



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# LOCAL GOVERNMENT AND REGENERATION COMMITTEE

Wednesday 5 November 2014



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**LOCAL GOVERNMENT AND REGENERATION COMMITTEE**  
**27<sup>th</sup> Meeting 2014, Session 4**

**CONVENER**

\*Kevin Stewart (Aberdeen Central) (SNP)

**DEPUTY CONVENER**

\*John Wilson (Central Scotland) (Ind)

**COMMITTEE MEMBERS**

\*Cameron Buchanan (Lothian) (Con)

\*Mark McDonald (Aberdeen Donside) (SNP)

\*Stuart McMillan (West Scotland) (SNP)

\*Anne McTaggart (Glasgow) (Lab)

Alex Rowley (Cowdenbeath) (Lab)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Roz Corbett (Federation of City Farms and Community Gardens)

Andrew Ferguson (Society of Local Authority Lawyers and Administrators in Scotland)

Caroline Gardner (Audit Scotland)

Jim Gray (Glasgow City Council)

Anil Gupta (Convention of Scottish Local Authorities)

John Hancox

Dr Lindsay Neil (Selkirk Regeneration Company)

Pete Ritchie (Nourish Scotland)

Douglas Sinclair (Accounts Commission)

Ian Welsh (Scottish Allotments and Gardens Society)

Rhona Welsh (Convention of Scottish Local Authorities)

**CLERK TO THE COMMITTEE**

David Cullum

**LOCATION**

The Mary Fairfax Somerville Room (CR2)



# Scottish Parliament

## Local Government and Regeneration Committee

Wednesday 5 November 2014

*[The Convener opened the meeting at 09:34]*

### Community Empowerment (Scotland) Bill: Stage 1

**The Convener (Kevin Stewart):** Good morning and welcome to the 27th meeting in 2014 of the Local Government and Regeneration Committee. I ask everyone present to switch off mobile phones and other electronic equipment, as they affect the broadcasting system. Some committee members might consult tablets during the meeting, but that is because our meeting papers are provided in digital format.

Agenda item 1 is a series of oral evidence-taking sessions on the Community Empowerment (Scotland) Bill. This morning, we will take evidence from three panels of witnesses, the first of which will give evidence on part 6 of the bill, which relates to common good assets.

First of all, I should point out that there is a change to the published agenda: Councillor Harry McGuigan has given his apologies for not being able to attend. I welcome to the meeting Anil Gupta and Rhona Welsh, community wellbeing policy officers at the Convention of Scottish Local Authorities; Jim Gray, head of democratic services at Glasgow City Council; Andrew Ferguson from the Society of Local Authority Lawyers and Administrators in Scotland; and Dr Lindsay Neil from the Selkirk Regeneration Company.

Good morning. Would any of you like to make some opening remarks?

**Anil Gupta (Convention of Scottish Local Authorities):** I just want briefly to say what I think Councillor McGuigan would have said, had he been here.

COSLA supports the common good element of the bill. Although we recognise that establishing a register of common good properties will create a burden on local authorities, we hope that it will be of only short duration. One issue that it will clearly be up to us to resolve is the extent to which properties that might be assumed to be common good are or are not, and we will be looking for advice on that judgment call from our legal advisers. Moreover, COSLA welcomes the idea that the bill can help to address tricky issues such as the Portobello high school situation, and we are

very supportive of SOLAR's views on the provisions in the bill.

I am not sure whether we have previously done so, but we also want to draw the committee's attention to the Improvement Service's 2008 report, which, in its comments on a common good assets register, on funding arrangements and on the particular notion that after a period of time—the suggestion in the report was 50 years—properties that have been seen as common good should be treated as such, might have influenced the bill's shape.

**Dr Lindsay Neil (Selkirk Regeneration Company):** I want to pay tribute on the record to Miss Mary Mackenzie of Peebles, who died about two years ago and devoted the latter half of her life to pursuing the common good much along the lines that the bill, I hope, is going to achieve. You have a posthumous word of support from her.

Most of the issues will come out during the questioning, but an important point that arises in, I think, everyone's submissions is the need to define the ownership of common good. There is a simple way of doing that, which I will not go into unless asked. A second issue is alienability, which also requires to be defined and, again, there is a way of doing that.

Thirdly, local people need to have more input in the administration of common good funds, and I have made a suggestion in that respect.

The fourth thing that I want to cover is that there should be some control over the money that local authorities take out of common good funds for whatever reason—and some of those reasons are quite elaborate.

**The Convener:** If our witnesses have no other comments, we will move to questions.

What do you believe to be the main problems with the current management of common good assets in Scotland, and will the bill help to solve them? I start with Mr Ferguson.

**Andrew Ferguson (Society of Local Authority Lawyers and Administrators in Scotland):** As I see it, the main problem is uncertainty about the law. Although the bill is not in any sense all about common good—it is about something much broader than that—it gives an opportunity to clarify that situation.

In our submission, we have focused in particular on the Portobello park situation and the appropriation of common good land for another public use. However—this is where we are in broad agreement with Dr Neil—there are difficulties in defining what is alienable and what is inalienable common good. In fact, it is hard even to say the words, never mind define them. Having those two definitions in the legislation will be

important with regard to what councils can do with common good land.

Indeed, a definition of common good land would also be useful. At the moment, the situation relies on lawyers interpreting some very old case law, and it would be far better if we had modern legislation that anyone could read and make a decent stab at understanding.

**The Convener:** We obviously have lots of different types of common good, and common good accounts are governed by a number of bodies. The Highland Council submission talks about 10 different common good funds. How would you go about defining what is common good, when each of the funds is set up so differently?

**Andrew Ferguson:** Common good is a local thing: former burghs are often quite small villages, although some go up to city size, and people have particular views on very local issues and particular bits of property. To me, however, defining common good is not terribly difficult. It is generally accepted that common good property was only property that was part of a burgh's property. The cases that I referred to are fairly elderly now. In particular, the 1944 case of the Magistrates of Banff v Ruthin Castle Ltd defines common good against two exceptions: the first is to do with property acquired using rates money, rather than common good money, for statutory purposes such as housing; and the other is trust property. I would not like to second guess what legislators would put down, but I would have thought that a basic definition would not be too hard to produce. Essentially, all burgh property would become common good unless it fell under those two exceptions.

**The Convener:** What about property that was gifted and never belonged to a burgh, or property that was bought from common good accounts? On my home turf in Aberdeen, the common good account has bought quite a lot of property so that the rents could be used to boost that account. How do we deal with such situations?

**Andrew Ferguson:** If property had been held on the common good account or had been acquired and put on the common good account, it would be difficult for a council, even now, to claim that it was not common good. I do not really see that as a difficulty. I suppose that you could expand the definition to talk about the common good account, so that if property had been acquired after the burgh days it would be included in that definition, but I just do not see it being too difficult.

**The Convener:** I am playing devil's advocate, because I do not think that there could be a catch-all definition, given the way in which some

accounts have been handled. You obviously think differently.

**Andrew Ferguson:** I am not saying that there would not still be hard cases. I am saying that the hard cases could be tested against a clear set of legislative principles. At the moment, they are tested against sometimes conflicting judgments in a case from the 1940s, and it seems to me that it would be better if there was at least an attempt at definition. I know that in other submissions people have argued that there is a risk that doing that could exclude something that people have always thought was common good, but, with a bit of thought, that need not necessarily be the case.

**The Convener:** Dr Neil, I return to my original question. What do you think are the main problems with the current management of common good, and will the bill solve those problems?

**Dr Neil:** The bill should aim to restore to communities their control and influence over what happens to their common good fund. It should also act as a referee in relation to the management by local authorities of common good funds, because we have had experience—and new examples are still cropping up—of failures by local authorities to observe the existing regulations, never mind any change in regulation.

The main thing is to involve local people, because the best guardians of property are its owners. A fine distinction avoided by many people is that the Local Government (Scotland) Act 1973 did not confer on local authorities the entire ownership of common good funds. It transferred the title, not the beneficial ownership. The beneficial ownership remains with the citizens of the former burgh, and, in the present day and age, they have very little say indeed in what happens to their common good fund.

09:45

**The Convener:** Anne McTaggart has a supplementary question.

**Anne McTaggart (Glasgow) (Lab):** Dr Neil mentioned the involvement of local people—I fully appreciate your point. How best can we involve local people?

**Dr Neil:** As I said in my submission, the best thing would be to have the counterweight of an equal number of local volunteers to the number of local authority people appointed to common good working groups, which is the way that most local authorities organise the management of a common good fund on a democratic level, although it is officers who are involved and who generally attend such meetings. If there were an equal number of volunteers, the local authority

would not have the option of steamrolling through any changes in a locality's common good fund.

I would add to that a limited veto power. The phrase that appears in the 1973 act and in the Community Empowerment (Scotland) Bill is "have regard to". My Queen's counsel friend, who has taken me by the hand all the way through the business of common good, says that "have regard to" is legally meaningless, because local authorities can have regard to something and simply disregard it. Therefore, some more teeth in that area would be very helpful. I know that the bill says "must have regard to", but even that is legally questionable.

The words "must" or "will" instead of "have regard to" would apply an imperative.

**The Convener:** How do you envisage those community representatives being appointed or elected? How would you ensure that they reflected the people's views?

**Dr Neil:** Community councils have been mentioned, and they are a good source from which people can be appointed or volunteer.

**The Convener:** A lot of people who have given evidence to the committee during our consideration of not only this bill but others say that, in many cases, community councils do not reflect the views of the communities that they represent.

**Dr Neil:** I have another finger up. The other community bodies that have evolved to meet needs in a community—Selkirk Regeneration Company is one such example, although, even in Selkirk, there are others—could put up a candidate to sit on the management committees. Depending on the numbers, they could be approved by the community council. There could be a limited number for the community council itself. For example, there could be one for the community council and two spread around the community. Different people could come in at different times.

The approval thing is a bit of a problem. Can you ask one potential candidate for such a position to approve another potential candidate? A better idea would be to divorce such approval and give it to some arbitrator, if you can.

**The Convener:** I can see that causing quite a few difficulties, based on evidence that others have given us.

**Jim Gray (Glasgow City Council):** I endorse my colleague Andrew Ferguson's submission. In our written submission on the bill, we strongly put forward the view that a statutory definition would be helpful.

Rather than repeat what Andrew Ferguson has said, I will speak in general terms. We are genuinely trying—we are committed to this—to make the common good fund more transparent and accessible to local communities.

In general, I suggest that it would be helpful to have a statutory definition that is more easily explicable to the general public, rather than have to rely on a number of cases from the past and varying interpretations of what those cases mean. Without overstating it, we strongly feel that the opportunity may have been missed to consolidate the existing definitions from case law and put them into statute.

A degree of confusion arises. Before we came into the meeting, I had the benefit of talking to Dr Neil, who knows a great deal more about the common good than I ever will. However, perhaps understandably, the general public are unclear about what common good funds are. There might be a perception—clearly not on the part of Dr Neil, but among some people—that in some way the common good is unique. However, it is clear that local authorities have a number of restrictions on what they can do with certain categories of property, whether that is restrictions on the title, burdens or contractual obligations that restrict use or disposal. Also, as Andrew Ferguson flagged up, the bill does not take us much further forward on the distinction in the common good between alienable and inalienable—I struggle to say those words, too.

In general, we support the idea of opening up and making more transparent the common good. We are already reviewing our policy on it and our existing register of assets. It might be more appropriate to say this in response to a later question, but we think that the policy memorandum and the financial memorandum have somewhat understated the resource implications for local authorities in implementing the provisions. However, we are committed to making more transparent the operation of the common good fund in Glasgow.

**The Convener:** Who wants to speak for COSLA?

**Anil Gupta:** As I said, we are in agreement with SOLAR and Mr Gray on the issue. Clarity is probably the biggest issue for us, as well as the potential burdens that arise from putting in place the register.

I want to briefly make the point that, when local government is required to have regard to various provisions and legal duties, it takes them seriously and, more often than not, that is followed up by examples of good practice being shared between members about how best to manage those things.

**The Convener:** Part 5 of the bill deals with asset transfers. How do you feel about asset transfer requests to common good accounts? How will that play out and what can be done on that?

**Andrew Ferguson:** That is a good question. As I mentioned earlier, there is really no opposition to the broad sweep of the bill that communities should be more empowered. Clearly, there are situations in which a local authority is not the best-placed body to take forward the future of a particular building—[*Interruption.*]

**The Convener:** Can I stop you there for a second, Mr Ferguson? There seems to be a very strange noise in the room. I do not know whether it is affecting broadcasting. Could it be someone's hearing aid, by any chance? Sorry, Mr Ferguson, but I am worried that it is upsetting broadcasting.

**Andrew Ferguson:** That is okay—it seems to have stopped now.

**The Convener:** Yes.

**Andrew Ferguson:** As I was saying, the bill tries to cover situations in which a local authority is not best placed to be the guardian of a particular asset and a community-based organisation would be better placed. It would be disingenuous to say that that never happens—of course there are such situations; there are shining examples of that. One of the reasons why we want the clarity that we are asking for on common good law is so that, when an asset transfer is proposed, the somewhat byzantine provisions of common good law do not get in the way.

Essentially, it should not matter terribly much whether something is common good. I know that it matters deeply to the community that something is common good, but regardless of whether a particular asset is common good, if the community has a plan for it, why should it not be able to take on that asset without there being blocks standing in the way? At the moment, it is not quite clear from the wording of the bill whether it would be necessary to go to court if there was an inalienable building that everyone agreed would be better looked after by a community organisation. Under the provisions of the 1973 act, in such circumstances—even though everyone was in agreement—it was still necessary to go to court. It is really a matter of stitching common good property into the overall sweep of the bill and linking it to things such as asset transfer.

**Dr Neil:** I agree with that, except—I am sorry; I have lost my train of thought.

If a local democratic group that assessed whether an asset should be transferred from the common good to another agency agreed that the purpose of the transfer was for the community good, it would probably offer no opposition. By

democratising the management of common good at a local level, some asset transfers will be facilitated.

**Jim Gray:** I endorse the view that we must be careful that we are not inadvertently making it harder for groups to take on community assets, which is a big enough challenge. Groups need a great deal of support to do that, and it can take a lot of time. There is a great deal of capacity building involved, as well as many issues to do with sustainability. I endorse the view that we need to be clear that we would not want any changes to the operation of the common good system to make it harder for such groups to take on common good properties.

I know that the committee is to hear later from the Federation of City Farms and Community Gardens, but at page 50 of the committee's papers, it touches on the issue in its submission. It mentions the situation whereby the bill could have the perverse outcome of making it harder for groups to take on common good property, for example for use as allotments.

**The Convener:** Do you wish to comment, Mr Gupta?

**Anil Gupta:** I have nothing to add to what is in our submission.

**John Wilson (Central Scotland) (Ind):** I welcome Mr Ferguson's request for a clearer definition to be provided in the bill. One of the issues with the transfer of land, whether common good land, which we are concentrating on, or land that is held in trust by a local authority for a community, relates to the role of the keeper of the registers of Scotland. SOLAR's submission indicates that the keeper will not give title to such land. What can we do in the bill to ensure that, when there is a transfer of a common good asset or an asset that is held in trust by a local authority to a community organisation, that will be recognised in the land title deeds? For many communities, ownership of the land is a requirement if they are to attract funding. If communities cannot get titles that demonstrate their ownership, some of the funding that they wish to apply for might not be forthcoming.

**Andrew Ferguson:** Thank you for picking up on that point.

There appears to have been a difficulty recently with the keeper accepting applications for registration. It was another local authority that was involved, so I am not completely conversant with the difficulty, but the keeper seemed to take the position that some sort of proof of court authority was needed if it was inalienable common good land. I suppose that the solution lies in the bill providing definitions of what is alienable and what is inalienable so that the position is quite clear.



If the acquisition had been carried out under the Community Empowerment (Scotland) Bill, that would give the keeper a little bit of extra comfort that it had been done properly and that he could record the circumstances clearly in the land certificate. The clarity of definition that we are asking for would help that situation and help the keeper to be able to give the land certificate that a community body would need.

I do not know whether Mr Gray has anything to add to that.

10:00

**Jim Gray:** I do not have anything to add on the technical aspect, but it occurs to me that we could have a potentially anomalous situation.

I am currently involved in a long-running piece of work that is to do with transferring a major facility in Glasgow into community management. We will have a service agreement with the voluntary organisation. Where there is a transfer of ownership, if we are staying true to the spirit of the common good, do we need a device to ensure that the common good, or the community as a whole, has safeguards built in if something happened to the group to which the asset has been transferred? The group could, unfortunately, go out of business or fail to deliver. There is an issue quite apart from the legal issue. In what way can we safeguard the longer-term community interest? Obviously, we would need to think about that and look at various agreements that we could enter into with the transferee.

**The Convener:** Let us go to alienable and inalienable rights. Many folks—our thousands of viewers at home—will find it very difficult to understand what those are. How do we explain them to folks? How do we ensure that the definitions of those things that you want are right?

**Andrew Ferguson:** You are absolutely right. Explaining those things to anybody who is not deeply steeped in common good traditions is slightly difficult.

Essentially, not all common good property can be sold. That has always been the case. Historically, the courts have held that there has always been a class of common good property that cannot be disposed of. One such class of property is things that were necessary for the administration of the burgh, such as the burgh chambers and the jail. I am going back through historic cases now.

The other main area is where there was a dedication in the title. Philanthropists in the 19th and 20th centuries gave land to towns, but on the condition that it was to be used for ever for the town, usually for a recreational purpose.

A third category relates to the burgh having dedicated an area, usually to recreational purposes. We are usually talking about land in that particular situation.

I appreciate that that is quite a long explanation to translate into legislation, but it would not be beyond the wit of the legislators to create a definition. The key issue is that those categories of property could be sold with the consent of the court. Perhaps the question to be asked is whether the right place to make that decision is the sheriff court or the Court of Session, but at least if the case goes before a court, the judge will weigh up the benefits and disbenefits of the sale.

Those properties could be sold under the 1973 act in certain situations. As a result of the Portobello case, in which the local authority wanted to use the common good property for another public purpose, there is now clear case law that says that it could not do that. There is an absolute brick wall against local authorities doing that in any situation other than by taking legislation through the Parliament. One might wonder whether that is the best use of the Parliament's time.

It would be tricky to define such categories of common good because, certainly in the case of old burgh chambers, for instance, the question whether they are still inalienable changes over time. I do not think that it would be impossible to do that, however. Indeed, it would be helpful to have definitions set down. Rather than having them in a string of 19th and 20th century cases and obscure law books, it would be better to have those set down in legislation that everybody can access on the internet. That would never be a perfect solution, but it would be a better solution than what we have at the moment.

**Dr Neil:** As regards alienability and non-alienability, a mechanism existed in section 75(3) of the 1973 act, which permitted the Court of Session or a sheriff court to make compensation for anything whose use was proposed to be changed. In other words, if the aim was to build a school in a park, if some other park facility was provided, the court could quite easily decide on the matter. That seems to be a mechanism for transferring something that is inalienable into something that can be used for the public good.

The point about defining alienability and non-alienability was first mentioned in 1937. A report in the *Scots Law Times* refers to

"a Commission appointed to enquire into the state of Municipal Corporations in Scotland"

back in 1835. That was the only place where we found a clear definition of what was alienable and what was not alienable. If a definition is included in the bill, that would be a good place to start.

**Jim Gray:** I do not have a lot to add to that. However, it has occurred to me that, if there is a feeling that it would be too difficult to capture all that in the bill, there might be a case for statutory guidance which, while not being prescriptive, could at least provide examples of what would be regarded as inalienable or alienable, and that could allow for an easier dialogue between local authorities and other interested parties. Where something is alienable, there could be examples of overriding benefit to the community from the land being disposed of, based on case law and good practice.

**John Wilson:** I wish to follow up on one of the issues that have come out of the evidence from local authorities in particular: the compilation of the register of common good. If there is a difficulty in compiling a register of common good assets, how do we know what assets are held in common good and what criteria are assigned to those assets?

Mr Ferguson made a comment about the philanthropists of the 19th and 20th centuries. The Carnegie Trust gave, purchased and built property for many local authorities in Scotland to provide public libraries, mainly. In the town that I live next to, the public library has been closed and transferred to a new-build facility. The original facility is up for sale. How would the local community determine or find out whether the local authority is entitled to sell that property, if the property was gifted to the people of the burgh of Coatbridge?

**Rhona Welsh (Convention of Scottish Local Authorities):** We have been contacted by a number of members who have recognised that holding a register of common good property is good practice. In fact, it is cited as good practice under Chartered Institute of Public Finance and Accountancy guidelines. A lot of local authorities know about the proposed legislation and have started this process already. That is why we have been emphasising today the need for clarity around what is considered to be common good. A number of authorities are currently compiling their registers and are coming up against some of the issues that you raised. At their heart, local authorities are keen to make sure that communities have access to that information. In the process of building the register, they welcome the opportunity to consult community councils and others in the area. They are always open to answering those questions. We have certainly never had any negative feedback on these proposals in the bill.

**Jim Gray:** On the scale of the task, my colleagues who are working on this tell me that they estimate—I stress the word “estimate”—that Glasgow City Council might have in the region of 20,000 title deeds to look at. I am not commenting

on what proportion of those could fall within the common good definition, but if you want to do an exhaustive analysis, you will require to look at them.

We are giving priority to the assets that have been queried in the past or cases where there is a proposal to dispose of or sell the asset—in other words, the parts of the potential register that are most likely to be contentious in the near future. We have run a programme of paid graduate internships, through which we have managed to get some assistance, and we will do the same again next summer.

If we are going to have a meaningful and comprehensive register, that will require a large-scale exercise. It goes back to the issue of having a definitive definition. Once we have the register, we are required to publicise it and community organisations as defined in the legislation will have the right to query some of the entries and to be consulted if and when there is any intention to dispose of assets. I am at risk of repeating myself by saying this, but the more we can improve public knowledge of what is common good, the less likely we are to have unnecessary disputes.

**The Convener:** From my humble perspective, I think that members of the public out there find it very difficult to believe that all this is not registered anyway. I know what I own. Folks get quite upset at points when they try to find out who owns something and the local authority then spends years trying to find out for them—if it can find out at all. Folks find that quite hard to comprehend. What do you have at the moment by way of a register of Glasgow’s common good assets?

**Jim Gray:** We have a register, but we regard it as imperfect. We are trying to perfect it and to make it as comprehensive as possible. I understand your point, convener. The problem is that we cannot rewrite history. The fact is that we are the successor body to other local authorities and the register has built up over a long period of time. It is many years since I did conveyancing—and, frankly, I was not very good at it when I did it—but I know that it is not always simple and straightforward, as those who know more about it than I do would confirm. We are where we are. It is regrettable, but the matter is very complex and over years and decades local authorities have perhaps not given it the priority that they might have.

**The Convener:** On the point about being the successor body, I have to say that I have inherited very few things in my life, but I know what I own.

**Dr Neil:** I will give you an example of where the local authority is almost blind to the existence of moveable assets. In a Borders town that I will not identify, there is a room full of pictures that say

underneath, “Dedicated to the Burgh of” or “Given to the Burgh of”, but the local authority refuses to believe that there are any moveable assets. Its argument is that because it did not receive a list of moveable assets from the previous administration, it has no obligation to continue to keep a list.

10:15

**Andrew Ferguson:** I was going to make one point, but now I want to make two.

Mr Wilson’s point is very well made. Even if we had a common good register, dividing it into assets that are alienable and those that are non-alienable—I am adopting Dr Neil’s word, because it seems easier to pronounce—would be an extra step and would involve another quite big exercise. At the end of the day, having a statutory definition will allow communities to challenge the local authority and say, “Well, you have said that this is common good, but do you consider it to be alienable or non-alienable?”

Dr Neil has made a good point about moveable common good assets. We have never really inherited a list of such assets and, although in Fife we have made some efforts to create some sort of register, I am quite sure that it is very imperfect. I point out, however, that we have tried to involve the local communities in what we have created.

Coming back to another point that we have made in our submission, I want to give the committee a concrete—or, I should say, wooden—example. With the sale of Lochgelly town house, we now have sitting in storage in Glenrothes a huge table that once belonged to Lochgelly burgh and which was where the members had their meetings. We do not know what to do with it, and I have advised my colleagues that there is nothing that says that we can legally dispose of it. As there seems to be no community use for it at the moment, the situation has become difficult.

**The Convener:** At this moment in time, then, the table is a liability rather than an asset.

**Andrew Ferguson:** It is a liability, because all we can do is store it. Obviously, there are lots of other assets such as paintings and so on, but it is a question of what we do with the table now.

**The Convener:** It sounds like another case where we ask, “Do we legislate to deal with this or does common sense come into play?”

**Mark McDonald (Aberdeen Donside) (SNP):** I hesitate to ask this question, given that unitary authorities were established 18 years ago and some of them—perhaps all of them—still do not have a comprehensive common good register. However, should we have an expectation of some deadline being set for the completion of such registers? Given that we still do not have common

good registers 18 years after unitary authorities came into being, can we afford to sit around and wait for local authorities to get their act together without such a deadline?

**Rhona Welsh:** A number of local authorities have fed back to us that their main problem is that when they themselves are uncertain whether an asset should be included in the common good fund, they have to take legal advice, which might be that they have to go to court for a determination. Obviously, that takes time and incurs costs, and I am not sure whether it is for us as a member body to indicate what deadline, if any, should be set.

**Mark McDonald:** I presume that authorities are seeking that advice from their external solicitors. If it were internally sourced legal advice from their own legal departments, would that not give rise to conflicts of interest?

**Rhona Welsh:** I can think of one particular local authority that has taken external legal advice on the matter, but I cannot speak for all 32.

**Jim Gray:** Where such a situation arose, we would seek external legal advice; indeed, we have done so. It is, to some extent, a judgment call as to whether we get the opinion of a QC or whether we go to court, but going to court clearly costs more money and takes longer. For that very reason, I can only endorse COSLA’s comments that it is very difficult for us to give a timescale for completing a common good register. I can understand—

**The Convener:** I want to stop you there, Mr Gray. We are hearing all this talk of seeking external legal advice when in many local authorities there are perfectly good lawyers being paid quite substantial sums. Are we being overly risk averse in dealing with this situation?

**Jim Gray:** We take that course of action to minimise disputes. Other parties and stakeholders might not agree with the legal advice that we receive from our own solicitors; we will want to create a degree of independence; and such a move stops just short of our going to court. That is the only reason why we would do that, because in general we rely on our own legal advice.

**Dr Neil:** I suggest that each local authority be written to and asked for its assessment of how long it will take to compile its list of moveable and fixed assets. A judgment could be made after that, perhaps by the minister.

**The Convener:** That is not a bad idea.

**Andrew Ferguson:** I do not see why the timescale for producing a common good asset register should not be fairly short. As colleagues have said, most local authorities have a common good asset register of some sort. The first step, in

terms of the legislation, is to publish those registers, which will lead to a discussion. There is no doubt that community interests will have local knowledge; I know that because we have been through the process in Fife. That local knowledge will feed in and help to create a robust common good register.

I see no reason why the timescale for initial publication, as proposed by the bill, should not be short. However, getting to the end of having a common good asset register that is absolutely 100 per cent accurate is a bit like painting the Forth bridge.

**Mark McDonald:** I think that you are right that there would be an initial process, but my concern is that if we leave it open ended, it is a licence for heel dragging. Although some local authorities will be further down the road than others, there will be some authorities—picking up from the inferences made by Dr Neil—that are engaged in a process of heel dragging on the issue. Rather than just leaving it up to individual local authorities to get their act together, should there be a co-ordinated approach? Does COSLA have a view on whether there should be co-ordination or should local authorities be left to plough their own furrows?

**Rhona Welsh:** In general, COSLA's position would be to ask that local authorities have the local flexibility to deal with the issues as they see fit. I am not sure that taking a co-ordinated one-size-fits-all approach would necessarily solve the problem. I appreciate the point that you have raised.

**Mark McDonald:** Perhaps I can clarify my point. I am not suggesting that one size fits all; rather, I am suggesting that we can ensure that local authorities are taking the right steps and moving in the right direction, and that no authority is being "allowed" to drag its heels.

**The Convener:** Dr Neil suggested that local authorities could be approached for timescales. Has COSLA ever approached local authorities and asked them how long it would take them to complete that kind of task?

**Anil Gupta:** We have not yet done so, but if the minister is to ask local authorities about the timeframes for producing a list of both moveable and non-moveable assets, it would be useful also to ask about the costs attached to developing those registers in given timeframes, because of the points that Mr Gray has already raised.

**Stuart McMillan (West Scotland) (SNP):** Good morning, panel. I would like clarification on one point.

Mr Gray, in your comments a few moments ago, you used two phrases. The first was, "We are where we are." I will paraphrase the second

phrase; you said that in the past, local authorities have possibly not given common good the attention that it should have received. We should also bear in mind the discussion that we have just had. Given some of the controversy that there has been over the years regarding common good the length and breadth of the country, why have local authorities not grasped this particular thistle to ensure that registers are up to date?

**Jim Gray:** I am not sure that I am best placed to answer that. I have worked in local authorities twice in my career—latterly, for about six years and for Strathclyde Regional Council in the 1980s. I understand why members may think that I have spent a long time in local authorities, but I have not.

I was responding to the understandable concern or frustration that the convener expressed about why it has taken so long to get clarity about what local authorities own. In that context, I was expressing a personal view that, given the other pressures on local authorities over the decades, they may not in some cases have been definitive in maintaining an absolutely comprehensive register. I presume that they have been more concerned about the individual conveyancing transactions that they have been engaged in. I am purely speculating that, if they had treated that register as a high priority, we would not be where we are.

However, that is not easily undone. Land transfers are complex. Andrew Ferguson has given some examples, and this is not necessarily just about land; it is also about assets. Local authorities have taken on a range of functions over the years involving not just component parts of the local authorities but other organisations that have merged with or demerged from them. A series of complex transactions has taken place. I speculate that the lack of clarity about what is and is not in the common good may well have compounded the problem. However, that is purely a personal view.

**Andrew Ferguson:** In Fife—I am not really speaking for SOLAR overall here—we have been involved in an exercise of that nature, and it is massively resource intensive. It takes a lot of time to read back through titles, some of which go back to the 1600s or 1700s, and try to make sense of them in the modern-day context. However, it can be done, and I stress again that with community involvement we can often get information about particular properties that local authority officials sitting in a central office may not have. There is also a generational thing, in that many colleagues who maybe had that information in-house have now retired.

The local nature of the work is important. Fife has 26 former burghs within its boundaries, so there are 26 different sets of problems and 26

different communities to engage with. Although, as I say, we have tried to go through that in Fife and I think that we are in the final stages of the work, it has not been without difficulties—of communication and otherwise.

**Stuart McMillan:** We received a submission from Highland Council, which is not here today, and one of its suggestions regarding consultation with the community is that there should be a requirement to

“consult only with Community Councils that represent the inhabitants of the areas to which the Common Good related prior to 16 May 1975.”

Do you have views on that suggestion?

**Anil Gupta:** We are aware of that view, which relates specifically to Highland Council's large geography. It would probably also be taken by other local authorities with similarly broad, dispersed populations. To Highland Council, it seems odd that a community council in Wick would have a view about what is going on in Skye.

**Anne McTaggart:** I have three small questions about the appeals process. As we discussed earlier, the bill requires local authorities to consult community councils and other community bodies about their common good registers. However, there is no appeals mechanism if the community disagrees with the local authority's decision. Should the bill define an appeals mechanism?

10:30

**Andrew Ferguson:** Ideally it would, but I struggle to think what a good appeals mechanism would be that did not involve an expensive process and, essentially, paying lawyers to come to a decision. I understand the desire for an appeals process with regard to the register, but it might be more useful to look at whether our current system, in which a local authority might have to go to the Court of Session when it wants to dispose of or appropriate common good property, is the best way of reaching a decision on this matter. However, I suspect that that goes without the bill's remit and might require separate legislation. As I have said, I understand the desire for an appeals process, but I see no easy mechanism for doing that.

**Dr Neil:** One of Audit Scotland's functions is to review the local authorities' management of common good, including their asset registers, on an annual basis, but over the years I have been impressed by the inadequacy of its comments on the compilation of asset registers by various local authorities, particularly in the Borders. Audit Scotland is in a position to judge an appeal, in so far as it is supposedly totally disinterested and arbitrary, but I have had reason to doubt its effectiveness in certain respects.

**Jim Gray:** I do not have much to add, except to say that I think it would certainly be preferable if we had some form of dispute resolution that did not require our going to the Court of Session, with all the costs and the length of time that that entails.

**The Convener:** What does COSLA think?

**Anil Gupta:** COSLA would agree with Mr Gray's comments.

**Anne McTaggart:** Could Mr Gray give us an example of good practice in respect of the dispute resolution that he mentioned?

**Jim Gray:** A variety of alternative dispute resolution methodologies can be explored but, generally speaking and as members will be aware, both parties have to come to an agreement. The question is whether there is provision for an independent person to be appointed, whether there is mediation or whether there is something else.

We would not want a community to feel completely disaffected because of a certain outcome, but there could be economic reasons why a particular piece of land had to be disposed of; for example, jobs or investment could be at risk. We would certainly be looking for speed and certainty. I do not have anything specific to offer, other than to say that we should try to avoid disputes and that any disputes that arise should be resolved without people having to go to court, if that is possible.

**Anne McTaggart:** And—

**The Convener:** Could you be quite brief, please?

**Anne McTaggart:** Yes, convener. This might require just a yes or a no, but do you support the rules that require local authorities to have regard to the views of community councils and bodies when disposing or changing the use of common good property?

**The Convener:** I ask the witnesses to be very brief.

**Dr Neil:** I have already said that the phrase “have regard to” does not have a great deal of legal strength. If some phraseology could be used to make it clear that, if the community were consulted, its opinion carried weight, that would smooth out the decision making and avoid conflict. There are conflicts all over the place—lawyers thrive on them.

**The Convener:** Do any of the lawyers wish to comment?

**Andrew Ferguson:** I agree with the proposals in the bill.

**Anne McTaggart:** Thank you. My other question has been answered, convener.

**The Convener:** I thank the witnesses very much for their evidence, and I suspend the meeting very briefly for a change of witnesses.

10:33

*Meeting suspended.*

10:37

*On resuming—*

**The Convener:** We will now consider part 7 of the bill, on allotments and food-growing strategy.

Before we move to the witnesses, I would like to say that the committee is working hard to engage with as many people as possible on this bill. We launched a short video on the participation aspect of the bill a few weeks ago. I am delighted to say that it has been watched nearly 1,300 times on YouTube and has led to more evidence being received. Later this week, we will launch a second video, on part 7, on allotments and food-growing strategy. We are keen to hear from folks on the provision for food growing, and we will be taking further evidence on the topic at our meeting in Fort William on 24 November. I hope that the video will encourage more people to engage with us on those issues.

In our second panel, I welcome Ian Welsh, president of the Scottish Allotments and Gardens Society; Pete Ritchie, director of Nourish Scotland; Roz Corbett, Scotland development worker, the Federation of City Farms and Community Gardens; and John Hancox, who lodged petition PE1433. Would you like to make any brief opening remarks?

**Ian Welsh (Scottish Allotments and Gardens Society):** Yes. I represent the Scottish Allotments and Gardens Society, which represents most of the allotments in Scotland, of which there are currently 8,000. When we carried out a survey in 2007, there were 6,400, which was about 10 per cent of the number left at the end of the war. We are therefore left with a low level of allotment provision. We hope that the new legislation will facilitate turning that situation around.

We have a number of concerns about the bill. It may take up too much time, but I can outline them now if you want.

**The Convener:** They will come out in questioning.

**Pete Ritchie (Nourish Scotland):** Nourish Scotland has around 2,000 supporters. It campaigns for a fairer and more sustainable food

system in Scotland. We welcome the bill in general terms. We want much greater community participation not just in food growing but in a community food economy, because we think that sustainable food is one of the defining challenges of the 21st century and that communities have to be part of the solution.

**John Hancox:** I am chair of Scottish Orchards and director of a network of orchards called the commonwealth orchard. We lodged the petition, which was about making land available to people who have not got land, and I am pleased that it has been referred to the Local Government and Regeneration Committee. The petition is about far more than just digging holes and planting things. It is very much the essence of what community empowerment is about.

I am interested in the concept of developing a right to grow, which is a little bit akin to the access laws that have been brought in. Basically, land should be made available for growing if it is not being used for anything better. It is the use of assets that is important, rather than ownership. Without going back to what Andrew Ferguson was saying earlier, I think that assets should generally be available for people to use unless there is a good reason why not.

**Roz Corbett (Federation of City Farms and Community Gardens):** Thank you for the chance to speak today. The Federation of City Farms and Community Gardens has more than 70 members and supports a number of other community gardens that are not members. We welcome the update to the allotments legislation, although we would like to see broader recognition of community gardening and other community growing in legislation. We also welcome the measures for local authorities to prepare food-growing strategies, although we would like a recognition that community growing is about much more than just food and that it has many other impacts and benefits. Following on from what Mr Hancox said, I would also like to say that the meanwhile use of land should be more readily supported for communities.

**The Convener:** To what extent do you think that the bill will deliver on the Government's commitment to strategically support allotments and community growing spaces?

**Ian Welsh:** We have some concerns about whether the bill, as it is framed, will do that. One of our major concerns is that the bill removes any reference to plot size from the legislation, and we would like reference to a standard of 250m<sup>2</sup> to remain in the legislation. The existing acts progressively reduced down the size of what was defined as an allotment, and the new bill appears to be removing it. A 250m<sup>2</sup> plot is sufficient for someone to feed a family of four. Plots that are

smaller than that will not have that capability. We feel that that sort of allotment is what defines us a community, so you would be removing the definition of the allotment community by not providing a reference to the standard size.

**The Convener:** I attended the Scottish older people's assembly on Friday to talk about the bill, and the discussion focused on certain aspects, including allotments. Some of the folk I spoke to informally said that they could not manage a big allotment any more but that they still wanted to carry on, perhaps with a smaller plot. Do you not think that they should have some rights too?

**Ian Welsh:** I take your point about flexibility. We want the 250m<sup>2</sup> there as a reference standard, not as an obligatory standard that has to be applied in all instances. Part of the response that we have had to our concerns about the removal of any reference standards is that, if it appeared that the majority of plots provided through local authorities in future were reducing in size, action could be taken but, if there is no reference standard, what would that action be based on?

We recognise that the number of allotments in Scotland has declined so greatly that many people may have their own definition of an allotment, which may differ from the one that was defined in law, and their own ideas about what it should be capable of doing. We recognise that there is a lack of skill and that people have different time commitments. We recommend that other sizes of allotment, such as half plots or quarter plots, can be provided in agreement with the users and the providers.

10:45

**Pete Ritchie:** The answer to your question is no, the bill will not address the strategy of ensuring a significant increase in allotments, because we do not yet take the business of food growing seriously enough. We need a much wider cultural change to start addressing that.

We welcome the part of the bill that focuses on outcomes being part of community planning. We want to see an outcome related to food squarely in the middle of the new set of outcomes that are agreed with local authorities post-2016. We would want them to draw on the new, post-2015 United Nations sustainable development goals, which are being published next year and which include the strategic goal to end hunger, improve nutrition and promote sustainable agriculture. Once those UN goals are in place, they will frame a lot of the single outcome agreements.

Once an outcome relating to food is part of the national performance framework, we will see a much greater focus by local authorities on food-growing strategies. The work that Nourish has

been doing with others such as the Soil Association on sustainable food cities is moving food up the agenda of our cities.

A strategic approach to supporting allotments and community gardens and, as John Hancox said, using land that is not being used for other purposes will form part of a much more strategic approach by local authorities to promoting local food growing and more sustainable food consumption and reducing food inequalities. We have to see food as part of a much more strategic approach.

We also expect that the new land reform legislation will broaden our approach to looking at the use of land in the public interest and for the common good. Those other things will build on the work of the bill and help create a more strategic approach. However, I do not think that the bill in and of itself will produce a strategic change.

**John Hancox:** I am very encouraged and pleased by the bill. It has the potential to change the culture in local authorities and institutions such as the Forestry Commission, so that they can use their considerable landholdings and financial clout to enable community engagement and develop growing. The legacy of the bill could be to help transform the amount of food growing that is done locally. I would be very encouraged if that happened, because it is what I have been working towards.

It is important that we do not get too caught up in the issues of land ownership. Although I am very much in favour of increasing allotment provision, I think that it is essential that we allow considerable flexibility, whereby local authorities and other agencies can allow land to be used for a period of time without getting too bogged down in legal hurdles. There ought to be a culture in which people are able to identify bits of ground that are not being used and can then dig holes and get on with it. The essence of community empowerment is that people are able to get on with it. The onus should be put on to local authorities and others to be supportive and to enable that process to happen, rather than to create onerous frameworks that put a lot of responsibilities around public liability on to the local groups, which can be difficult for groups that are not terribly powerfully constituted to deal with.

**The Convener:** You have said that folks should just be allowed to go and dig holes on land. Does that include private land, as well as public land? How do folk ensure that the land that might have the hole dug in it is fit for growing? Many areas in certain parts of the country are contaminated sites.

**John Hancox:** There has to be a partnership approach with landowners. That is critical. My petition looks at publicly owned land—health

board land, local authority land and so forth—so I am not aiming it at private landowners. That said, quite a number of private landowners were at a meeting yesterday with a farmer who is happy for his land to be used but who is worried that, after he says yes to something, it could get out of control, and he would not be able to change the land use decisions further down the line. That is not true with the particular person I met yesterday but, in general, if we can have an agreement whereby people can use land according to a commonsense arrangement, which can be changed, that could be a very positive thing.

**Roz Corbett:** There is potential for the bill to support allotments strategically. It could do more, however, towards community gardening and other community growing initiatives. Potentially, more thought needs to be given to strategically addressing the skills and resources of community groups. There is a massive skills gap in horticulture at the moment, and the food-growing strategy seems to be an opportunity to address that at a local authority level.

On the contaminated land issue, several groups and organisations already use their resources to support other groups. The grow your own working group recently launched a contaminated land guide for groups wishing to assess whether their land is contaminated. There could be more support for organisations that are doing that kind of work.

**Anne McTaggart:** I thank and welcome the panel members. I will stick to the issue of size, although I know that you have just discussed it, convener.

Before that, I make people aware of the visit that I went on with Stuart McMillan. We are very grateful to Ian Welsh and to Judy Wilkinson, who is in the public gallery, for the extensive knowledge that they shared with us on the day when they took us around some allotments in Glasgow.

The biggest item from that day was the size of allotments. I did not meet any allotmenters—is that a word?

**The Convener:** Allotment holders, perhaps.

**Anne McTaggart:** I did not meet any allotment holders who were not concerned about what would happen if the size of allotments was not in the bill, in that local authorities could well take shortcuts and cut sizes. I heard what Mr Welsh said earlier: if people do not have a statutory size to begin with, how can that be cut down and how can it be defined later? I would like to hear a wee bit more about some of those concerns—I certainly heard them on the day of our visit.

**Ian Welsh:** There were ordinary plot holders on that visit. Some of them are on my site, and they took on their plots relatively recently, within the past five to eight years. Our plots are at least 200m<sup>2</sup>. The square meterage thing is simply the updated metric equivalent of 300 square yards, which was recognised as a suitable size to achieve the aim of feeding a family-size group. Many of the new people who come to our site and look at the plots think that they are big and wonder how they can handle them. Anne McTaggart heard from two people who both said exactly that and have now reached the stage that they do not have enough ground to do all that they want to do, because of the range of produce that they realise they can grow.

That touches on something that was referred to earlier, which is the lack of knowledge and skill out there. The allotment world has shrunk so much that it is not something that features in many people's experience any longer. When I was a child being carried around, I was taken to the allotment in Glasgow that my parents had looked after during the war. That experience stuck with me and there were many people like that, but now things are changing and people have a different perception of what an allotment might be about as opposed to what it actually is.

One of the other concerns, which is linked to that, is how waiting lists will trigger the creation of plots. The current recommendation is that, when a waiting list in any area reaches 50 per cent of the existing plot provision, the local authority will be required to take action. I think that the most likely action would be simply to take plots when they become available and halve them. That would enable the authority to reduce the waiting list to below the 50 per cent threshold without necessarily creating any new growing land.

We are at a very low ebb. The total number of allotments in the United Kingdom is 300,000, so our increase from 6,400 to 8,000 allotments from 2007 to now is poor by comparison. Things have declined very badly in Scotland. Not only must we protect what we have got, we must create a suitable framework to achieve the things that the others are talking about. The community gardens and the other smaller growing initiatives all have a part to play. That is where people will learn, so there is undoubtedly a value to all that, but there needs to be a mechanism to allow for people who learn and then want more.

**Roz Corbett:** I agree with Ian Welsh.

**Pete Ritchie:** We need far more allotments and community gardens in Scotland. My concern is that the bill does not have any levers to require that to happen. The framework of single outcome agreements is the lever that we need. The intentions of the bill are fine, but the lever is not



there to enable us to get from 8,000 to 30,000 allotments in the next five or 10 years. As Ian Welsh said, that is where we need to be.

As Roz Corbett says, we need a significant investment in skills, both for allotmenters and for community growers.

**John Hancox:** Picking up on the issue of skills, I would say that the best way of increasing the skill base is to work with young people. I have worked with a lot of schools, developing school allotments—to use the term loosely—and school orchards. Working with children is a very good way of working with the whole community, because if children get involved and interested, they drag their parents, grandparents and wider community into it. Providing opportunities for people at a community level to take small steps will lead to bigger steps. I see the number of children in schools throughout Scotland having experience of food growing feeding through to an ever-greater demand for growing spaces further down the line.

**The Convener:** You say “small steps”, but do you not think that small-size growing might lead to folk moving on—if that is possible—or sticking to that smaller size if that is all that they are fit for doing at that time? I am talking about the flexibility that I mentioned earlier.

**John Hancox:** I do not want to be controversial, but I think that small-size growing, which can be growing in a square metre, a barrel or in a flower pot on a windowsill, is all great and I would encourage all of it.

11:00

**Anne McTaggart:** Yes, but the size matters. The concern from the community groups and people that I have met is that, if we do not define the size, local authorities might well take shortcuts and make half and quarter allotments, which would then get them up to the number that they should be at. That is the major concern.

Another point that I took from our visit to allotments was the importance of wellbeing and the community aspect. Roz Corbett touched on that. It is not just about growing and gardening; it is about sharing and caring and about other people's knowledge and experience. Allotments are hugely family orientated and provide benefits for people's general health.

**Pete Ritchie:** I support that. To give some context, all the allotments in Scotland would fit into 200 hectares, which is one small farm's worth—that is all the allotments that we have in Scotland. We put hundreds of millions of pounds into single farm payments through the common agricultural policy to support farming; we should put more

money into providing more hectares for more growers. There should absolutely be flexibility on plot size, but Ian Welsh is right that we need more ground under community cultivation, whether that is allotments or community gardens.

There is 300 hectares of derelict land in Edinburgh alone, and that is before we get to parks, golf courses and back gardens. Less ground is being used for allotments in Scotland than there is derelict land in Edinburgh. We need to acknowledge the scale of that. The bill, or the follow-up to it, needs to be much more assertive and say that we just need more ground being grown on.

**John Hancox:** I will touch on a similar point, which is that, in Glasgow, there is around 3,000 hectares of vacant and derelict land. There are vast areas of what is known in the trade as green desert—great areas of grass where nothing happens. I have done a bit of work with a local food operation on the south side of Glasgow called Locavore, which has a pig on a bit of ground. It is worth mentioning that there should be flexibility and that chickens, goats and pigs should be included in the discussion—it is not all about fruit trees or vegetables. People like growing food in all shapes and forms.

**Roz Corbett:** On the size of allotment plots, currently, if a person feels that they cannot manage an allotment, they can share it with someone else they know, or they can talk to the allotments officer and take someone on. That should not mean that the size of the plot is watered down, because the standard size should be maintained. There needs to be provision for allotments of that size. Community gardens play a role in making available smaller spaces for people to grow and for people to meet local community members. Community gardens should be seen not as an alternative to allotments but as complementing them in that sense.

**Ian Welsh:** I am glad that other panel members have cited issues to do with land. When I first became involved in the issue at this level, I was a volunteer mentor for the allotments regeneration initiative, which was a project managed by the Federation of City Farms and Community Gardens. That involved me following up on contacts that had been made by groups or sometimes individuals—it often started with individuals—throughout Scotland who wanted an allotment.

I have quoted some figures from the survey that we did in 2007. More than half of those allotments were in our four main cities, and the rest—fewer than 3,000 of the 6,500—were scattered across the rest of Scotland. They are still there. No one wanted the land for anything else in the years since the war, so they remained there. The land

has not always been of the best quality or in the best location, which is probably why no one wanted it for anything else.

The issue then became that groups were competing with whoever had an interest in the land and saw its potential for building and private housing development. That interest has receded, but there obviously will, in the years ahead, be a need for social housing. I certainly would not want to argue the case for depriving people of that housing, but there is a misperception of the amount of land that is involved in allotments.

If we were to add another 40,000 allotments to what we currently have, it would take 1,000 hectares of land to provide the standard size of 250m<sup>2</sup>. It is difficult to envisage 1,000 hectares. The area that is defined by the red line in the map that I am holding up, which lies between the roads, is approximately 3.2km by 3.2km, which is 1,000 hectares. It is the greater Holyrood park area, which we are sitting on the edge of.

In other words, the amount of land that would be needed to provide 40,000 allotments throughout Scotland would be no more than that.

**Stuart McMillan:** Good morning, panel. As Anne McTaggart said, I was on the visit in Glasgow. As someone who had no knowledge of allotments beforehand, I took a lot from the day, and I thank the people who were there.

I have a few questions. I know that there are waiting lists for people who want to have an allotment. Is there enough demand to reach the Scottish Allotments and Gardens Society's suggested target of 50,000 plots in 10 years' time?

**Ian Welsh:** That would be our aim—

**The Convener:** Mr Welsh, I ask you to wait to be called, please.

**Ian Welsh:** Sorry—I beg your pardon.

**The Convener:** Ms Corbett can go first.

**Roz Corbett:** Mr Welsh probably has better statistics on allotment waiting lists. From my community gardening experience, a lot of the people who come to community gardens do not bother to put their names on waiting lists, because they perceive that they will not get an allotment in the next 10 years. The accuracy of waiting lists at present is probably questionable, but I imagine that the demand is more than the lists would suggest.

**John Hancox:** Allotments are partly about provision and partly about demand. I work with a lot of people who are interested in community food growing. One example would be students who are in Edinburgh or Glasgow for a three-year period. They are not particularly interested in taking on a plot, but they are interested in doing some

practical work for the time in which they are resident in the city. They can get involved and do some useful work, with the understanding that they will be moving on at some point.

I have an allotment, and I have experience of the issues. Allotments tend to be more appropriate for people who are quite settled and who want to develop their allotment and grow food for a reasonable length of time. There is a need for provision for people who arrive in town and want to just get on with things rather than putting their name on a waiting list in the expectation that they will still be living in Glasgow in five years' time. An awful lot of people do not live like that. They are in town for a period of time and they want to do the work, but they accept that they will be moving on.

There is also a demographic issue here. A lot of the allotment people are a bit older and quite a lot of the community garden people are a bit younger. There is a throughput whereby the people who have experience of community gardens often want to get an allotment eventually. A range of provision is needed.

**Pete Ritchie:** There is a demand, and I do not think it is all pent up and contained within allotment waiting lists. I just want to share some vignettes. First, there is Tom Kirby's work with the Granton community gardeners. He set up two or three community gardens in Granton in a short space of time and brought lots of people in who were new to gardening, who never had their name on an allotment waiting list but who have now become involved in community growing. The second is our farm at home out near Penicuik. About 40 households in a very sparsely populated area, where we thought that everybody already had gardens, have taken plots on the farm. We also teach teachers. We have teachers from Edinburgh schools on a course with us at the moment. They are all involved in community growing and school growing activities. As John Hancox said, if those kids have that experience, they will be looking to grow more when they grow up.

We should not focus our allotments policy on the existence of waiting lists. We should have a clear public policy that we want to see more people growing more of their own food. It is part of community empowerment and part of a resilient food strategy. It should be a public policy objective to increase allotments, not simply to ask whether there is pent-up public demand. We should encourage demand for allotments and support it through growing skills and, as John Hancox said, through taking an open approach to people getting access to growing space when they want it, rather than telling people that if they wait five years, they might get something.

**Ian Welsh:** I agree with everything that the other panel members said. The statistics show that there are currently about 4,500 people on waiting lists in our four main cities. The other groups out in rural areas tend to be self-starting—people have empowered themselves, if you like. More than 100 such groups have emerged since about 2005. About half of them have managed to get new allotment sites—hence the reason why the numbers rose—but probably around half are still waiting. On the basis that each of those new sites has averaged about 30 plots, that amounts to another 1,500. That could take the total up to between 14,000 and 15,000. We have the aim of getting back to the numbers that were there after the war, but that has to be demand led.

As others have outlined, the profile of a plot holder has changed. When I took on my plot in 1976, plot holders tended to be people who looked a bit like me. There are many more families and younger people involved now. Some of them move on because of career progression and so they have the allotment for a shorter period than would have happened in the past. However, the change in profile reflects the general interest that a new generation has in growing things.

**The Convener:** I call Stuart McMillan. Stuart, could you be brief in asking questions—and could panel members be brief in answering them—because a lot of other folk have to come in?

**Stuart McMillan:** Sure. One of the issues that has been raised today is the availability of land. When I was in Glasgow it was suggested that instead of land banking, whereby land just lies dormant, land that might be used for a specific purpose at some future point could be utilised in the interim. There would be cost implications of that for people who wanted to take on an allotment on that land. Would taking over some of that land be a useful activity to get involved in or would there be further complications if that were to happen?

**The Convener:** I will start with Mr Welsh. If you could be briefer than Mr McMillan I would be grateful.

**Stuart McMillan:** Sorry.

**Ian Welsh:** We are not against that sort of flexible use of land, but as an organisation we are aware of our history. After the war, our predecessors expressed concern about the declining number of allotments, which was due to the fact that many of the allotments were classed as temporary and the main need for the land was for post-war social housing.

11:15

**John Hancox:** Access to land, in whatever shape or form, seems to make sense. I cannot see the point in having land sitting unused while people are sitting in their houses watching daytime television. It would be silly not to be able to connect those two things together.

Reconnecting people to land and giving them some of the skills that they need is the very essence of what community empowerment is about. It is not so much about building something that will be there for ever; in many ways, it is about growing people's confidence and skills. If someone looks out of the window and sees something that they have planted or looked after, it can be very powerful. Having things, even small-scale things, very close to home, is very valuable.

**Roz Corbett:** We support the meanwhile use of land for community garden projects. The Grove community garden in Fountainbridge in Edinburgh is an interesting example of that. In the short term, there is a cost benefit argument in terms of maintaining the site, reducing vandalism and so on.

**The Convener:** I think that that site featured in our video.

**Pete Ritchie:** We think that the food-growing strategy should include clear provision for traditional allotments, for the use of meanwhile land for community growing, and also for more ambitious larger-scale programmes. There are some very attractive sites, both in Edinburgh and Glasgow, that could be used for larger-scale community growing and we think that part of the food-growing strategy should be about properly run social enterprises growing at scale, not simply community volunteers or people growing for their individual consumption. We think that there should be an emphasis on a community food economy in and around our cities and that food-growing strategies should contribute to developing that.

**Cameron Buchanan (Lothian) (Con):** What is your solution to the problem of wasteland that you cited in both Edinburgh and Glasgow? I read about guerrilla gardening in somebody's submission. Is that the answer?

**Roz Corbett:** It follows up on the previous question. There is a potential to use a lot of derelict and underused land at the moment. In Glasgow, the stalled spaces programme has been quite successful in using such land. Guerrilla gardening is but one type of community gardening that people can do to make use of that kind of land.

**Cameron Buchanan:** My question is, what would you do with the wasteland? Would you

legislate for the vast acreage of wasteland to be used for allotments?

**Roz Corbett:** There could be a lot more encouragement in the bill for use of that land. I would not necessarily restrict that to allotments. The land might not be suitable for allotment growing, but a view would have to be taken as part of an assessment of the land.

**The Convener:** I want to turn Cameron Buchanan's question around. Legislation may not be the key here. For example, should allotments and garden spaces feature in councils' local development plans?

**Roz Corbett:** I will leave that to Ian Welsh.

**The Convener:** Mr Welsh, you have been pointed to.

**Ian Welsh:** I say yes. The social housing issue will be important in the coming years because of the situation that many people find themselves in—they will never be able to afford to buy houses at the prices they are now going for. It is important that people get decent affordable housing, but it is equally important that land is set aside for some type of growing activity or whatever type of green space activity that people want.

I would hate to think that it looks as though we want people to be forced to have allotments. We do not. We want the circumstances to exist so that, if someone wants an allotment, they can have one.

**Pete Ritchie:** There are good examples of growing on derelict contaminated land using raised beds, such as in Fairlie. Local authorities need to assess the costs of remediating land. The pace of land remediation has been very slow, mainly because we are trying to pay for it out of the current account. We should look at financial mechanisms to invest in the remediation of land for which the payback would be over 30 or 40 years, as a result of the upgrading of land for social housing, allotments and other purposes. We are a bit stuck at the moment. A lot of derelict land is not being remediated because there is no financial mechanism to make it worth while. Although that is perhaps outwith the scope of the bill, it is an area that we need to look at.

**John Hancox:** I have two comments. First, I love guerrilla gardening. Anything that makes gardening sexy and attractive to young people is great. Guerrilla gardening has a frisson, because you go out in the middle of the night and plant things.

More seriously, there is a lot of good-quality land that is not derelict and which is the legacy of Victorian times. Victorian parks were laid out only with amenity trees. When the Victorians laid out parks, they deliberately planted things that were

not productive—the exotics of the time. It is worth considering getting food growing back into mainstream open spaces. Access to bits of ground in parks should perhaps be part of the bill's considerations. We basically want open space to reflect what the populace wants, and people love picking apples off trees. We can as easily plant productive trees—nuts, fruit or whatever—as we can any kind of amenity tree. Such trees would produce food at the same time as having an amenity value.

**John Wilson:** Good morning. I will be slightly controversial and ask whether allotments should be used only for food production. A number of allotment holders—particularly the ones who are associated with the horticultural shows around Scotland—also grow plants such as dahlias and chrysanthemums. I am concerned that we could end up with rules and regulations that say that, when additional allotments are allocated, they can be used only to produce food for consumption by allotment holders or the community. Are there any views?

**Roz Corbett:** To encourage biodiversity in a garden, good organic gardening principles include planting other things and not strictly plants that produce food. That should be encouraged.

**John Hancox:** I take a very liberal view of these things. As long as people are planting things and enjoying doing it, and as long as they are getting exercise and the community and health benefits, what they are growing does not matter that much. I have an enthusiasm for fruit but I am tolerant of people's enthusiasm for flowers.

**Pete Ritchie:** The bill gives local authorities responsibility for regulation of those issues.

**Ian Welsh:** I suppose that I should own up, in that the site that I am on is an independent one, and growing flowers has always been part of it. Indeed, when I took my plot on in 1976, there was a significant number of chrysanthemum and dahlia growers. Unfortunately, that has declined a bit.

The trend among most people newly coming in seems to be to grow fruit and vegetables, but our site rules do not prohibit the growing of flowers, and I do not see why any site regulations should be so restrictive as to not let people grow flowers. They are perhaps just a bit more expensive to grow than vegetables, depending on what someone wants to grow.

**John Wilson:** It is interesting that Mr Welsh is involved in allotments that are independently owned. One issue for us is community ownership, which is also covered in the bill. Could we create more allotments through communities making bids to take on the ownership of land to turn it into allotments or to produce food? As others have mentioned, there is lots of green space around

towns and villages that is just lying there, and the council comes along once every couple of months and cuts the grass. How would you view communities taking on land for productive use, either for allotments or community food-growing projects?

**Pete Ritchie:** In general, we welcome growth in community ownership of land full stop, whether it is in the Highlands and Islands or on the outskirts of Edinburgh.

We have to recognise, though, that new financing mechanisms are needed. We point to the success of organisations such as Terre de Liens in France, which issues community shares on a national scale to invest in community-owned land. There are benefits to a national-scale issue, because for any community to raise the hundreds of thousands of pounds that may be involved in purchasing high-value peri-urban land is a big ask and it can distract the community from the real job, which, as John Hancox says, is to use the land productively. If a local authority has maintenance costs for a piece of land, it is unlikely that the community will have lower maintenance costs, so it will need an alternative business plan that generates an income to meet those costs.

We would welcome the extension of community ownership, but we caution that it is not simply a question of raising a few bob, buying a bit of ground and then seeing how it goes. Communities need support to put proper sustainable business plans together if they are going to take on significant bits of land as owners.

**Ian Welsh:** I am on an independent site, and it has been independent for 50 years.

I see the bill as creating a process by which community takeovers could happen for groups that want to do it. I think that the way to that will be through local authorities, simply because the likely economic circumstances over the foreseeable future will mean that self-managing on sites will become a desirable option. It would provide cost savings to the plot holders and, potentially, to the local authority, depending on how much of the management of the site the group takes on. It is a road to ultimate ownership, which might appeal to some people.

Our main concern with that aspect of the bill is about the kind of legal entities that such bodies would be. There are problems with aspects of the unincorporated association, which is what allotment associations are commonly classed as. We are hoping to see something in the bill that might improve the situation.

The other thing that we are aware of—

**The Convener:** You have to be very brief, Mr Welsh, because we are really pushed for time now.

**Ian Welsh:** There is a marked difference between what has been happening in most rural areas and what has been happening, to a much lesser extent, in the post-industrial areas, around Glasgow in particular. That difference will be reflected in many aspects of community empowerment beyond allotments and growing activities.

**Roz Corbett:** I agree with the previous comments from the panel.

**John Hancox:** The petition that I put forward was aimed at public bodies—the Forestry Commission, local authorities, housing associations, health boards and so forth. In my non-legal head, that land is already in public ownership. It seems to me that it should be there for people to use, and that issues about transferring land from one body to another are not where the efforts should be focused. To my mind, it should be about making land that is already in public ownership more productive. We need a presumption in favour of people being able to use underused land unless there is any good reason why not, and that should particularly be so when it is in public ownership.

11:30

**Mark McDonald:** Part of the first question that I was going to ask has been dealt with by John Wilson. It is worth noting that the bill does not just provide for communities to own land. Transfers do not have to be about ownership; they can be about leasing. There is also the opportunity for participation requests, which might deal with some of the concerns around the absence of a duty, which is mentioned in the submissions.

The big question, though, is something that Mr Hancox has touched on. For almost the entirety of this session, we have been talking about local authorities, although Mr Hancox has mentioned other public bodies. The national health service holds large amounts of land, as do universities, and perhaps we should be looking at how such bodies could play their part in providing more land and making it available for allotments, given that it would have an added benefit for some of the work that they are engaged in. What are the panel's views on that?

**The Convener:** Maybe you could give us yes or no answers. Should other public bodies be involved as well as local authorities?

**Pete Ritchie:** Yes, and the Forestry Commission is doing some good work on that.

**Ian Welsh:** Yes. In fact, that has already happened in some instances.

**The Convener:** Could you give us an example of where that is happening?

**Ian Welsh:** In Fort William, some Forestry Commission land has been made available for allotments. It is mainly in the rural areas.

**The Convener:** We are going to Fort William, so we can find out more about that example.

**John Hancox:** I definitely agree. There are a lot of different bodies that could make land available. The Crown Estate is an interesting case, as it has a lot of assets, as do health boards and public trusts of one sort or another. My view is that private landowners are often enlightened and can see the benefits of making land available, so I would not want to come across as controversial or coercive, but I would not want them ruled out of the picture. Private landowners may well be amenable to that use of their land.

**The Convener:** That was a long yes or no answer, Mr Hancox.

**John Hancox:** I am sorry.

**Roz Corbett:** We have examples of groups working on NHS land. There is a question about land that remains within Westminster powers, such as land owned by the Ministry of Defence and Network Rail, and how those bodies can support that effort in Scotland.

**The Convener:** I have one final question that it is important to ask. Is there enough provision in the bill to ensure that folk with a physical impairment can access allotments? Mr Ritchie talked about raised beds at Fairlie. Are we doing enough of that sort of thing to help people with a physical impairment to take part?

**Pete Ritchie:** My understanding of the equalities legislation is that all public bodies are required within the existing framework to make provision for people with specific needs. As in lots of other areas of local authority policy, I think that authorities would ensure that people whom they support follow similar provisions, but that should certainly be made explicit, if not in the bill then certainly in guidance and implementation advice. People should definitely pay attention to that.

**Ian Welsh:** We mention in our submission the need to take account of the fact that people suffering from mental health issues or conditions such as Alzheimer's disease may have their own special needs. I have seen a site in Bristol where the association decided to create allotments that would suit people with disability access issues, but it turned out that there was not a demand for them and they were not used. Identifying a clear demand would have to be part of it.

**John Hancox:** We have worked with a number of nursing homes, prisons, secure accommodation facilities and secure hospitals. Having some food growing in areas such as prison grounds—

**The Convener:** That is really outwith the scope of the bill.

**John Hancox:** I am talking about access. Having stuff close to where people are is highly relevant. Having food growing close to where people live, especially if they are elderly or disabled, is something that should be considered, rather than making people go out and use an allotment site elsewhere.

**The Convener:** Ms Corbett, do you have anything to add?

**Roz Corbett:** I have no further comments.

**The Convener:** I thank all the witnesses for their evidence today. It has been extremely useful.

11:35

*Meeting suspended.*

11:43

*On resuming—*

**The Convener:** Welcome back. I introduce our final panel for this morning. I welcome Douglas Sinclair, chair of the Accounts Commission for Scotland, and Caroline Gardner, Auditor General for Scotland. I understand that this is your second committee of the morning, Ms Gardner.

**Caroline Gardner (Audit Scotland):** It is indeed.

**The Convener:** I invite the witnesses to make some opening remarks.

**Douglas Sinclair (Accounts Commission):** Thank you very much for this opportunity to give evidence in relation to our joint submission to the committee. I will say a few words on behalf of the Auditor General and the Accounts Commission.

We remind the committee of its potential interest in our report, "Community Planning: Turning ambition into actions", which we will publish on 27 November. We will provide the committee with that report when it is published. It draws on the findings of the five local audits that we have undertaken this year. Of those, audit reports for Glasgow, Falkirk, Moray and West Lothian have already been published, and the one for Orkney will be published tomorrow. We will draw on the findings of those audits in the evidence that we give today.

11:45

Our submission notes that the bill presents opportunities for local communities and public authorities to work differently together to create new models for the delivery of public services. That fits with the core theme that we have consistently touched on in our work, which was articulated in our briefing to the committee last year during its inquiry into public sector reform. We noted the

“growing consensus that significant change is needed in the design and delivery of public services”

in order to respond to rising demand due to the pressure on resources, demographic change and ever-increasing public expectations.

Part of the process of change must include thinking carefully about the important role that communities can play in redesigning—and, in some cases, providing—public services.

As I have already stated, we will provide the committee with more reflections on the progress of community planning through our forthcoming report on community planning. In the meantime, we are happy to take any questions that the committee may have on our submission.

**The Convener:** Ms Gardner, do you want to add anything?

**Caroline Gardner:** No. As Douglas Sinclair said, he speaks for both of us on this occasion.

**The Convener:** We have caught sight of the reports from Glasgow, Falkirk, Moray and West Lothian, which are a mixed bag. Do you think that putting some of the duties on a statutory basis will help to improve community planning?

**Douglas Sinclair:** It will certainly make it more of a shared enterprise. In placing a parallel duty on all the bodies concerned, along with the council, the bill is saying that community planning is not just the responsibility of the council.

However, there are some issues in relation to the section of the bill that deals with governance. A more appropriate title for section 8 might be “Organisation of community planning”. It says that each partner must contribute the necessary resources by way of money, staff and information to ensure that community planning works effectively, but there does not seem to be anything in the bill that deals with the issue that could arise whereby one of the partners is not contributing effectively towards the local improvement plan. That is quite an important issue. What is the sanction? There will be ministerial guidance, but there do not seem to be any dispute resolution provisions.

That touches on an interesting point about the bill. In the past, the role of the local authority has

been to initiate, facilitate and maintain community planning. That is being repealed. That raises an interesting point: what is the future role of the council in community planning? In my view, that role has always been one of facilitation rather than dictation.

If we think about what a local authority does and what distinguishes a local authority, it is not the fact that it provides services, because many other bodies provide services, including in the private and voluntary sectors. It is not distinguished by virtue of its role as a regulator, as there are other regulators, including the Scottish Environment Protection Agency and the Care Inspectorate. What distinguishes local government is its capacity for community leadership, which is a result of its democratic legitimacy.

There needs to be some articulation of what the continuing role of the council might be in community planning. Perhaps it needs to move away from a role that is enshrined in statute towards one that is accepted around the table as being an appropriate one. We need a leader of community planning, not least to resolve some of the disputes that could arise, which I mentioned earlier.

**Caroline Gardner:** I agree entirely with Douglas Sinclair that the definitions and responsibilities that are set out in the bill are useful improvements. One of the themes that came through from our individual audits of community planning partnerships and from our previous national report is the sense that, where community planning works well, those things help, but where partnerships are struggling, they are probably not the answer. The questions about governance and accountability are important in helping the local community to hold its partnership to account and in helping the Scottish Government to hold partnerships to account for their contribution to national outcomes.

There are no easy answers to those things, because community planning partnerships are not formal, incorporated bodies. That may not provide the best solution, but on the question of what support community planning partnerships might need and what mechanisms might be required to encourage partners that are not taking part or that are not statutory partners to play their full part and to increase transparency, so that local communities and the Government have a clearer picture of what is happening locally and what contribution is being made to the national picture, those seem to be important things that are not apparent in the bill as introduced.

**The Convener:** Do you think that the bill will be helpful when it comes to sharing best practice and exporting that from one partnership to another? It seems that in some places we do certain things

very well, yet, not that far away, we fail dismally when doing the same things.

**Douglas Sinclair:** As I mentioned, the extent to which the bill makes community planning more of a shared endeavour, so that there is an equality of participation, will hopefully help people to share best practice. I have made the point before that a report on public services in Wales contains the interesting phrase that good practice is a bad traveller.

An interesting point is whether the commission, the Auditor General and, indeed, other scrutiny bodies can do more collectively to identify good practice, perhaps in an annual good practice manual or guide. That would encourage people to move away from the view that if something is not invented in their area, they will not do it. There is a lot to be said for an initiative of that nature. That is one of the things that we are thinking about in terms of the future role that we might play in our work in relation to community planning.

**Caroline Gardner:** You are right about the challenges of spreading good practice and learning from one another, whether through good practice or by learning from things that have not worked so well and the difficulties involved. That is an area in which the greater transparency that I mentioned earlier might help. Giving a clearer picture of what people are trying to achieve, how they plan to go about it and the linkage between what each of the individual partners is doing could let people follow up with questions about why they are trying that, how it worked in practice and why they may have stopped doing something that did not have the impact that was hoped for.

**The Convener:** Will the publication of an annual report help with the export of best practice? Will that make the process much more transparent, particularly for members of the public? Is what is envisaged for the annual report enough, or should it be beefed up in any shape or form?

**Douglas Sinclair:** I would like to think that an annual digest or report—call it what you will—that is signed off by all the scrutiny and inspection bodies would have considerable impact and influence on community planning partners. In addition to that, there is the potential to produce good practice guides. If we consider a community planning partnership in which the exercise of joint leadership is particularly effective, it would be interesting to analyse that in a bit more detail and provide a good practice note that could be disseminated to the other 32 community planning partnerships.

The leadership of CPPs is incredibly complex, as Caroline Gardner has suggested. We are talking about plural accountability: the council is accountable to the local community; the health

board is accountable to ministers and, ultimately, the Parliament; the police commander is responsible to the chief constable; and the fire officer is responsible to the chief fire officer. All those people are trying to work together with different accountability arrangements. We have found that it is important to build a relationship of trust that can bring about change because people want to make a difference rather than because of formal accountability mechanisms.

Analysing some community planning partnerships in which the leadership role has been extremely successful and effective, finding out why and sharing that knowledge with other community planning partners would be very useful.

**The Convener:** At the end of the day, though, everybody is accountable to the public.

**Douglas Sinclair:** Ultimately, yes.

**Caroline Gardner:** As we said in our submission, the proposed regular national reports by Scottish ministers on community planning and empowerment would be an important step forward. There are still questions for us about the accountability arrangements for that, what will happen with the reports and to what extent there will be independent scrutiny of them—whether by the Parliament or by us as auditors. It feels to us important to make sure that they are prepared in a fair and balanced way in which people have confidence.

There is a growing sense that integrated reporting is a big theme in the corporate world. The matching of performance on services and outcomes with the finances and other resources that are available lets us get a much stronger picture of what is working well and where there may be choices to be made. I would be keen to see the development of such national reporting happening in tandem with the Government's developing thinking about the way in which its financial reporting needs to develop under the Scotland Act 2012 and as further powers are devolved in the future to keep both things moving in parallel.

**The Convener:** Before I bring in colleagues, I will change topic ever so slightly. Our first panel discussed the common good aspects of the bill. In particular, there was a lot of discussion about registers of common good assets. One of the witnesses, Dr Neil, said that there was some inadequacy on the part of Audit Scotland in holding councils to account for the lack of registers in some cases, or the existence of poor registers in others. Do you have any comment on that?

**Caroline Gardner:** I am happy to comment on that as a former controller of audit, and Douglas Sinclair may well wish to come in. The issue is clearly a contentious one, which has been



important for communities throughout Scotland, and for some particular communities, for a long time. Councils have made significant strides in registering common good land, buildings and other assets. Different choices have been made in different parts of Scotland about the priority that should be attached to reconstructing historical records—which, in some instances, are very old and incomplete—rather than the other priorities that councils have to meet.

You will not be surprised to hear that I do not think that Audit Scotland has necessarily been deficient in following that up, but I recognise that there are differences in the quality of the information and that, in some cases, making it complete would be a very expensive and possibly impossible task.

**Douglas Sinclair:** I would not disagree with any of that. It is a complex issue, which, as Caroline Gardner has indicated, has been one of priorities and finance. I would be interested to see the evidence that Dr Neil has for his view that the Accounts Commission or Audit Scotland has been deficient in relation to the issue.

**Cameron Buchanan:** I have read your submission, and I notice a bit of criticism in it. It includes phrases such as

“a long way to go ... work effectively ... holding Ministers to account for their achievement ... being clearer about the frequency of such reporting”.

The bill appears to be silent on the extent to which the resourcing of the administration of the community planning process should be seen as a partnership task. Could you comment on that? Is that the main point that worries you?

**Caroline Gardner:** It is not a major worry, but it is one that we felt we should jointly register with the committee. At the moment, the duty to lead community planning clearly sits with local authorities, and our audit evidence shows that it has mainly been councils that have provided the resources required to administer it, to keep partnerships running and to do lots of the background work that is essential for partnerships to be effective.

Our sense is that, if the leadership responsibility is shared more equally, there is a risk that the resource that is needed to underpin the processes of community planning might be less easy to identify and protect, given the budget pressures that face all public bodies as well as the third sector and other partners involved. It is not a major concern for us, but we do not underestimate the importance of getting that support right for effective community planning, and it seems that a risk could arise with the proposed changes in the responsibilities for leadership.

**Cameron Buchanan:** There seems to be a significant gap when it comes to how such partnerships can work effectively. You commented on that in your “Improving Community Planning in Scotland” report. You did not think that the reporting bit was accurate enough.

12:00

**Douglas Sinclair:** There is a lot of good will. The difficulty that community planning partnerships have lies in translating that good will into tangible action, because there are so many other priorities to deliver.

Community planning was established in 2003. In a sense, it has taken off and made progress only since the joint statement of ambition between the Scottish Government and COSLA. The ambition is there, but it is not easy for bodies to build relationships of trust, to show willingness to share resources and to recognise that, by working together, they can achieve more. That is complicated by the fact that some bodies have separate targets. For example, health boards have national targets. In a sense, those national targets are their priority, rather than the priorities of the community planning partnerships.

It is a slow but maturing process. As I mentioned, we found that when CPPs have managed to build a relationship of trust, that has led to a willingness to share, to experiment and to find the areas in which they can add demonstrable value by working together. A key priority for CPPs is the agenda of reducing inequality. That does not mean that everything will be on the table when it comes to reducing inequality, but they should make a difference where they can.

The statement of ambition was perhaps overambitious in some areas. For example, it suggested that CPPs should have all the attributes of a governance board. That was perhaps overambitious because, as Caroline Gardner has indicated, they are voluntary partnerships. They depend, to a large extent, on good will and a willingness to work together. Because they are voluntary, it takes time to build up the relationship of trust and good will that adds value and makes a difference in terms of outcomes for communities.

It is a maturing process—progress continues to be made—but because of all the competing priorities and other demands on public bodies, moving community planning from being the Saturday job to a seven-day job will continue to take time.

**Mark McDonald:** If you were to ask community representatives—we have spoken to community representatives—you would find that there is a perception that community planning is too often something that is done to communities rather than

with communities. They would probably identify a disconnect between the community planning process and the turning of what priorities the process comes up with into deliverable outcomes—the delivery of what has been discussed. From your work, do you see that that is just a perception, or is there a fair chunk of reality in it? How might the bill address such concerns?

**Douglas Sinclair:** We have found in our audits some good examples of CPPs listening much more effectively and engaging with communities. For example, in Falkirk there was a redesign of social work services in Bo'ness and Blackness to allow older people to live in their homes for longer. In an interesting piece of work called empowering communities, Orkney Islands Council is consulting communities about the potential transfer to the communities of responsibilities for running minor services.

It is fair to say that although CPPs are getting better at consultation and participation, there is still a way to go with the transfer of power to communities. One point that the Accounts Commission regularly makes in our overview reports is that councils should make better use of options appraisals in order to identify the best way to deliver services. That must include the possibility of transferring a service to communities.

One problem is that communities are not homogeneous. Community planning implies a single community, but in any area there are different interests. It is not easy for a CPP to balance those interests.

There is a need for CPPs to consult together rather than separately and there is a best-value issue in respect of how CPPs engage with communities. Too often in the past they have tended to consult separately rather than collectively. There may be a case for both—if a council wants to consult on a school closure, that is a matter for the council—but where there are opportunities to consult together, there is scope for CPPs to do that better.

**Caroline Gardner:** I agree entirely. We have seen more consultation: public bodies and partnerships are getting better at consulting. We are not seeing much of a shift towards making communities and people partners in deciding what the priorities are or in redesigning services and delivering them. I believe that the real sense of participation and the true sense of empowerment will become much more important.

The convener referred to my meeting with the Public Audit Committee, at which we spent some time talking about the choices that we need to make between short-term targets in the health service and social care versus the longer-term changes that are needed to meet the 2020 vision

for an ageing population. We cannot do that to people; everyone must have the chance to take part in the conversation about the relative priorities of shorter waiting times versus the longer-term priorities of services that are based near people's homes and which help all of us to live longer and healthier lives at home.

That sense of the conversation with people being at the heart of resolving the challenges around prevention-type finances and growing inequalities is more important than it has ever been.

**Douglas Sinclair:** The bill is focused very much on community empowerment. There is a debate to be had on the point that the Christie commission made about the need for services to be designed around not just communities but individuals, because the individual interest is not necessarily the same as the community interest. A patient's relationship with the health service is quite different from the community's relationship with it. An interesting question is whether we can empower communities without first empowering individuals.

**Mark McDonald:** That is an interesting question, which will probably come up in our deliberations.

You raised the point that local authorities are perhaps being given the burden of taking forward community planning in many places. Are there many places where public sector organisations or community planning partners are not pulling their weight, or does the situation vary from area to area?

**Douglas Sinclair:** The situation varies from area to area. I would not like to call community planning a burden—as I tried to express earlier, community leadership is arguably the most important role for local government.

As I have said, there is a way to go on getting a joint commitment, but the bill may well help that process in placing a parallel duty with regard to the contribution that is made through resources, staff and information in order to fulfil the local improvement plan. It will be interesting to see how that works in practice—I think that it will be an interesting issue for Audit Scotland, the Accounts Commission and the Auditor General to keep an eye on in order to see how well the duty is implemented and what the difficulties are in that regard.

As Caroline Gardner indicated, the resource in supporting community planning has, to date, come largely from local authorities. It will be interesting to see whether other partners are prepared to put their money on the table to help to bring that about.

Community planning will not just happen—it needs a dedicated resource to make it work and to implement the decisions of the community planning board. If the board wants to deliver a joint initiative, it needs somebody to ensure that that is managed and delivered, and that the results are reported back.

**Caroline Gardner:** We were trying to convey the point that, at present, councils formally have that leadership role, and the broadening of responsibility to include the other partners and make community planning more of a shared endeavour is welcomed by local authorities as well as by others.

In practical terms, we see variation across Scotland. That is partly to do with local circumstances but—as Douglas Sinclair mentioned earlier—we see the effect of having different accountability regimes and performance targets for other partners. That is the case in particular with the health service, where there is a strong and understandable focus on the HEAT—health improvement, efficiency and governance, access and treatment—targets for each individual health board, which may be more or less consistent with the priorities of the community planning partnership and other public bodies that are involved and engaged to different degrees in setting the local priorities.

The shared endeavour will help, but the point that we have previously made with regard to aligning the Scottish Government's policies to make them as consistent as they can be on the ground is also important.

**Mark McDonald:** I have one final brief question. I appreciate that “burden” may have been the wrong term to use. I did not mean it in the sense that was perhaps picked up.

Do you think that community planning partnerships are as accessible as they could be for our most deprived communities? Do they focus enough on prioritising investment, resources and services for communities that are most in need, rather than on communities that have the loudest voices? Those are not always the same communities.

**Douglas Sinclair:** That is a very fair question. Looking at the definition of community empowerment, we can say that we know it when we see it. First, however, we need to build the confidence and the skills of communities to enable them to tackle the council and the health board. There is a huge resource issue in making that happen.

The other side of the equation is the need to ensure that public bodies increase their openness and their culture of listening, that they respond to their users and that they aim to think of other ways

to deliver services. Again, that is a big culture change and a big resource issue. The danger is that sufficient resources are not being devoted to that, which comes back to the point that the articulate middle class, rather than the communities that are most in need, will make further progress.

We have been encouraged by the fact that a number of community planning partnerships see reducing inequalities as their number 1 priority. There is a lot to be said about that, and an argument to be made that it is a very important role for community planning partnerships to enable them to continue to make a difference.

There is another difficulty in engaging communities with community planning partnerships. The bill mentions the duty on a community planning partnership to

“consult ... such ... bodies as it considers appropriate”.

It does not use the word “engage” or refer to the national standards for community engagement. Some of the wording could be tightened up—some local authorities have, to their credit, said that in their evidence to the committee. There is a long way to go.

**The Convener:** Does Ms Gardner want to come in?

**Douglas Sinclair:** I will make just one final point, first. We found in all the community planning partnership areas that at local level—sometimes irrespective of the local CPP—there are a lot of good examples of partnership working. We could capture some of that work more effectively as part of our annual digest of good practice, and we could look at how local partners engage with disadvantaged communities and disadvantaged service users. We should not forget those people. That would be really helpful.

**Caroline Gardner:** It is clearly a perpetual problem that the most deprived communities are the hardest to reach, and the least likely to have the time and resources to speak up and to have access to the support that other groups may have. Community planning partnerships need to be aware of that and work to counter it.

There are some very good examples in that regard, as Douglas Sinclair said. One of the examples in the reports that we have published so far this year comes from Glasgow, in which partnerships have, as part of their priority of reducing the harm that is caused by alcohol, focused on communities in which there are particular problems with alcohol misuse. It is important to build in the support that is needed so that we can understand what is going on in those communities in order to help people to speak up

and to participate in the process. That bottom-up approach has a lot of potential.

**Stuart McMillan:** I was struck by Mr Sinclair's comments. In addition to the annual digest of good practice, is there potentially a role for the benchmarking tool?

**Douglas Sinclair:** Yes. That is a good point. It is fair to say that the Accounts Commission has strongly welcomed the work by the Society of Local Authority Chief Executives and Senior Managers and COSLA in developing benchmarking for local government. Those bodies are now embarking on a new piece of work to develop benchmarking for community planning partnerships, which is good to see. We would not want that work to be carried out to the detriment of the work that they are doing in councils, which still has a long way to go. However, we strongly welcome the provision of a baseline to enable community planning partnerships to compare their performance with that of others.

**John Wilson:** Good afternoon. I have a number of questions, but I will focus on two or three. Ms Gardner mentioned in response to Mark McDonald that the communities that are the most difficult to engage have the least resources spent on them. If you are able to identify that as an issue, why are the community planning partnerships, local authorities, health boards and other agencies in the community planning process not applying resources to ensure that we get some of the most deprived communities and individuals to engage in the process?

**Caroline Gardner:** It is important to say that we have found some great examples of where people are doing that. However, there are not nearly as many as we would like to see or as many as are needed to address the challenges that we are facing. One reason is that such work is hard to do, because it needs to be done over a long period of time and requires investment not only of money, but of time, attention and thought. In many ways, it requires a complete change of mindset among the people who are responsible for public services. It means their letting go of the idea that they know what the problem is or what the right answer is, and instead going out and listening and seeking to understand what is going on.

I mentioned "The Ripple Effect", which is about alcohol misuse in Glasgow. What is interesting about that is the way in which it seeks to understand what is causing the problem, rather than jumping to an answer. That can feel as if it is time consuming, and it can be hard for professionals who have worked in the area for a long time, particularly at a time when public services' budgets are under pressure for all sorts of reasons.

One of the tricks to turning that on its head is to recognise that to carry on as we are will keep on throwing up the problems that exist now, with particular communities being excluded from services and the risk that inequality may actually increase as more affluent communities benefit from the initiatives that community planning partnerships and others are undertaking. I do not want to leave you with the impression that it is an easy thing for them to do.

12:15

**John Wilson:** Prior to local government reorganisation in 1995, Strathclyde Regional Council had a number of community workers in deprived areas around Glasgow and did a lot of good work, but their focus was changed after the reorganisation. We seem to be reinventing the wheel in relation to what we want to do in engaging communities. I leave that comment with you.

Mr Sinclair said something in response to a question from the convener about the accountability of community planning partnerships. Part of the bill is about accountability for what is being delivered in communities. If I picked you up correctly, your comment was that local authorities, as democratically elected bodies, can hold community planning partnerships to account for what they are delivering in their areas. My understanding is that, for the majority of community planning partnerships, the only elected member who sits on the partnership is the leader of the council and that the majority of community planning partnerships have no other elected members sitting on them. How do local authority elected members—I mean the 1,223 local government elected members—hold the community planning partnerships to account for delivery of services in the local authority area if the local authority has the lead role in delivering services?

**Douglas Sinclair:** I am sorry if I gave the impression that local authorities can hold the community planning partnerships to account. They are participants in community planning. What councils can do is hold to account the performance and contribution of the representatives that they have on community planning partnerships. I am interested in the example that you gave of a community planning partnership on which there is only one elected member. The work that we have undertaken shows that that is not the case in many community planning partnerships. In some cases, there is an argument that the local authority is overrepresented. It is worth making that point.

**John Wilson:** To clarify, do you mean that more councillors are involved at strategic level with the

community planning partnerships, or are you referring to the number of sub-groups that have been established by local authorities? For example, Glasgow has five area partnerships and North Lanarkshire has four or five. The councillors are involved at that level and they feed into the community planning partnership, but they do not actually sit on the strategic partnership.

**Douglas Sinclair:** My point is that, in the audits that we have done, we have found councillors both at strategic level and at the thematic partnership level. There is a balance to be struck. If you want to engage effectively with all the partners in a common endeavour, although the council has the lead role it should not dominate, or create the perception that it is dominating, by virtue of the size of its membership on the community planning partnership. If it does, there is a danger that the other partners will feel that they are second-class citizens and that they do not have equality of contribution or representation.

I do not think that there is a simple template that can be followed by all of them; there are 32 different community planning partnerships. You will find, for example, not only the chair of the health board sitting on some partnerships, but the chief executive, because he is an executive member of the health board, whereas the chief executive of the council does not have that status and may not be represented on the same basis. It is a complex model of governance—if you can call it that—and many such issues are in the process of being worked through and resolved. However, it is fair to say that some community planning partnerships still have a way to go in understanding the nature of representation and the different roles that people play.

For example, there is a difference between a non-executive member of a health board and a councillor who is an executive; they sit round the table with different roles and different responsibilities in the back-office organisation, yet we expect them to work together in a different way in a CPP. Some of those issues are still to be unpicked and unravelled and worked through.

**John Wilson:** That is despite 11 years of community planning partnerships.

**Caroline Gardner:** My sense is that the situation reflects the complexity of the accountability that we are talking about. Douglas Sinclair touched on the fact that CPPs are voluntary partnerships. How we are able to audit them highlights that we can go a long way with those voluntary arrangements, but that there are limits to them.

Between us, we audit all the statutory bodies that make up the partnerships. We can use our audit responsibilities to audit how they work

together and to produce reports on them. Where normally my reports would go to the Public Audit Committee, the commission has powers to consider reports from the controller of audit and to engage with councils on the back of those reports. For CPPs, there are no similar powers because CPPs do not have formal status. That need not be an enormous problem when things are going well, in the same way that the non-incorporated status of CPPs is not a problem, but it can leave a gap when there are problems. That is what we have tried to draw out in our submission.

**John Wilson:** Given that comment about the voluntary nature of CPP engagement by other bodies, would it not be preferable—particularly given the earlier comment about the accountability of some of the agencies for their spend or for the effectiveness of the work that they do in CPP areas—to bring CPPs on to a statutory footing? We could then be quite clear about their role and responsibilities, especially in terms of delivery of services within the CPP areas. Instead of those voluntary arrangements, do they need to be put on a formal footing whereby we bring them on board and say that there is an expectation about delivery of services in line with the identified CPP strategy?

**Douglas Sinclair:** It is worth making the point that the power has existed since 2003 for a CPP to apply to the Scottish ministers to become an incorporated body—in fact, it is reiterated in the bill—and none of the CPPs has exercised that opportunity. That says something about their appetite to become incorporated bodies, recognising—as Caroline Gardner has indicated—the separate nature of their accountability.

The other point is—

**The Convener:** Before you go on to the other point, are you aware of any CPP that has discussed in any depth whether it should become an incorporated body?

**Douglas Sinclair:** Not to my knowledge, convener. I do not know the answer to that.

The second point is that it is interesting that the Scottish Government has decided that health and social care partnerships should be statutory bodies. I think that they will be accountable for about 40 per cent of the Scottish budget and the relationship between the HSCPs and the CPPs is going to be an interesting one. HSCPs will be represented in future on the CPPs, but the nature of the oversight relationship between a CPP and a statutory body—an HSCP—is still to be developed and clarified.

**Caroline Gardner:** I do not think that putting the partnerships on to a statutory basis is necessarily the answer. There can be strengths in the sorts of voluntary arrangements that are underpinned by the bill provisions that we are seeing. However, as

we pointed out in our submission, that arrangement brings with it a gap in accountability between the partnerships and the individual partners. Given the importance that is placed on them in public service reform and in meeting both the challenges in Scottish society and the financial pressures that we are facing for the foreseeable future, those questions about accountability and governance are important ones to work through.

**John Wilson:** I have one last, quick question. It goes back to your submission. In relation to community asset transfer, you highlighted that

“it would be necessary to be clear about what would happen in case of failure by the community to make effective use of the asset.”

Which organisation do you see determining whether a community is making effective use of an asset that has been transferred? What is your evaluation of the use of assets at present by the local authorities that hold them?

**Douglas Sinclair:** Some criteria will have to be developed to enable evaluation of whether the community body is making effective use of the asset. That might be something for ministers to develop in guidance. If a view is taken, say by a council, that a body is not making appropriate use of an asset, there should be an appeals mechanism whereby the body concerned has a right of appeal so that natural justice is observed.

**Caroline Gardner:** At the point when the asset is transferred, it will be important to have an agreement between the body that is transferring it and the community organisation that is taking it over about the purposes and how success will be measured. That will provide a basis for some reasonably objective assessment of whether there is failure and, as Douglas Sinclair said, natural justice demands that there be an appeals mechanism linked to that.

**Anne McTaggart:** Good afternoon, panel. We will forgive you if you think that I should be saying, “Good evening,” as we have been here for a while.

How will the bill assist with the measurement of achievements and value for money by public bodies? Will you incorporate in your answer some of the benchmarking that you mentioned earlier?

**Caroline Gardner:** We already have the requirement that community planning partnerships produce reports on progress against their single outcome agreements, and we have reported previously that there is room for those to develop further. They should be better based on clear objectives in the first place, with clear milestones for progress on issues that will sometimes take a generation to change—we cannot wait 20 years to see whether we are making a difference to children in the early years. They should also make

better use of the data that is available to show some of the linkages in that.

We know that there is scope for improvements at the local level, and some of the same considerations are likely to apply to the proposed regular reports from the Scottish ministers on the national picture. In particular, it is not simple to make linkages between the long-term, high-level outcomes that people are trying to achieve and the actions that they are taking right now—this year and this month—to move towards them, but it seems to us to be really important in helping people to make choices about the best way of improving the life chances of children across Scotland or developing sustainable economic growth.

That seems important to us both because it demonstrates the thinking process about the policy choices that are being made and because it helps people to think about whether progress is meeting expectations and, if not, what should be done to correct that. That would make a real difference to our ability to assess value for money and the overall way in which outcomes are delivered.

**Douglas Sinclair:** The bill is silent on who the report by the Scottish ministers on the national outcomes will go to. There is a question mark over whether there is a role for the Parliament in holding ministers to account for their performance in relation to the delivery of national outcomes.

Also, the bill leaves it to the Scottish ministers to decide the frequency of reports on national outcomes. Is there a role for the Parliament to determine that? There is an argument that reports should not be too frequent, because we want to allow a reasonable time to see improvements in national outcomes, but they should not be too infrequent either. We should consider what the Parliament's role is in relation to both the frequency of reports and who they go to.

As we state in our evidence, it is important that the reports on national outcomes do not mask inequalities and that they cover performance in different parts of Scotland, so that the issues, particularly those that relate to deprivation and poverty, are not lost.

**Anne McTaggart:** Given what Ms Gardner said in her answer, do you believe that there is enough in the bill that links local improvement plans, strategic priorities, partner bodies and single outcome agreements?

**Caroline Gardner:** I think that we make the point in our submission that those linkages could be clearer. It does not all need to be in the bill. You might want to keep some flexibility as Governments and circumstances change over time, but it is important to make the link between

national and local. We have found through our audit work in the past that, particularly at a local level, community planning partnerships are not always clear about the relationship between their local priorities and the national priorities, or about the weight that each should take.

12:30

**Anne McTaggart:** I have a tiny final question—I thank the convener for his patience.

Should any community planning partners be removed from or added to the current set-up?

**Douglas Sinclair:** The bill proposes—it is in schedule 1, I think—to add a fair number of additional bodies to the community planning partnership. That raises the issue of the effectiveness of a community planning partnership, given that it is a big body. Community planning partnerships need to think through how they work effectively with an increased membership.

**Anne McTaggart:** Thank you.

**The Convener:** I have one final question. We have the bill and the new legislative proposals, but how much of getting this right is down to common sense and a change of culture in organisations rather than legislation?

**Douglas Sinclair:** That is a very good point. A lot of this is about developing a culture of trust and joint working—that is what community planning is about. Community planning is about the willingness of a community planning partner to give up some of its power to work for the common good. That is a challenge for every public body, because giving up power is not something that comes easily. However, that is what community planning requires, as there needs to be sharing of power, recognition that we are here to provide joined-up services and recognition that solutions to people's problems are seldom within the gift of one organisation. You are right to put the emphasis on what you call common sense and what I would call a culture of being absolutely focused on the user and on the community.

**Caroline Gardner:** We have reported repeatedly that where community planning and other forms of partnership work, it tends to be because there is a culture of putting the user at the centre, putting communities at the centre and doing what is needed to get on with it. The question for the bill is how far it can set the conditions for that to happen and put in place mechanisms that will help when things are not working as well as they need to. That is the test that we suggest you apply to it.

**The Convener:** Thank you very much for your evidence.

12:32

*Meeting continued in private until 13:19.*





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