict between managing natural resources in a sustainable way and achieving sustainable economic growth, or does the hierarchical structure of the bill make that situation clear cut? To put that another way, on a day-to-day basis—working at the coalface, as it were—are you clear in your priorities and purpose going forward?

**Calum MacDonald:** Yes, we are clear in our purpose. I do not think that a shift in our main focus is being imposed. There is a clear understanding of what we have been established to do, which is to protect the environment. There are other things that we have to take account of in decisions that we make on a daily basis. The purpose as drafted in the bill accurately reflects the way in which we operate currently.

**Graeme Dey:** You will be aware that certain environmental groups look at examples of bills for better regulation that have been lodged in other countries which, in the view of those groups, shifted the balance inappropriately. What reassurance can you give such groups and the committee that protecting the environment will always be the priority?

**Calum MacDonald:** That is what I am in the job to do. Perhaps that is not enough to reassure the committee. Changes in the regimes of other countries are much more part of a deregulatory agenda. I firmly believe that that is not what the bill is about. For me, it is about improving the way in which we regulate and making our duties and responsibilities as a regulator more transparent.

**Graeme Dey:** Thank you. That is useful.

**Jayne Baxter:** Calum MacDonald, you said that you were confident that interpretation of the provisions in chapter 5 can be balanced against existing duties. Can you give any examples of where those provisions will be used in practice and how they will be prioritised?

**Calum MacDonald:** I will ask Jo Green to answer that.

**Jo Green:** Is that in terms of our new general purpose?

**Jayne Baxter:** Yes.

**Jo Green:** An example of where we have balance and where we can contribute is what we did on planning services reform back in 2008 and 2009, when our new chairman, David Sigsworth, came in. He knew that we were playing a valuable role with the advice that we were giving, but he was clear that we could improve our role in planning. When we analysed what we were doing and spoke to the development sector and planning authorities, it was clear that a lot of our advice was slow and so broad that it was difficult for people to understand what the important advice was. Often we were coming in quite late in the process.

We changed what we did quite significantly and put much greater effort into development plans. If you get those right, it is much easier to get the development management side right. We put much more focus on pre-application engagement—on engagement early rather than late on in the process. We replaced a lot of the advice that we were giving on the low-risk stuff with standing advice.

Not only were there efficiencies and a better, quicker service, we could track the impact of our advice so we knew the uptake of our advice and that our advice was having a really good impact.

We did all of that without in any way compromising our role on the environment. We were absolutely helping the economy and communities.

**Jayne Baxter:** There is no reason why that will not continue.

**Jo Green:** Absolutely. It is just a balancing act that we already do.

**Calum MacDonald:** Those balancing decisions are literally taken on a day-to-day basis. Another example would be when we have a particular requirement on a permit holder. We can come and go about timescales, rather than being hard and fast. Those things are done in discussion with the operator. We take into account the wider context in which they are operating.

**Jo Green:** There is a focus on the economy part of this, but there is also the health and wellbeing element.

**Jayne Baxter:** I am more interested in the health and wellbeing element, if I am allowed to say that.

**Jo Green:** SEPA already has a role in health and wellbeing. We are Scotland's flood risk warning body. With the Health and Safety Executive, we play a role in the control of major accidents and hazards. We are a category 1 responder to major incidents.

Occasionally, as a regulator, if the issue is about life or a short-term impact on the environment, we sometimes have to make a decision that protects life. As a regulator, we already make those balancing judgments.

**Jayne Baxter:** How do the proposals in chapter 5 relate to the proposals in section 4, which require regulators to

"contribute to achieving sustainable economic growth".

Is there a duplication of provisions? What are the implications of that?

**Calum MacDonald:** Bridget Marshall attempted to answer that earlier, but you should hear it from us directly. Bridget and Jo Green want to contribute on this one.

**Bridget Marshall:** As I explained earlier—I think that George Burgess covered this as well—section 4 exempts those regulators that have a similar duty under any other enactment from that general duty. As SEPA is getting a similar duty in part 2, the general duty under section 4 does not apply to SEPA.

**Jo Green:** The code of practice linked into that duty would apply to us. We will be on the group that will help the Government to develop a code of practice.

**Jayne Baxter:** That is helpful.

**Angus MacDonald:** This may be an operational issue but, as we have you here, I will ask about it anyway. There are communities in which, due to the nature of the economic activity, the risk of environmental incidents is higher. I am thinking in particular of my constituency. Should consideration be given to locating SEPA personnel in those communities to facilitate a faster response to environmental incidents and to ensure clear oversight?

**Calum MacDonald:** We are very conscious of our environmental footprint and our coverage throughout the country. We have officers located in 23 offices, from Orkney and Shetland right down to the Borders. I am not sure what you are suggesting with regard to the location of officers. I want my guys out in the field as much as possible rather than sitting at desks and keyboards. I am happy to consider the specifics of your constituency case. I would be happy to have that conversation, away from this table, about how we might achieve what you are asking in a better way.

**Angus MacDonald:** That would be good. Thank you.

**The Convener:** We have asked all our questions. I thank the panel for their evidence, which will help us along our way. We are dipping our toes into areas that are important for the country. Thank you.

11:30

*Meeting suspended.*

11:32

*On resuming—*

# Crofting (Amendment) (Scotland) Bill: Stage 1

**The Convener:** For item 2, I welcome the Minister for Environment and Climate Change, Paul Wheelhouse, who is here to lead his team of officials from the Scottish Government, who are Richard Frew, policy adviser; Kenneth Htet-Khin, senior principal legal officer; David Barnes, deputy director, agriculture and rural development; and Joseph Kerr, head of crofting services. Welcome, gentlemen. Minister, I invite you to make brief introductory remarks.

**The Minister for Environment and Climate Change (Paul Wheelhouse):** Thank you for inviting me to give evidence on the Scottish Government's Crofting (Amendment) (Scotland) Bill, which was introduced in the Parliament on 9 May. Richard Frew gave the committee a detailed account of the bill's provisions last week, so I will cover the key points briefly, because I know that members want to ask questions.

I was interested to read the *Official Report* of the committee's meeting on 15 May, when Scottish Government officials and key stakeholders gave evidence on the bill. I hope that it will assist the committee if I respond to some of the points that were raised in the meeting, in advance of your questions.

As you know, the main purpose of the bill is to allow owner-occupier crofters to apply to the Crofting Commission to decroft their land in a way that is similar to the way in which landlords and tenant crofters may do so under the Crofters (Scotland) Act 1993. Currently, an owner-occupier crofter can apply to decroft only when the croft is vacant. That does not sit well with section 23(10) of the 1993 act, which provides that a croft is vacant

"if it is occupied otherwise than by",

among others,

"the owner-occupier crofter".

The existing legislation clearly does not work as it was intended to do. Although some crofting lawyers, such as Brian Inkster, disagree, the concern that I have expressed is shared by others, including Sir Crispin Agnew and Derek Flyn. The commission's legal advice appears to have drawn the same conclusion.

The bill will remove any legal doubt on the issue. The bill therefore amends section 23(12A) of the 1993 act to remove the reference to owner-occupier crofters being treated as landlords of vacant crofts for the purposes of decrofting. It also moves away from the vacant croft provisions by inserting into the 1993 act free-standing provisions for owner-occupier crofters to decroft, effectively replicating the provisions for tenants seeking to decroft, and that is why the drafting takes the form that it does.

The bill also allows the commission to give, or to refuse to give, decrofting directions to owner-occupier crofters, and provides that the commission may not consider a decrofting application if it has already required the owner-occupier crofter to submit proposals for letting the croft. That applies when action is being taken against a breach of duty under section 26J of the 1993 act, and mirrors the current legislation when the commission requires letting proposals from landlords of a vacant croft.

I note the suggestion that the phrase

"the Commission need not consider the application"

in proposed new section 24B(2) of the 1993 act could be amended to

"The Commission may refuse the application".—[*Official Report*, *Rural Affairs, Climate Change and Environment Committee*, 15 May 2013; c 2206.]

There are two reasons why the bill is worded as it is. The first is for consistency in terminology with the equivalent provision in section 24(3A) of the 1993 act. Secondly, it would be premature in the enforcement process for the Commission to consider rejecting a decrofting application in advance of knowing the outcome of the section 26J enforcement action requiring letting proposals. The intention is therefore for the application to be suspended, rather than rejected, at that stage.

The bill inserts new sections 24A to 24D into the 1993 act. I have considered various options for addressing this decrofting issue, and I believe that those additional sections set out clearly, beyond doubt, that owner-occupier crofters can apply to decroft their land. Other options that I considered included a public services reform order, which requires a 60-day consultation period and would therefore have delayed remedying the problem. I also considered the order-making power in section 54 of the Crofting Reform (Scotland) Act 2010 but, unfortunately, that power is limited to specific circumstances not applicable here.

The bill applies section 25 of the 1993 act to owner-occupier crofters as they apply to tenant crofters and landlords but disapplies parts of section 25 that relate only to tenants, such as references to a crofter's right to buy the croft under section 12(2) of the 1993 act. The bill also provides the same right to owner-occupier crofters as that afforded to a tenant crofter to decroft the site of a dwelling-house on the croft, where they have not already decrofted a house site.

It was suggested last week that further consideration be given to whether the intention was for each subsequent owner-occupier crofter to have a right to decroft the site of the dwelling-house following transfer of the croft. The example given was a transfer of the croft to the crofter's wife so that a further decrofting right applies. The intention is to align tenant and owner-occupier crofters so far as possible, and as that right passes between tenant crofters on the transfer of the croft, it follows that the same should apply to owner-occupier crofters.

Also, decrofting a house site is different from decrofting whole crofts for speculative purposes. The latter would be subject to a decrofting application for a reasonable purpose under section 25(1)(a) of the 1993 act, which allows the commission to refuse decrofting if it would be detrimental to the sustainability of crofting in the locality or to the crofting community, or for other reasons, so there are safeguards that the commission can deploy to limit the effect of speculation.

Even then, it may be appropriate to approve the application if, for example, there is much need for affordable housing in the area, which an application would facilitate. The legislation is therefore drafted to reflect the intended policy. I am not aware of any such difficulties with that right in relation to tenant crofters. However, it can be considered further if it becomes a problem. As the right would cover both tenant and owner-occupier crofters, it is outwith the scope of the bill.

In the event of a breach of conditions relating to a decrofting direction, the bill provides for the direction to be revoked. The sanction in the 1993 act for tenant crofters is that the croft is declared vacant, but that is inappropriate for owner-occupier crofters, because section 23(10) of the 1993 act provides that a croft is not vacant if it is occupied by, among others, an owner-occupier crofter.

Section 2 and the schedule to the bill make consequential amendments to the 1993 and 2010 acts, as a result of new sections 24A to 24D, mainly to add cross-references to the new provisions. Retrospective provisions in section 3 allow the 159 decrofting directions already issued by the commission, and the 50 applications held in abeyance, to be treated as if the legislation had been in place from 1 October 2011, when the definition of owner-occupier crofter was introduced. The 50 cases presently held at the commission can then be fully processed as soon as the legislation comes into force, and these provisions simply place individuals in the position they expect to be in.

Section 4 will allow a further right of appeal to those who might have been dissuaded from appealing a decrofting decision within 42 days before the commission intimated on 25 February 2013 that owner-occupier crofters could no longer apply to decroft.

Section 5, "Transitory provision", will ensure that the crofting register provisions in the 2010 act will apply to decrofting applications from owner-occupier crofters as they apply to decrofting applications from others. That will allow registration to remain voluntary until 30 November this year.

Sections 6 and 7 are self-explanatory. Commencing the legislation on royal assent will allow the decrofting issue to be addressed as early as possible.

Finally, the bill is tightly focused to justify the expedited procedure that is being applied to it. I am aware that other issues outwith the scope of the bill need to be considered, but I also recognise the very real impacts of the failure of the 2010 act to deliver the policy intent in this case. There is a desire on the part of stakeholders and MSPs of all parties to address this specific decrofting issue quickly. I am grateful to all who have contributed to bringing us this far in such a short timescale, not least the committee and its clerks.

I am happy to take any questions.

**The Convener:** Thank you. First, we consider the effects of the cessation in approving decrofting applications.

**Graeme Dey:** Good morning, minister. Given that 50 decrofting applications from owner-occupier crofters have been suspended—presumably, other owner-occupiers who were planning to make such an application are holding off—how mindful are you of the difficulties that the delay may be causing? Do you believe that everything that can be done is being done to ensure that, if the bill is passed, as surely it must be, the Crofting Commission is ready to hit the ground in seeking to clear the backlog?

**Paul Wheelhouse:** Graeme Dey is absolutely right that the issue presents real difficulties for individuals. As far as I am aware, we have had no estimation of the financial impacts that have been placed on individuals, but people may face practical difficulties with obtaining a mortgage, be unable to secure equity release on an existing mortgage or be unable to progress plans to assign a croft to their children or others in their family and build a house for themselves to live in. Those kinds of real practical issues can affect individuals at this point in time.

We have asked the commission to continue, in so far as it can, to process those applications that it received prior to its announcement in February, so that those can be oven ready, if you like, to be

taken on following the passage of the bill. I understand that the commission is doing everything that it can in that regard. I believe that we are as far forward as we can be at this stage.

**Graeme Dey:** I realise that there can be no exact science for the timescale, but if the bill is passed in the next few weeks and receives royal assent, roughly when can people anticipate that applications will be able to proceed?

**Paul Wheelhouse:** For new applications, I imagine that the commission will be able to open up the process immediately. The 50 applications that have already been submitted will be at different stages of processing, so some might need very little to facilitate a decision from the commission, whereas others might have further to go. I am confident that, if we can get the bill passed before the summer, the provision in section 6 will enable progression thereafter to be as rapid as possible once royal assent is received. I hope that, in the course of the summer, people will be able to continue to operate as they had originally intended to do.

**The Convener:** We turn to timescales and the solution proposed in the bill.

**Jim Hume:** Good morning, everyone. On the issue of speed, if I heard you correctly, you said that you are looking to get the bill signed, sealed and delivered before the beginning of the summer recess. However, the bill has not been subject to a formal consultation, which is quite unusual for any bill. In your view, has the Government consulted sufficiently to ensure that we cover all the potential issues? As you will know, people have various views on the right way forward. For example, the Scottish Land & Estates submission is a little critical of what is being done, so I would be interested to hear your views.

11:45

**Paul Wheelhouse:** Thank you for the opportunity to talk about the consultation. One reason why we are keeping the bill so tightly focused is that we are mindful that we are having to expedite procedures as far as possible and strike a reasonable balance in the timescale for the passage of the bill. Jim Hume raises an important point, so I will set out for the committee what consultation has taken place. We appreciate the input from key stakeholders and others. There was considerable input to the Scottish Government and the Crofting Commission in the immediate aftermath of the commission's decision. Indeed, specific issues that impacted on constituents were raised a number of times by colleagues from across the Parliament.

Unfortunately, there is insufficient time to have a full consultation process, because of the desire of colleagues from across the Parliament to deliver a solution before the summer recess. However, there has been on-going engagement with stakeholders. Key stakeholders who have been consulted include the Committee of Scottish Bankers, the Council of Mortgage Lenders in Scotland, the Crofting Commission, the cross-party group in the Scottish Parliament on crofting, which I attended to discuss the issue, the crofting law group, the National Farmers Union of Scotland, Registers of Scotland, the Scottish Crofting Federation, the Scottish Land Court, Scottish Land & Estates, which Jim Hume identified, and the Scottish Legal Aid Board.

So, there have been opportunities. I believe that some stakeholders were at last week's meeting, and that the representative of the NFUS, Mr Murray, was happy that his organisation had had an input. He said:

"we have had ample opportunity to respond. We have been invited to several stakeholders meetings".

He continued:

"the consultation with regard to the draft bill has been fine."—[*Official Report*, *Rural Affairs, Climate Change and Environment Committee*, 15 May 2013; c 2203.]

I appreciate the point that Scottish Land & Estates has made, but others feel that they have been appropriately consulted and are mindful of the necessity to move swiftly in this case.

**The Convener:** I note that Scottish Land & Estates stated that it "accepted the view" from a stakeholder meeting

"that the legislation was necessary and had to be retrospective to deal with those who had taken action already."

Given that you are dwelling on some of those points, do you share the bill team's confidence that the Government's lawyers have had the time that they need to consider all the aspects of the problem so that it is solved in a way that does not lead to unintended consequences?

**Paul Wheelhouse:** That is an important point. There have been suggestions that the Scottish Government could have had a shorter bill or neater or more simple wording. I respect the views of the individuals such as Sir Crispin Agnew and Derek Flyn who have made such comments. As I alluded to in my opening statement, in the drafting of the bill, we have tried to replicate as closely as possible the decrofting provisions for tenant crofters, so that there can be no doubt about the intent of the Government and Parliament's will that owner-occupiers should be able to decroft on a similar basis. The bill might not be the shortest one that we could have produced, but I hope that it gives the greatest possible clarity about the intent and therefore less room for an alternative interpretation to emerge.

We hope that we have struck the right balance and have produced a bill that is reasonably clear for people to understand, albeit that crofting law in general could hardly be described as clear, as I think everyone round the table would acknowledge. In the specific provision, we wanted to amend the 1993 act and make the provisions as similar as possible so that there is absolute clarity that the intent is that owner-occupiers should have similar treatment to tenant crofters in respect of decrofting.

**The Convener:** Notwithstanding that, Sir Crispin Agnew and Brian Inkster have made detailed critiques of the bill. You have made some comment on those, but do you have any other comments?

**Paul Wheelhouse:** I would prefer to respond to specific issues as they come forth.

**The Convener:** Okay, well how do you respond to the points that they raise about the wording of the bill? Sir Crispin Agnew had one or two points that might have clarified certain terms.

**Paul Wheelhouse:** I very much respect the opinions of Sir Crispin Agnew, Derek Flyn and others—and indeed Brian Inkster, who has taken a different view regarding the bill. We have tried to ensure consistency of language between the bill and the provisions of the 2010 act, and to ensure that the 1993 act is amended in a very clear way, such that the provisions relating to owner-occupier crofters being able to decroft are as similar as possible to those applying to tenant crofters. We have tried to ensure consistency.

I appreciate the points that Sir Crispin has made. If he had his way, the bill would have been shorter and more concise, but we tried to focus on ensuring consistency, and length is not the only consideration—it is also about clarity. The balance that we have struck gives us a clear provision, allowing for similarity of treatment for both groups.

**The Convener:** Will the wording of the bill need to be amended?

**Paul Wheelhouse:** I will happily look at anything specific, but we have gone through the process. To answer your earlier question, although the timescales have been constrained, the legal team has worked extremely hard to ensure that the bill is consistent with the measures in respect of tenant crofters. There are different ways to draft a bill, but we are not aware of any defects at this stage.

**The Convener:** If need be, we can tease those things out at a later stage.

Jim Hume has a question on owner-occupiers and owner-occupier crofts—that interesting area.

**Jim Hume:** Liam McArthur, my colleague from Orkney, wrote to you about decrofting by owner-occupiers and owner-occupier crofts, and you have responded to him. Do you have any further comments on the issue of decrofting by owner-occupiers?

**Paul Wheelhouse:** Is there anything specific to which you are referring?

**Jim Hume:** Not at all—there was nothing specific, but it has been highlighted that there can be issues with owner-occupier crofts and decrofting by owner-occupiers. You have already responded to Liam McArthur, but I wondered whether you wished to make any further comments on that subject.

**Paul Wheelhouse:** I suspect that the main issue regarding owner-occupier crofters relates to provisions for crofts that are undivided. I am aware that a number of members across the chamber have raised the issue in connection with their constituencies. We do not propose to deal with that matter in the bill, but I am aware that there are a number of areas of crofting legislation about which people have raised concerns in the past or during consideration of the bill. We will look to pick up any messages that the committee brings to us about specific issues that have been raised.

**The Convener:** We are considering issues to do with crofts with multiple owners, and we asked the bill team and others a question about that subject last week to find out how many people might be affected by it. If you have some answers for us just now, that would help.

**Paul Wheelhouse:** I am happy to try and establish, after the meeting, whether there are any statistics that would give us an idea about how many crofters might be affected. I apologise that I do not have the numbers in front of me now.

We are aware of the matter, which is an example of an issue that we are not proposing to deal with in the bill but which is clearly of concern to a number of stakeholders, not least members of the committee. I recognise the fact that stakeholders have identified and raised with the committee other issues relating to crofting legislation. I am not aware of other issues that have been highlighted as having such an impact or as requiring such urgent action as the one affecting owner-occupier crofters that is addressed in the bill. For that reason, we did not include the issue in the bill.

However, I am happy to confirm that the Scottish Government will carefully consider all the issues that will have been raised, and it will engage with stakeholders in doing so. As part of that process, I will consider what further legislation or legislative action may be required. I am happy to give the committee the commitment that we will

keep it and stakeholders informed as to our thinking in this area.

**Richard Lyle:** My question arises from information that we have received. Richard Frew made quite a passionate plea for more than 40 young couples. Sir Crispin Agnew went on about all the problems that he had with the bill, and the original Mr Inkster said that we did not need the bill.

My concern is that we have had so many attempts to resolve the issues. I am not a crofter or a lawyer, but I know that this has gone on for hundreds of years, particularly in Scotland. There have been many changes in our approach to crofting. Does it concern you that so many different lawyers are saying so many different things? Has Mr Frew added to or amended the bill since we heard Sir Crispin's views last week?

**Paul Wheelhouse:** It would be unfair to put Richard Frew in that position because, unfortunately, he is working at the behest of ministers. We have made no amendments to the bill in response to Sir Crispin Agnew's points last week.

As even Sir Crispin acknowledged, there are some legal opinions, such as that of Brian Inkster, who is highly qualified, that the bill is not necessary. Although I appreciate that he comes at it from that perspective, other lawyers, such as Mr Flyn and Sir Crispin, have stated that, irrespective of whether you agree that there is a problem, there is doubt in the legal community. Hence the commission was left in doubt about whether it could process applications and concern that it might have been doing something unlawful if it did.

The bill removes that doubt. As I said before, there is more than one way of skinning a cat when it comes to the drafting of the bill. However, we have drafted the bill in such a way that it replicates as closely as possible for owner-occupier crofters the provisions for tenant crofters, so that there can be no doubt that what we intend is that owner-occupier crofters can decroft part of a croft or a whole croft as required, in the same way as tenant crofters. We have tried to give that clarity and we are trying to address the fact that the 2010 act does not deliver what was intended. The bill will restore the position that the 2010 act delivers what Parliament intended, which is to give parity of esteem in this respect to owner-occupier crofters and tenants.

**The Convener:** If there are no other questions on the bill, we move on to some of the issues that have been raised in our discussions.

**Angus MacDonald:** Good morning, minister and panel. The bill addresses the specific issue of owner-occupier decrofting. However, other issues have been highlighted during the consultation, and general views have been given by stakeholders at the cross-party group on crofting. How do you plan to go about resolving the other issues on crofting law that the committee has heard about? Is someone in the Scottish Government specifically tasked with collating all the views that have been expressed in the past few months? I presume that those matters will be addressed in the not-too-distant future.

**Paul Wheelhouse:** Angus MacDonald raises an important point. I will address the point about the resourcing issue first. We have the bill team in place for the purposes of this bill. As part of the exercise of consulting stakeholders, it has been collecting as much evidence as possible. I have alluded to issues that have been suggested for inclusion in the bill. I am sure that such issues were raised with the committee last week and will be mentioned again during this meeting. We have tried to keep the bill tightly focused in order to deliver it by the summer recess, with the will of Parliament, in response to the need for urgency. Some members, including Tavish Scott, had called for emergency legislation. We recognised the urgency and felt that this was as far as we could go. We will be collecting as much evidence as possible through the bill team and, as I alluded to in response to an earlier question, we will keep the matter under review.

I am keen to see what issues come out of the consultation and the committee's efforts or arise elsewhere. If there are things that we need to look at, such as other perceived flaws in the legislation or anomalies that need to be corrected, we will consider what routes we might deploy to deal with them. That will have resource implications.

12:00

A number of options were proposed by people last week—from the consolidation of crofting legislation to scrapping it all and starting from scratch, and somewhere in between. We have a number of potential routes, but it is too early to say what might be a sensible way forward. However, I recognise that a number of problems with crofting law have been raised not only in the course of the bill but well before it was introduced. A particular problem is that the 2010 act does not deliver what ministers and Parliament intended. We therefore must remedy that as soon as possible.

**Angus MacDonald:** Will you clarify that cognisance has been given to the other issues that have been highlighted, and that they are being taken on board for future attention?

**Paul Wheelhouse:** Absolutely. As I said earlier, I fully recognise that stakeholders have raised a number of issues that we cannot deal with through the bill because of the need for urgency and, dare

I say it, Jim Hume's point about ensuring that there is proper consultation. We know that there is defined demand to get the bill—or something else legislative—to fix the problem that exists. Other issues may be more contentious, and we must have appropriate consultation on them, because there is no unanimous view that something needs to be done.

As I have said, we will consider carefully all the issues that have been raised in the course of your deliberations so far and, indeed, those that might be raised during the bill's passage through Parliament. We will engage with stakeholders in doing so. I see a key role for the cross-party group on crofting in that regard. We will keep closely in touch with the commission and our stakeholders. We will consider what further legislative action may be needed in the course of that.

**Jayne Baxter:** Good morning. I want to continue that theme. At what stage will you make a decision about next steps? Can you put a timescale on that? Will that timescale be influenced by the resource requirements? Consolidating the legislation will be a big job—whatever route you follow, a lot of staff resources and time will be needed. Are there enough resources to hand? Is the office of the Scottish parliamentary counsel sufficiently resourced?

**Paul Wheelhouse:** Those are all important matters. I am but one minister, and any proposals for legislation would have to go before the full Cabinet for its consideration. Therefore, I cannot take for granted what colleagues would agree to.

You are absolutely right that there are resource implications. For example, if the view was taken that a major review or consolidation of crofting law needed to be undertaken, there would be an onerous burden on the commission. I am sure that you are aware that there were delays in setting up the new commission. The commission has major tasks to work on to tackle absenteeism and get the crofting register up and running, which has its own issues, as I am sure that you will appreciate. We have to take into account the impact of any work on the commission. We would have to consider the resource implications and, if need be, find the resources to underpin that work.

**Jayne Baxter:** What about the office of the Scottish parliamentary counsel?

**Paul Wheelhouse:** I am not as close to that issue. Kenny Htet-Khin might have a view on it.

**Kenneth Htet-Khin (Scottish Government):** I am not aware of any resource issues with that office.

**Jayne Baxter:** That is the office that drafts bills.

**Kenneth Htet-Khin:** Yes.

**Nigel Don:** I want to pursue the same issue, perhaps ad infinitum. I am conscious that there are provisions to allow pre-consolidation, which is a strange concept, given that consolidation is fundamentally about not changing something. I suspect that we all recognise that we are looking at an area of law that does not need consolidation; rather, it needs rethinking, because there is too much to consolidate. The Scottish Law Commission is one body that tends to do such rethinking. Is there any prospect that the Law Commission will look at the matter? Should it be looking at it?

**Paul Wheelhouse:** I will ask Richard Frew, who is closer than me to the consultation, whether the Scottish Law Commission has said anything. I know that the Law Society of Scotland has offered to help with a fundamental review or consolidation of crofting legislation.

It is worth pointing out for the committee's benefit that, as minister, I have certainly come to appreciate just how impenetrable crofting legislation is. The Crofting Commission has on its website the 1993 act as amended, along with certain caveats—for example, that the legislation has not been consolidated by Parliament. That at least aids people's understanding of how the subsequent amendments in 2007 and 2010 fit in. That will also apply to the bill, if it is passed.

However, we need to consider whether consolidation that falls somewhere short of scrapping the law and starting again is required. As I said, there are effectively three potential routes for dealing with the situation that we face. We can consolidate the legislation and add amendments to fix some of the problems that we have talked about, undertake a straight consolidation, or scrap the legislation and start again. I know that those points were raised last week.

It is too early for me, as minister, to say what I believe is necessary, but we will look at the options in due course. Does David Barnes or Richard Frew have anything to add?

**Richard Frew (Scottish Government):** I simply agree. Nigel Don is right to highlight the Scottish Law Commission's role in any potential considerations, as it will be a key player if consolidation is an option. I suspect that the answer will be that resource is an issue, and that its involvement will depend very much on its existing workload. That would apply to Parliament too.

**Paul Wheelhouse:** We are mindful of the burden on this committee, apart from anything else, of undertaking such an exercise.

**The Convener:** Fortunately we have broad shoulders, but we hope that you have a satnav to

find your way, given the impenetrable nature of the subject.

Claudia Beamish will go next with a question about the way ahead, on which we have already started.

**Claudia Beamish:** Thank you, convener—what a position to be put in. I do not propose to make any profound statements.

Good morning, minister—or good afternoon, I should say. As you will be aware, there was a committee of inquiry on crofting in 2008, and its findings informed the drafting of the 2010 act. The Scottish Government set out a number of significant points in response to that inquiry, which included:

"Maintaining and increasing the amount of land held in crofting tenure. Ensuring that land in crofting tenure is put to productive use. Ensuring that housing in the crofting counties makes a full contribution to the local economy. Giving more power to local people to determine their own futures"

and

"Assisting young people and new entrants into crofting."

I highlight those points, which have been highlighted to me, because they are important and I wonder to what degree they might be the way forward.

You have talked about keeping the committee informed, which will be helpful, and about future engagement with stakeholders. In your view, is another inquiry needed, or are you looking at maintaining the principles that I listed in driving the issues forward?

**Paul Wheelhouse:** A number of those issues are very important. On the productive use of croft land, the Crofting Commission is addressing matters such as tackling absenteeism as almost its number 1 priority for the use of its resources just now, and, as a secondary objective, tackling neglect. Those priorities certainly acknowledge the points that were raised in the 2008 inquiry.

We are undertaking work already—for example, on new entrants to crofting. Crofting conversations are being undertaken, and people are going into schools to encourage young people to take up crofting. A number of things are already in train.

To be fair, I think that you have raised an important point, because we need to keep under review and ensure that we are addressing the issues that have been raised. Indeed, the forthcoming Crofting Commission plan will set out how the commission is identifying and trying to tackle some of them. However, I am happy to keep in touch with the committee on the matter. As part of the discussion with Nigel Don and others about the need for more fundamental consideration of the legislation, perhaps we need to start by considering the appropriate route. Is it consolidation? Is it consolidation-plus? Is it something more fundamental? I would welcome outside, objective views on that. We need to consider first the best way forward, and a further inquiry will be considered as one option.

**The Convener:** In the end, the Shucksmith committee's consideration of crofting was contested both by people who liked it and people who did not. However, it shaped what happened thereafter. We know from the series "Hebrides: Islands at the Edge", which is on television at the moment, that on Benbecula, school courses on crofting are oversubscribed. That might give some hope that there are people who want to go into crofting and that the population in such areas can be maintained.

**Paul Wheelhouse:** The programme on the Hebrides is tremendous and a fantastic advert for that part of Scotland. Having done some initial visits to the crofting counties, I am aware that there are some areas where there is very high demand for new crofts—on South Uist, for example. However, to pick up on one of the recommendations that Claudia Beamish mentioned, there is also a real problem with absenteeism. I am sure that you are aware, convener, that how that is being handled is a fairly contentious issue in some parts of the crofting counties. However, it is clear that there is demand for crofts, which will no doubt be stimulated by what is happening in places such as Benbecula.

**The Convener:** Alex Fergusson has a couple of brief points.

**Alex Fergusson:** Rather than ask a question, I have some thoughts to offer. We established last week and have reaffirmed today that this is a hugely complex area of legislation. I appreciate everybody's desire to address the anomaly that arose from the 2010 act. We all thought that the situation had been resolved, but it became clear that it had not.

We had questions last week about how certain people are concerned that, in solving the current problem, we do not give rise to others. As well as the differences of opinion between Brian Inkster and others, it became clear at last week's meeting that there are differences of opinion between Sir Crispin Agnew and Derek Flyn. I am not exactly totally satisfied that we will not have more problems. Given the complexity of the issue, how certain are you that we are not simply solving one problem while creating two more? I do not know whether you can give an exact answer to that, given the complexity of the issue, but I would appreciate any comfort that you can give me.

**Paul Wheelhouse:** In drafting the bill, we have tried to reduce the scope for misinterpretation and

disagreement. The provisions that relate to tenant crofters are reasonably stable and working fairly well, so there is no problem with them as they stand. The problem specifically relates to owner-occupier crofters. We have taken forward the measures as far as we can for owner-occupiers. There are some slight differences—we have taken steps to ensure that community right-to-buy provisions are not reflected for owner-occupiers, for example. However, in so far as we have been able to do so, the approach that we have taken is to keep things as similar as possible, to ensure that there is minimal scope for misinterpretation.

That means that the bill is longer than Sir Crispin Agnew and Derek Flyn, say, would have liked. However, length is not everything, and having a shorter bill is not necessarily the primary virtue; it is about trying to ensure clarity and minimising the risk that we could be challenged at some point in the future. I cannot give an absolute guarantee, but I hope that what we have done will minimise that risk.

12:15

**Alex Fergusson:** I entirely agree with you on the issue of clarity, but Sir Crispin Agnew suggested that some parts of the bill did not tie in with other parts. I do not know the bill well enough to give exact examples, but Sir Crispin did so. Can you assure us that the bill team is taking that on board and that it will, if necessary, address it at stage 2?

**Paul Wheelhouse:** I certainly believe that the bill team has fully considered Sir Crispin Agnew's comments. I ask Richard Frew to confirm what has been done.

**Richard Frew:** Mr Fergusson is quite right to highlight the differences of opinion. Frankly, even solicitors who are experts in crofting law disagree about certain aspects. However, we have looked at the written evidence that has been provided to the committee and we will take account of the oral evidence. Nothing springs to mind on the specific issue to which Mr Fergusson referred with regard to what we could amend in the bill as introduced. Clearly, we can take such questions into account at stage 2. I certainly want to work closely with the committee to ensure that members understand where we are going.

**The Convener:** I have a small point about Richard Frew's answer to my question at last week's meeting about the number of multiple owners of crofts. When I asked whether he had a ballpark figure, he said:

"I am not aware of the exact figures, but I am sure that the commission has a list of the different types of crofter."—[*Official Report, Rural Affairs, Climate Change and Environment Committee*, 15 May 2013; c 2185.]

Can we take that answer any further just now?

**Paul Wheelhouse:** I will ask Joe Kerr to comment on that. He is on secondment from the commission, so he may be more closely involved with the issue.

**Joseph Kerr (Scottish Government):** An exercise was undertaken that looked at the different status of people in the crofting elections. In terms of multiple ownership, I understand that the figure was around 700, and that the ballpark figure for owner-occupier crofters was between 3,000 and 4,000.

**The Convener:** That is a much more precise answer than we were given last week, so thank you very much.

As there are no further questions, I thank the minister and his team for their evidence, which we will use in our stage 1 report. Thank you for expediting the bill. We will try to expedite our report at next week's meeting.

12:17

*Meeting continued in private until 12:33.*

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