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Pàrlamaid na h-Alba

Official Report

RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE

Wednesday 26 November 2014

Session 4

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RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE
30th Meeting 2014, Session 4

CONVENER

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

DEPUTY CONVENER

Graeme Dey (Angus South) (SNP)

COMMITTEE MEMBERS

*Claudia Beamish (South Scotland) (Lab)
*Nigel Don (Angus North and Mearns) (SNP)
*Alex Fergusson (Galloway and West Dumfries) (Con)
*Cara Hilton (Dunfermline) (Lab)
*Jim Hume (South Scotland) (LD)
*Angus MacDonald (Falkirk East) (SNP)
*Dave Thompson (Skye, Lochaber and Badenoch) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

David Barnes (Scottish Government)
Duncan Burd (Law Society of Scotland)
Roderick Campbell (North East Fife) (SNP) (Committee Substitute)
Sandra Holmes (Highlands and Islands Enterprise)
Richard Lochhead (Cabinet Secretary for Rural Affairs, Food and Environment)
Peter Peacock (Community Land Scotland)
David Prescott (Holmehill Community Buyout)
Jonathan Pryce (Scottish Government)
John Watt

CLERK TO THE COMMITTEE

Lynn Tullis

LOCATION

The Adam Smith Room (CR5)

Scottish Parliament

Rural Affairs, Climate Change and Environment Committee

Wednesday 26 November 2014

[The Convener opened the meeting at 09:32]

Decision on Taking Business in Private

The Convener (Rob Gibson): Good morning, everybody, and welcome to the 30th meeting in 2014 of the Rural Affairs, Climate Change and Environment Committee. I remind everyone to switch off mobile phones, because they could affect the broadcasting system. You might notice that committee members and others are consulting tablets during the meeting to access their meeting papers in digital format.

We have received apologies from Graeme Dey, and I welcome Roderick Campbell as his substitute.

Agenda item 1 is for the committee to decide whether to consider in private its letter to the Scottish Government on its "Wildlife Crime in Scotland 2013 Annual Report", which is item 6. Do we agree to take that item in private?

Members *indicated agreement.*

Subordinate Legislation

Scotland Act 1998 (Functions Exercisable in or as Regards Scotland) Order 2015 [Draft]

09:33

The Convener: Agenda item 2 is to take evidence from the Cabinet Secretary for Rural Affairs, Food and Environment on the draft order.

The order has been laid under the affirmative procedure, which means that the Parliament must approve it before its provisions may come into force. Following this evidence session, the committee will be invited to consider the motion to approve the order under agenda item 3.

I welcome the cabinet secretary back to his post. Congratulations, cabinet secretary. I also welcome Brian Endicott, the deputy scheme manager, and Gemma MacAllister, solicitor, from the Scottish Government. Do you wish to speak to the order, cabinet secretary?

The Cabinet Secretary for Rural Affairs, Food and Environment (Richard Lochhead): Thank you, convener, and good morning to all members of the committee.

Thank you for your congratulations—it is a real honour and privilege to be reappointed to the position of Cabinet Secretary for Rural Affairs, Food and Environment. I have thoroughly enjoyed the past few years in this post. I hope that we have achieved much, and it has been good working with the committee, but I very much appreciate that there is still much to do in the times ahead. I look forward to working with the committee to meet some of those challenges and to grasp some of the massive opportunities that are relevant to many of the issues that we will be speaking about.

Of course, one big challenge is the implementation of the new common agricultural policy, which I know we will come on to later in the meeting. This Scottish statutory instrument is relevant to the policy, because there are some farms in Scotland, and south of the border, that straddle both countries and are covered by different Administrations for the purpose of the CAP. An arrangement has been in place for a long time, which the order renews for the new CAP, whereby a farm declares which Administration it wishes to be administered by. The payment rate that that farm receives, irrespective of the fact that it straddles the border, relates to the different Administrations' rates. It is really quite a technical statutory instrument to deal with that situation.

Alex Fergusson (Galloway and West Dumfries) (Con): Good morning, cabinet secretary, and I repeat the congratulations—it is good to see you back.

I understand that this provides clarification of the situation between Scotland and England. Does it apply to other parts of the member state of the United Kingdom? In other words, if somebody has a holding in Northern Ireland or Wales, does this apply to that, or is it purely about the Scotland-England relationship?

Richard Lochhead: It does apply to that. It was remiss of me not to clarify that it applies to all Administrations within the UK.

Alex Fergusson: The explanatory note that we received on the instrument talks about Scotland and England. Does the point need to be clarified anywhere in the order itself?

Richard Lochhead: My understanding is that all parts of the UK are covered. As you say, there are farmers who have holdings in different Administrations. I should have been clear that all parts of the UK are covered.

Alex Fergusson: That is okay. Thank you very much.

The Convener: There are no other questions, so we will move to agenda item 3, which is to consider motion S4M-11642, asking for the committee to recommend approval of the affirmative instrument. We can debate this for a long while, if need be, but I hope that that will not be the case.

I invite the cabinet secretary to speak to and move the motion, and I remind members that officials cannot take part in the debate.

Richard Lochhead: As I explained in my opening remarks, this is largely a technical measure.

I move,

That the Rural Affairs, Climate Change and Environment Committee recommends that the Scotland Act 1998 (Functions Exercisable in or as Regards Scotland) Order 2015 [draft] be approved.

Motion agreed to.

The Convener: Thank you, cabinet secretary. The committee's report will confirm the outcome of the debate.

Draft Budget Scrutiny 2015-16

09:39

The Convener: Agenda item 4 is our fourth and final evidence-taking session on the Scottish Government's draft budget 2015-16, in which we will hear from the Cabinet Secretary for Rural Affairs, Food and Environment. The committee has previously taken evidence from stakeholders on the themes of forestry and Scotland rural development programme climate issues, and we also heard last week from the Minister for Environment and Climate Change.

I welcome to the meeting the cabinet secretary and his Scottish Government officials. First of all, I must congratulate David Barnes, deputy director, agriculture and rural development, on his own promotion—we might not see him in this role again. I also welcome Jonathan Pryce, director of agriculture, food and rural communities, and Linda Rosborough, director, Marine Scotland. Good morning, all.

I refer member to the papers, and I will start the questioning. As you will know, cabinet secretary, it is often difficult to read across from one budget document to the next to find out what exactly has been spent and what is likely to be spent. For example, the spokesperson from RSPB Scotland said that, from how the figures in the budget have been presented,

"it is very difficult to understand that it did not include agri-environment spend under the new programme for 2015-16 ... It would help if the figures were better presented in the future so that we can understand what the expenditure relates to."—[*Official Report*, *Rural Affairs, Climate Change and Environment Committee*, 12 November 2014; c 3.]

Can the presentation of the budget be made clearer to ensure that it is easier for stakeholders and the public to understand what is being funded and when that funding is being made?

Richard Lochhead: This has been an on-going issue for this and no doubt for many parliamentary committees for several years now. In the past few years we have made some changes that I hope have been helpful but, in relation to your comments about non-governmental organisations' views of spend on agri-environment schemes, I point out that the figures that we published at the time of the announcements on agri-environment budgets are already in the public domain. High-level budget titles are, by definition, at a high level. We make available figures below that level in order to provide further explanation, but I take your point and I will reflect on the comments.

The Convener: It would help enormously. Given our interest in the climate change element of the SRDP, we want to be able to track it well.

One part of the budget document that is unclear is the statement on page 95 about changes to the European Union support and related services budget on page 95. It refers to

"An increase of £30.1 million of new money to fund the domestic part of the revised European funded Scottish Rural Development Programme (Pillar 2)."

Exactly how has that £30.1 million for the domestic part of the SRDP been calculated, and what will it be spent on?

Richard Lochhead: When we looked at the wider interests of rural communities in our consideration of how the new common agricultural policy would be implemented, we had, as the committee might recall, some vigorous debates in our negotiations and discussions with stakeholders. Two particular issues led to this adjustment; first, the impact of moving from the historic to area-based agricultural support payments, which is, of course, the radical change in the new policy; and, secondly, the whole debate about the pace of transition in Scotland, given that we still have historic-based payments here.

Under the current arrangements, some significant Scottish beef producers receive relatively high payments. In some cases, those payments are deserved, because of the level of activity; in other cases, however, they are made simply on the basis of a farm's historic activities. Because of our limited ability to link the new area-based payments to activity, we had to find other ways of helping the active beef sector in Scotland.

The beef sector is very important to Scottish agriculture; indeed, it is the jewel in the crown. As our beef farmers are often the engine of Scottish agriculture, we were concerned about how in the overall package we could make available more support for beef production in Scotland. After all, this is about not just primary producers but hauliers, livestock markets, the retail sector and all the other downstream jobs.

09:45

The backdrop of the budget is the on-going debate about how we work with the beef sector to ensure that we do not rest on our laurels and that we are constantly improving the quality of Scottish beef and other brands. Other countries are making big investments in becoming more efficient, are looking at genetics and so on.

I have used the opportunity presented by the budget to inject under the heading that you have highlighted domestic money into pillar 2 for the new beef scheme, which will be delivered over three years with an unprecedented £45 million. Of the £30.1 million, therefore, £15 million is new money that has been put into the budget for the beef scheme. I think that it will have a significant impact on the quality of beef production in Scotland and ensure that we do not rest on our laurels and that we are up there with the best.

Another part of the decision making was the debate on the transfer of funds from pillar 1 to pillar 2. As the committee will recall, it, too, was a vigorous debate, with environmental organisations suggesting that we go for the full 15 per cent transfer and put the money towards agri-environment schemes. On the other side of the fence were the producers, who had clearly looked at the impact of transition, were nervous about the financial impact on the viability of many farms in Scotland and wanted to minimise the transfer from pillar 1 to pillar 2. Ultimately, I chose to transfer 9.5 per cent rather than less than that, as some wanted, or indeed the full 15 per cent. I thought that that was a good balance.

As part of the Government's agenda of greening the CAP and at least ensuring that some resource was available under the agri-environment schemes—after all, all our budgets are tight, what with the bigger issue of the Scottish portion of the overall European budget—I decided to put some new money into that budget, too. The figure is made up of a variety of budget inputs, some of which are simple adjustments to other headings in the level 3 figures. Even the agri-environment uplift of—if I remember correctly—£10 million does not all appear in the first year, because our announcement related to the impact over the whole programme. In any case, it takes a while for the scheme to open for applications, for applications to come in and for money to go out.

Another impact on the budget figures between 2014-15 and 2015-16 has been the financial transactions budget. As the committee will recall, the UK Government created the financial transactions arrangements, which, although they mean more money for Scotland, also require the money to be paid back to the UK Treasury in future. Under that arrangement, money was allocated to my portfolio at short notice. It was a UK Government instrument, and the money had to be allocated to different portfolios.

At the time—and despite all the vagueness about how the money might be used and all the strings that came attached from the UK Government—I asked for a budget allocation in case our fishing industry faced a particular upheaval. You might recall that at the time the prawn fleet—one of our biggest fleets—was under pressure because prawn stocks had dried up for a few months, and I wanted a safeguard in case we had to introduce emergency restructuring measures. Thankfully, the stocks came back, and the health of the prawn sector improved dramatically.

The Government was of course also pursuing other policies such as affordable housing, and as a result £22.5 million was removed from this budget line to pay for that.

The Convener: That was useful, and I hope that that money will be seen in terms of rural development. It will be interesting to see whether you can track that—whether you notice affordable housing in any of the ways that the SRDP works. Do you have an answer to that?

Richard Lochhead: In terms of?

The Convener: You said that the money was withdrawn for affordable housing.

Richard Lochhead: They were just budget headings in my portfolio, not part of our direct decision making on the SRDP. I had to put the money under a budget heading in my portfolio because of its potential use in some of my industries—although, thankfully, the money was not required. In any case, it was not part of what we would recognise as the SRDP; it simply came under the rural budget headings.

The Convener: Thank you for that explanation. Claudia Beamish will now ask some questions about the budget's relationship to the national performance framework.

Claudia Beamish (South Scotland) (Lab): Good morning, cabinet secretary, and I add my good wishes for your return.

The national performance framework has been taken forward not only through the work of the Cabinet Secretary for Finance, Constitution and Economy but with civic Scotland and on a cross-party basis. As I understand it, the indicators in the framework that relate to the portfolio are

"Increase people's use of Scotland's outdoors ... Improve the condition of protected nature sites ... Increase the abundance of terrestrial breeding birds"—

which includes that big complex word, "biodiversity"—

"Improve the state of Scotland's marine environment"

and

"Reduce Scotland's carbon footprint".

To what degree have those indicators been taken into account in preparing the draft rural affairs and environment budget? It would be useful to hear your comments on that.

Richard Lochhead: You have mentioned many issues, but I will touch on two or three specifically. I pay close attention to the indicators that you have highlighted; indeed, as the committee might recall, when I was making some decisions about particular budget uplifts under difficult budget settlements, I used the indicators as a reason for addressing particular issues. Members might also recall that we have recently had some pretty tough discussions with the agricultural sector about greening the new common agricultural policy. There has been a decline in farm bird populations in recent years, and I took that into account in considering how to implement the greening measures in Scotland.

Likewise, there are certain issues, such as mackerel in the pelagic sector, where the indicators appear challenging. Mackerel is Scotland's biggest stock, and it might show a decline in relation to the indicators. That is largely because of the international dispute, as a result of which the Marine Stewardship Council's sustainability status was removed from what is effectively our biggest and most valuable stock. Thankfully, with the conclusion of last year's negotiations, the picture is brighter, and I hope that we will see a better indicator for fish stocks in future.

I have also been very conscious of the need to address the issue of support for using the outdoors, but I must return to the very difficult budget situation that we had with pillar 2 and the rural development programme, which includes some of those measures. I was able to protect some budget headings, such as the paths initiatives. If I recall correctly, we have allocated at least £1 million each year for that, but at one point I thought that we would not be able to afford it. We took those issues into account in seeking to encourage outdoor activity and healthy lifestyles.

You have highlighted a variety of headings, and we pay close attention to them. Indeed, I raised the issues directly with stakeholders to justify some of my decisions.

Claudia Beamish: I want to mention a point of which you will be aware but in which the wider public might also be interested. You have highlighted the issue of mackerel stocks, but can you comment on the fact that progress on Scotland's wider marine environment is worsening? The worsening indicators in this portfolio are

"the state of Scotland's marine environment ... the condition of protected nature sites"

and the rather large issue of "Scotland's carbon footprint". What specifically is being done to tackle those issues?

Richard Lochhead: In relation to the budget?

Claudia Beamish: Yes. I am sorry if I have not been clear. I am talking about the national performance framework indicators that come under our budget and in which performance is worsening.

Richard Lochhead: You have raised two issues: the marine environment, and terrestrial

matters. With regard to climate change targets, I was conscious that a large part of the funding in the rural development programme supports agriculture in one form or another and, given that agriculture accounts for around a fifth of emissions, it was important for the rural development programme budgets to reflect that to a degree within our own limited budgets. That is why I introduced the carbon audits, and why we have a substantial programme of key greening measures, which I alluded to when I mentioned nitrogen management on farms. This is all about reducing the carbon footprint in agriculture.

It is also, as I have said, about biodiversity with regard to the protection of breeding birds. Some measures relate to activities that can be carried out in certain seasons, while others relate to buffer strips, hedges and so on that ensure that our farm bird populations can breed and have access to food at particular times of the year.

We can at least take comfort from the fact that the greenest common agricultural policy ever is being implemented in Scotland. I understand why people might argue that it does not go nearly far enough, but there is only so much that we can do with our very limited budget, which is a fraction of other countries' budgets. At least we can now claim to have a greener agricultural budget in Scotland than ever before.

Claudia Beamish: Can you also comment on the issue of the wider marine environment?

Richard Lochhead: The Marine Scotland budget is effectively flatlining, but I have done my best to protect it because of the important work that is being carried out to implement the new marine protected areas in Scottish waters. We are currently working on the management measures for the MPAs, which are about restoring our marine environment to its proper health status. Under European directives, we have to achieve targets by 2020, and we are trying to take all the issues into account.

Roderick Campbell (North East Fife) (SNP): Good morning, cabinet secretary. You touched on biodiversity a short while ago. I do not want to labour the point, but are you able to say anything else about biodiversity in the context of the budget?

Richard Lochhead: I should point out that because of the importance of agriculture activities in this debate, NFU Scotland and the Scottish Government have agreed on the need to put a lot more effort into environmental measures on farms in the coming years. We have agreed in principle a new environmental forum in Scotland to ensure that we can get everybody around the same table and agree—I hope—on how to further green agriculture in the years ahead. As you can imagine, there are often controversial issues to address.

Some of the greening measures that we have put in place relate directly to biodiversity, while others are about reducing carbon emissions. We can be proud of our package. The test will come when we implement it in the months ahead, but we are confident that it will allow our farmers to produce food for the nation sustainably while at the same time protecting and safeguarding our environment. Of course, 30 per cent of the single farm payment is attached to the EU's greening measures under the new greening of the CAP. In other words, from day 1, farmers will have to put in place greening measures to get 30 per cent of their single farm payment. That is another reason why the CAP is greener than before.

Nigel Don (Angus North and Mearns) (SNP): Good morning, cabinet secretary. It is good to see you back—continuity is a wonderful thing.

Picking up on greening, I have been told by local farmers that they perceive that there might be a problem. They have no objection to greening but have suggested that growing two different crops in a relatively small area might generate two products at such a sufficiently small level that it will be uneconomic to harvest them. Are you able to address that issue with your officials?

Richard Lochhead: One of the debates that we had about the greening of the policy focused on ecologically focused areas and the demand that 5 per cent of qualifying land be put aside. As far as that land is concerned, certain conditions have to be adhered to. Many farmers had a slight misunderstanding about which crops could or could not be grown, and many thought that the 5 per cent applied to the whole of the farm. That is not the case; it is only the 5 per cent that is allocated for EFA status under the CAP. As more and more farmers have realised that, they have felt that they can perhaps manage the situation on their farm and maintain viable food production while at the same time having the EFAs.

Nigel Don: It sounds as though there needs to be a communication exercise, because I have heard from people who feel that they might be asked to do things that are simply uneconomic on a small farm. That is clearly not in anybody's interest. After all, a product that is not harvestable economically is not a harvest.

Richard Lochhead: After discussions with the sector, we made some last-minute changes, and these were welcomed, particularly by the arable sector, which feels most affected by the measures. Of course, during the CAP negotiations, we managed to secure some concessions to what was being asked for in the first place. What had originally been proposed would have been, to say

the least, quite challenging for Scotland. We managed to get some changes to the three-crop rule, who would qualify and so on, and we are now in a much better place than where we could have been.

10:00

The Convener: Are you confident that we will be able to produce enough barley for the number of distilleries that are being planned and set up, especially given that, as was mentioned in last week's food and drink debate, some markets for whisky are reducing? The situation is obviously fluctuating, and some developments in distilleries have been put on hold. Have we struck roughly the right balance between supply and demand for barley?

Richard Lochhead: Your question is timely, convener, because tomorrow I will be hosting our first summit with the malting barley sector, and we will be bringing producers and people from the mills and the supply chain around the same table to look at that very issue. Clearly, demand for Scottish whisky is rocketing. Of late there have been some challenges in the Chinese marketplace and elsewhere but, overall, there seems to be a high level of confidence in the whisky sector.

There might be a big opportunity for our cereal growers in the times ahead and, for the very reasons that you have outlined, we have to understand what that will mean for supply and demand. I hope that tomorrow's summit will be significant and pull out some of the issues that have to be addressed to ensure that we produce enough barley. We can then ensure that Scotch whisky that is produced in Scotland—where of course it has to be produced—has Scottish barley as a raw material.

The Convener: Thank you for that. We will move on to the issue of legacy payments from the previous SRDP.

Jim Hume (South Scotland) (LD): It is good to see you back in post, Richard.

As far as legacy payments from the previous SRDP are concerned, there is a budget of £21.8 million under the agri-environment measures budget line. What evidence of the effectiveness and value for money of the legacy schemes do you have, and what lessons that might have been learned from the previous SRDP about effectiveness and value for money can be applied to the next SRDP?

Richard Lochhead: There are indeed legacy payments, some of which will be paid off in the first year of the new SRDP or, indeed, this year. With regard to the budgets that cover legacy payments in the coming year, it is worth bearing in mind that, because some of those payments will have been paid off and will therefore not be there next year, that money will not be available for investing in future environment schemes.

Clearly it is important that we carry out evaluation, and we have had evaluation schemes that Scottish Natural Heritage and others have been involved in. According to the evidence that we have received, the legacy payments have made a material difference and have benefited biodiversity in Scotland's environments. It is always difficult to pin down exactly what impact the payments have had, but they are having a positive impact. I am happy to send the committee details about that.

Jim Hume: Thank you for that answer. I note in the draft budget that the budget for rural communities and rural enterprise is dropping by about 98 to 99 per cent. In the past, legacy payments have supported projects such as monitor farms, which we have been quite supportive of, the rural leadership programme and so on. Meanwhile, the budget for technical assistance is going up by 1,540 per cent to £5 million and the budget for payments and inspections administration is going up by about 29.1 per cent in real terms to £45.4 million. How will those budget changes affect things such as the monitor farms and the rural leadership programme, which the rural enterprise budget has supported to some extent in the past? What will be the future for them?

Richard Lochhead: The leadership programme has been very valuable. Indeed, those of us who have met some of the participants in Parliament have been struck by the talent that is out there, and we want to continue to support that.

In recent years, we have introduced the new monitor farms for climate challenge purposes. They are sort of climate change farms, which demonstrate best practice in reducing emissions, and we are going to increase them. Of course, the rest of the monitor farms have been successful, too, and we definitely see them as being valuable in the future.

Part of the budget is for knowledge transfer, which will cover those kinds of issues. Whether it is for tackling carbon emissions, improving profitability or general efficiency or whatever, we believe that it is important to support that.

Jim Hume: I am sorry, cabinet secretary, but the rural enterprise budget is almost disappearing. My memory is that it was used substantially to help provide budgets for such projects. Are we looking at different ways of doing that?

Richard Lochhead: I will ask David Barnes to come in here. I think that the issue is covered in

other budgets, but I want to clarify that. The new SRDP is slightly different.

David Barnes (Scottish Government): As the cabinet secretary says, there are changes to the positioning of various things in the SRDP budget. Monitor farms will in the future come under the knowledge transfer scheme. The monitor farms that are in place have multi-annual contracts, so they will continue. We cannot open the new knowledge transfer scheme yet, because the new SRDP is still with the European Commission for approval. However, the existing monitor farms are continuing and, once the new scheme can open, as the old monitor farms finish their periods, we will be able to approve new ones.

On the rural enterprise budget, we have changed the balance of which parts of the programme deliver which things. For example, small rural business support and farm diversification will in the future be delivered through the LEADER scheme, for which we are working with the local action groups to produce new local development strategies. That explains part of the change.

The other element that we should not forget is one that the cabinet secretary announced about a year ago. He has referred to the decisions on the budget transfer from pillar 1 to pillar 2 and on the increase to the agri-environment funding. As part of the announcement on that, members might remember that the cabinet secretary had to announce that in order to make the books balance for the new SRDP, a targeted approach would have to be taken to capital investment. Therefore, as the published plans say, capital investment under the new SRDP will be focused on particular subsets of the farming industry—new entrants, crofters and other small farmers and slurry stores—because of the climate change link. The general approach of there being capital grants for every farmer in Scotland had to give so that we could live within the budget for the new SRDP. That explains part of the reduction.

Of course, those capital grants do not figure highly in the legacy, which generally relates to multi-annual contracts in which a land manager makes a five-year commitment to manage the land in a certain way. The payment therefore continues to flow for a number of years, whereas with capital grants the farmer makes the capital investment, receives the grant and that is the end of it. Therefore, there is very little capital in the legacy part of the on-going budget.

Nigel Don: I want to pick up on that. Another concern that has come across to me strongly in talking to farmers recently is their feeling that, once the SRDP schemes open up, the window of opportunity will be really quite small. To be blunt, it will be challenging and difficult for farmers to get hold of the forms, get the right information, fill them in and get them back. Are you aware of that issue? How will we manage it?

Richard Lochhead: We are awaiting the green light from Europe on the SRDP. Dozens of countries have submitted their RDPs. We are trying to find out this week whether we will get clearance before the end of the year. Failing that, it will happen at some point early next year. Unfortunately, farming businesses have been through this before. It is a five-year programme, and if for some reason they are not in a position to apply in the first year, there will be subsequent opportunities. I will pay close attention to that. We have a new information technology system, which we hope will help. It is more modern and, we hope, easier to use than the last one, so it should help.

The Convener: The IT stuff is on a wing and a prayer.

Angus MacDonald (Falkirk East) (SNP): Ease of access to agri-environment schemes and other CAP schemes is extremely important. However, there has been some discussion among stakeholders about the introduction of the CAP futures programme, not least by Audit Scotland, which has highlighted an increase in overall costs from the original estimate of £88 million in December 2012 to the latest estimate of £137.3 million. Will you update the committee on the current situation with the CAP futures programme? Can you also give the committee some comfort that the programme will provide ease of access to the CAP schemes and the funding that is required for the budget to be used efficiently?

Richard Lochhead: We are doing our best to learn lessons about access from the last round. We will make greater use of local offices for farmers and crofters to make their applications. Broadband availability has improved dramatically in Scotland, but it is not at the same standard in every part of the country, so we are making the offices available for use.

We had to renew the IT systems; it was the most complex implementation that we could imagine, despite the promise of a simplified policy from Europe. Over and above that, we had an agreement with the industry to use some options that add significantly to the complexity.

We are on track to deliver the payments in good time. The payment window is open until the June following December. However, we are aiming for December so that we keep to our existing timetable. The industry has said that if we require a few more weeks for the payments to go out, as a cost of getting the policy right, it would much prefer an effective policy and a few weeks delay. We have that in our back pocket, although I hope

that we will not need to use it. December was the payment deadline for the existing CAP that is being replaced, so we will do our best to maintain that in the new CAP.

However, we have to do things like mapping and inputting 460,000 fields for audit. That is a phenomenal exercise and we have a lot of people working on it.

Angus MacDonald referred to the budget, which was decided before we knew the European decisions, never mind the Scottish decisions. It appears that there has been an increase, but as the Audit Scotland report says, we have done our utmost to manage that, to get back on track and to make sure that the system is delivered on time. John Swinney and I have had a few meetings with CGI, which is the IT company that is delivering the system, and we have taken steps to ensure that the project has proper leadership. The system is very complex; I am not denying that for a second. I sweat about it at night sometimes, but the signs are that we are on track and I take comfort from that. However, we have to pay close attention.

Angus MacDonald: That is good to hear. I am sure that a number of folk outside the committee will be glad to hear that you are on track for payment.

I do not want to dwell on operational issues, but there is concern about whether the introduction of mobile technology for field staff is deliverable. Do you have any information on that?

Richard Lochhead: The matter has not crossed my desk, but it so happens that I have with me the recently appointed chief agricultural officer, who has not taken up his post yet. It is probably unfair to put David Barnes on the spot, but as I do not know the answer I am going to do just that. I will ask Jonathan Pryce as well. It is an office-level operational matter. Now that you have raised the issue, I will investigate it. Perhaps my colleagues have comments on that.

10:15

Jonathan Pryce (Scottish Government): I can explain the story around the mobile technology. Audit Scotland highlighted in its report that certain elements of the divisional business-case scoping had been deferred, but not taken away completely, in order to ensure that we maximised our chances of delivering the payments on time, which is the most important part. The report highlighted mobile technology in relation to inspections but did not point out that we already use mobile technology in the field when we are doing land inspections. We still intend, after we have successfully made the payments for 2015-16, to extend mobile technology to livestock inspections, for which we do not currently have mobile technology support.

The committee can rest assured that the new IT system that we are producing will make use of the existing mobile technology. When our rural payments inspectors are out on the farms and in the fields, they carry a large rucksack on their back with a thing sticking out the top—a high-resolution global positioning system tracker that enables them to map the fields directly. They do that in the field using Toughbook laptop computers and tablets.

So, we are using mobile technology, and its extension to what is a much smaller part of the business will come, but not as early as we originally intended.

Angus MacDonald: Progress is still being made, which is good. Thank you.

Claudia Beamish: I want to ask more broadly about assessment of the schemes. My question relates to the IT, but is more about the personnel and the complexities of assessing applications and giving support to farmers. Given the multiple benefits that we expect from the agri-environment scheme, such as for biodiversity and climate change, are you confident that there is funding in the budget to support training and further training of field officers? I am not in any way disparaging what they do at the moment.

Richard Lochhead: Jonathan Pryce is in close contact with people who are involved in that. All I can say is that there has been a huge amount of investment in training our several hundred staff around the country. It is a new policy and we are urging our officials to be as supportive as possible. They are limited by European regulations in what they can do in terms of advice. However, there has been massive investment in training for staff to familiarise them with the new policy and its implementation. The Audit Scotland report covered training and its costs.

Time will tell how things will go. The new IT system is replacing an outdated and outmoded 20-year-old system; it is modern and more flexible so that when changes have to be made in the future it will cope a lot better. With the current IT system, it is like taking parts from one old car and putting them into another old car when we are trying to do amendments for new schemes. Hopefully, we will not have to do that in the future. A huge amount of effort is going in to ensure that people are familiar with the new system. Jonathan Pryce might want to talk about the training aspects.

Jonathan Pryce: It is probably worth highlighting that the CAP futures programme is an IT-enabled business change programme, so the budgets that we have talked about and the business case for the futures programme include training staff in management of the schemes as well as the IT costs. The main increase has been

in the IT costs, but there is increasing complexity in the schemes across the piece because of the requirements under European regulations. Some of that is picked up through the business as usual annual training scheme that we provide to all our agricultural staff on updates to schemes, but there is additional training within the futures programme budgets.

Alex Fergusson: On the last topic, I am sure that the cabinet secretary will be aware of the recent campaign to provide appropriate support for dyslexic farmers. I mention that issue because it has been raised by a constituent of mine and it is something that I have a lot of sympathy for. I do not know whether the cabinet secretary can comment on what training is being given to field officers to provide such support to farmers.

My principal question, however, goes back to the Audit Scotland report, which highlighted that one of the main technical areas—that is, the mapping component—will not be included when the programme is implemented. The cabinet secretary understandably referred to the complexity of completing the programme. However, how do we implement a brand new CAP support programme that is dependent on mapping, when the mapping component will not be part of the IT programme?

Richard Lochhead: The system will be tested before the end of the year and will open for applications in March, if I remember correctly. Work on mapping is on-going. The first payments will go out in December 2015—I hope. We must get the auditing requirements right in relation to the mapping. Jonathan Pryce is close to the subject, so he can respond to your point about the timescale.

Jonathan Pryce: Yes. It is not that we do not have a mapping system. As Audit Scotland explained in its report, we have deferred the development of a brand new mapping system—the land parcel information system—until at least 2016, simply to de-risk the programme and to maximise our chances of making payments on time.

However, we will launch a customer registration portal, which should go live in December and will be accessible to the majority of customers in January. We will ask farmers and businesses to go online to register their details, which will set them up for the application process in March 2015.

The system that will go live at the turn of the year will include online viewable access to the existing maps that we hold. In other words, the data that we hold on our land parcel information system will be accessible to farmers and viewable online. The new functionality was not available to them before, and we expect it to be enormously helpful for them.

Until we design the new land parcel information system, we will not have the ability to amend maps online. That work will follow. However, we have invested in our existing land parcel information system core in order to ensure that it is robust and stable for use for applications and payments in 2015.

Alex Fergusson: That is useful. Thank you.

Will the minister comment on the dyslexia issue?

Richard Lochhead: I pay tribute to the NFUS for raising the issue and for pursuing it with the Government. It is very much an equalities issue. We are keen that farmers with dyslexia should be able to apply, just as any other farmer can. We are doing two things: first, we have said to the NFUS that we will work with it to see what needs to be done to make application easy, for example by providing help at our offices around the country, and secondly we are discussing whether there is more that we should do. The SRDP is funding an advisory service, so we will ensure that the service is sensitive to farmers with dyslexia. It is a one-to-one advisory service—it does not directly involve our officials.

Alex Fergusson: Thank you.

You mentioned the Scottish beef package that is being introduced and the new money that is being put into it. The document, "Beef 2020 Report: A vision for the beef industry in Scotland" emphasised

"the need to take serious steps to minimise the carbon footprint of every kilogram of meat produced",

while arguing that production in the sector should be increased. I do not argue with the second part of that at all. Is there a quandary in trying to reduce the sector's carbon footprint while trying to increase its productivity? How will the beef package help in that regard?

Richard Lochhead: I gave a wee bit of background to the rationale behind the beef package. On how we reconcile beef production with carbon emissions, it is clear that the more efficient and productive our beef sector is—for example, through higher productivity from the same number of animals, because if we are more efficient the production level per animal increases—the more we help the environment and reduce carbon emissions.

I met the Quality Meat Scotland board a couple of weeks ago and we discussed parts of the beef 2020 package. Professor Julie Fitzpatrick of the Moredun Research Institute presented some eye-catching statistics, not only for Scotland but in

general, on the amount of waste in livestock production through poor productivity, animals catching disease and farmers losing animals. Investment in animals is clearly wasted if the animals do not live healthy lives and are not productive.

The issues that we are discussing today are very important. With regard to reducing the cost of beef production in Scotland, if we have a better understanding of genetics and we capture data from all farms, we can put in place the right measures and produce more, but with a smaller environmental footprint. The overall environmental impact might not be reduced, but we will get greater production from the same number of cattle.

Europe pays close attention to things such as the impact on production and the number of animals, so we must do the same if we are to get permission to use support schemes. It is much better to increase production with the existing number of animals, to cut costs and to get more money from better animals going to the abattoir. One hopes that it is a win-win situation.

The beef 2020 scheme, for which we are still waiting for clearance from the European officials, is in the agri-environment part of the SRDP because there are some environmental issues associated with it. The more efficient we can make beef production in Scotland, the better it will be for the environment.

Alex Fergusson: Can you give a possible timeline for when the full details of the beef package will be made known?

Richard Lochhead: We have announced a three-year package that consists of £15 million a year. As I said before, such investment in the beef sector is unprecedented. The first year of the package will be 2015, and it will run for two years after that.

The timeline very much depends on our hearing from Europe about any significant changes that we have to make. We are confident that we will get a scheme, but we have to wait for the detail from Brussels.

Alex Fergusson: On a related issue, I have in my constituency a number of large-scale beef producers who are very keen to put in place farm-sized anaerobic digestion units. That would have a hugely beneficial environmental impact, but the farmers are being told by Scottish Power that there is no chance of a grid connection before at least 2022.

Although I appreciate that investment is required to upgrade the infrastructure before grid connection can take place, given the amount of renewable energy connections that are already in place or are planned to take place, can the Scottish Government do anything to encourage Scottish Power to bring forward the programme to allow faster connectivity?

Richard Lochhead: The regulation of connectivity is a reserved matter. We have made representations in the past via energy ministers in this Parliament to the UK Government on grid connection issues. I urge the committee in turn to urge the Smith commission to look at the energy powers that can be transferred as part of the package of further devolved powers for this Parliament. I very much agree that, where possible, agricultural businesses should be looked upon favourably and that schemes that are attached to such businesses should be prioritised to a certain extent.

As food production and food security become big issues in the years ahead, other issues may have to be taken into account when applications are made, but priority for applications from agricultural businesses would be a good thing. Connectivity is part of the equation.

Alex Fergusson: I would not delay, but we can discuss that some other time.

The Convener: One could say that there are aspects of rural poverty that require community schemes to get hooked up to the grid too, which would strengthen the argument for parts of the south and north getting better grid connection. That is not a question, but it is a fact that it is not just farmers who require that connection.

It would be fairer if farmers were able to access grid connection on a reasonable basis rather than going through a planning system that seems to discriminate against some businesses.

Richard Lochhead: It was my portfolio that set the benchmark of £5,000 per megawatt for community benefit. Of course, that now applies for schemes in general throughout Scotland. Last year, the energy minister progressed measures to make such schemes much more transparent. The aim is partly to share the benefits of onshore wind in rural communities with the wider community and for community benefit. That approach is delivering significant benefits for many rural communities, and it is part of the equalities agenda. If there is more that we could do, I am open to suggestions.

The Convener: We had some questions about that from the point of view of the forestry part of the rural development programme. We will reflect on your remarks when we make our comments about the budget to the Finance Committee.

Dave Thompson will now ask about the less favoured area support scheme.

10:30

Dave Thompson (Skye, Lochaber and Badenoch) (SNP): Good morning, cabinet secretary. Welcome back.

LFASS is very important for constituencies such as mine and for the Highlands and Islands generally. Maintaining people on the land and on crofts in difficult farming conditions is obviously beneficial for the environment. Crofting has a very high environmental value compared with some other farming methods. As less favoured areas are replaced by areas of natural constraint, would it be beneficial to attach a higher weighting to the environmental value of crofting and agriculture when consideration is given to payment levels under the areas of natural constraint system?

Richard Lochhead: That is a good question to ask on behalf of your constituents. The issue that you raise is important to your constituents and those of other members. That is why we gave the budget commitment to continue the scheme in the new SRDP, which I remind the committee accounts for about a third of the budget in pillar 2, if my memory serves me correctly. When it came to the debate about the transfer from pillar 1 to pillar 2, I was quick to remind the agriculture sector that at least a third of the budget in pillar 2 goes directly into agriculture—and that is not including many of the other schemes that have been mentioned today.

There has been a call to better target the scheme. We have until 2018 to renew it. I am sympathetic to the idea of making changes to it, but I do not want to throw the baby out with the bath water. A big discussion will take place about how we should better target it. If there is a case for that, I will give it serious consideration.

We are pleased that we have managed to allocate budget funding to the scheme. Discussions are continuing with the European Commission about some of the fine detail, as you can imagine, because the way in which the scheme is delivered in Scotland is quite complex. We hope and expect that it will be in the new programme.

Dave Thompson: Thanks for that. I am pleased that you will be considering the better targeting of the scheme. When you think about changing the system, I ask you to keep in mind the fact that, for a relatively small additional cost, in terms of what crofters and small farmers in the north and west would get, you would get a disproportionate additional environmental gain.

Richard Lochhead: I will keep that in mind. In the previous parliamentary session, I made some changes to the scheme that uprated the payments to the more severely disadvantaged recipients. That was warmly welcomed in a number of constituencies, including—I am sure—your own.

We have a track record of ensuring that we support the more fragile communities. It is premature to say what changes will be made in the future, but the committee will undoubtedly have a view, and I urge it to offer that view in due course.

The Convener: We are concerned about being able to measure these things, which would allow us to prove that they provide value for money. We know that agriculture is very fragile in many of the areas that get LFASS payments. Can we expect to find out in some detail how you will measure that? To follow up on Dave Thompson's question, it seems to me that we need to be able to demonstrate that the scheme provides value for money.

Richard Lochhead: Yes, and I have had representations in the past year or so, as part of the implementation of the new policy, about making changes to LFASS. However, opening up that can of worms at the same time as trying to implement the new CAP would have just brought everything to a halt—I would have had to employ several hundred more officials, so there was just no going there.

We want to implement the new CAP first; we then have until 2018 to review LFASS. We will do that, but I have resisted the temptation to look at the scheme in the middle of implementing a complex CAP.

The good news is that Scotland generally fits into the criteria laid down by Europe for the successor to LFASS. As things stand, we are confident that we will qualify in the way that we want to qualify. It is ironic that, when you cross Europe, you see some countries that look much greener and wealthier but which qualify for LFASS. That is bizarre. There may be issues that need to be addressed in relation to LFASS across Europe.

The Convener: We will keep that issue on the table, because we are interested to see how it develops.

Nigel Don will ask about farming for a better climate.

Nigel Don: The 2015-16 budget for farming for a better climate appears to be £400,000. Is it more than that? Are there other parts of it that are labelled under some other heading?

Last week, we heard evidence from those who generally support the scheme. They wondered whether that budget would be sufficient to generate the carbon dioxide savings that are attributed to the scheme in the second report on proposals and policies. Will you reassure us that

this is all going to work as well as it must in order to reduce our carbon footprint?

Richard Lochhead: Farming for a better climate is a good initiative of which I am very proud. I have visited some of the farms that have taken part in the scheme—I recommend members do that, too, if there are any in their constituencies. It is great to hear how, sometimes, reluctant farmers got involved—which was brave of them—and saved X per cent of their energy bills or reduced their emissions. There are good-news stories, and the initiative is catching on.

There are also carbon audits in the SDRP. We hope to encourage farmers right across Scotland to get involved in such measures.

I may have not picked up your question correctly, but I am not sure that I understand how revenue could be generated from farms that have made savings. The SRDP's purpose is to invest in rural Scotland and to encourage transformation where possible. The whole of agriculture will then reap the benefits. Perhaps one day there will be no need for agriculture subsidies—we do not know. I am not sure how that would work or how you would capture the revenues from farms that have benefited, but I am open to suggestions.

Nigel Don: Forgive me—I may have put my question badly. I am picking up on the comment made by RSPB Scotland the other week. In their view, 90 per cent of our farms would need to take up the benefits that we are identifying in order to achieve the carbon dioxide savings that we need under RPP2. Therefore, the question is whether we believe that that level of uptake will happen. If we do not, how will that work?

Richard Lochhead: I am keen to change the mindset of the agriculture sector in Scotland. As I said, we want to balance delivering food security with sustainable production. A huge scientific debate is going on about how to do that. I referred to the carbon audit in the SRDP and, as part of the CAP greening measures, there is a requirement to record on-farm management of nitrogen. Those are pretty big changes compared with what was there before. Some are mandatory and some are in the SDRP, which people can apply to, and there are advisers to encourage 90 per cent of holdings to get involved somehow.

Nigel Don: On the carbon audits, you cannot run a business without having your tax issues audited. How soon will it be before farms will not receive public money unless they do a carbon audit?

Richard Lochhead: All the debates in Europe are being held against the backdrop of what should be voluntary and what should be mandatory. For the first time, we have mandatory measures—30 per cent of the payment, which is a substantial amount, relies on those measures being adopted. That is a step forward. However, the options that were brought forward were not necessarily the best ones for Scotland. We therefore support a review of the greening measures, which I want the new Commissioner for Agriculture and Rural Development, Phil Hogan, to undertake as soon as possible. He has given us some sympathetic noises but, unfortunately, when I was in Brussels a couple of weeks ago, the UK Government did not let me join in its meeting with him, so I could not put the point directly. However, I am hoping to secure a meeting with him in the near future.

Through such an early review of the greening measures, we would want to ensure that what we do in Scotland makes a difference and is effective, while being appropriate for Scotland. At the moment, that is not quite the case with some of the mandatory measures, and we are trying to get round that. I want to encourage a change of mindset, so that such issues are taken seriously.

The Convener: The farming for a better climate farms are scattered around the country. I do not know whether there are any in the crofting areas. I raise that point because, although it is a diverse area, it would be interesting to have models for crofting for a better climate, and it would be interesting to see whether farming for a better climate farms could be included as places that crofters could visit and pick up some things.

Can you tell me whether the number of farms will increase, or whether we are covering the parts of Scotland that we mentioned earlier, where crofters might have to do an audit themselves for the money that they get under LFASS and its successor?

Richard Lochhead: I will ask Jonathan Pryce to discuss the detail of that, but I am very sympathetic to the point as part of taking crofting forward.

David Barnes wishes to comment.

David Barnes: As the cabinet secretary mentioned, we are increasing the number of farming for a better climate farms. We are working with the industry—the tranches of demonstration farms that we already have were selected jointly by Government and the industry. We will take the same approach and work with the industry to work out the best coverage, both geographically and sectorally.

The content of farming for a better climate is not entirely made up of farms: there are also farm walks, demonstration days, material on the website and so on. Apart from the demonstration farms, there is a lot of material that can be accessed.

Government has an interesting prioritisation decision to take. The convener mentioned assessing value for money for all our expenditure. The scientific backdrop to the RPP, and therefore to the Government's policy, is that the most important thing that we need to get farmers to do is, as the cabinet secretary and members have said, manage well their use of nitrogen fertiliser, both organic and inorganic.

We want geographic coverage across the whole of Scotland. Scientifically, however, it would make sense to concentrate efforts where the most nitrogen fertiliser is used, because that is where we can bring about the most benefit for the climate by reducing emissions.

Those two considerations both play into the Government's decisions, but we will be working with the industry to pick the farm locations and sectors.

Roderick Campbell: My question has largely been answered, but I seek further explanation, although everybody else may know the answer. Could you identify for me the areas where the most nitrogen fertiliser is used? Are there specific geographical areas where it is used more?

Richard Lochhead: As part of the nitrate vulnerable zones legislation, we publish maps that show where nitrates are a big problem for watercourses. Those maps therefore indicate where the big areas are. I am not sure whether there are other maps, but the ones that we have published will be the best source of that information.

Roderick Campbell: Can you tell me whether any particular part of Scotland is affected, or should I just go and look at the maps?

Richard Lochhead: I would get some headlines if farmers in the areas concerned thought that they were about to be hit with NVZ legislation, so I had better not guess. There are pockets that are much worse than others, but the situation in many parts of Scotland is improving, which is good news.

The Convener: Obviously, there is significant use of nitrogen fertilisers in areas where there is arable farming. That is what we are thinking about, rather than the crofting areas, where there is not such significant use.

Richard Lochhead: There are also issues around the livestock sector, with slurry and so on. That is all part of the equation.

The Convener: Okay—we look forward to some developments there.

We now move on to equalities issues. Cara Hilton will start.

Cara Hilton (Dunfermline) (Lab): Good morning, cabinet secretary. What changes, if any, were made to the SRDP budget as a result of the equalities statement that accompanies it?

10:45

Richard Lochhead: I take equalities issues into account across my farming, fishing and other responsibilities, such as the general economic development of rural communities. For instance, the LEADER programme has been successful in tackling disadvantage in some parts of Scotland through targeted schemes and programmes on agriculture. We put huge effort into trying to get new entrants into agriculture included in the new CAP, which was a big equalities issue. No doubt, some new entrants will say that they are not totally equal with other farmers, but they will become so in the course of the new CAP, and we have gone as far as we can to ensure that that is the case.

The Government has a duty to publish an equalities statement. John Swinney, as the Cabinet Secretary for Finance, Constitution and Economy, publishes one as well. We take the matter seriously across our portfolios.

Cara Hilton: How will the budget assist young people to remain in rural areas? What will it do to improve information technology skills, in particular to reduce the isolation of disabled and older people in rural communities?

Richard Lochhead: The digital economy line sits in my budget as well, in terms of connectivity to address inequality in Scotland in a spatial way. The roll-out of broadband connectivity is a very important part of our strategy.

At the launch of the Scottish rural parliament about three weeks ago, there was an insightful video by rural communities from Argyll and Bute—I think that there was cross-party representation in the audience for that. About 400 people came together for the first rural parliament meeting, and some equality and rural poverty issues came out in some of the contributions. One comment was that the internet was a lifesaver.

We are doing our best to roll out internet connectivity. We do not control its regulation, but we have a joint project with the UK Government and the providers to fund it. That is an equalities issue that is very much part of the budget.

I have already mentioned attracting young people as new entrants to fishing and agriculture and giving them opportunities in those sectors. Despite all the stick that I take from certain young farmers or new entrants, a young farmer said to me last week at an event that he felt that he would now have an opportunity for a career in agriculture because of some of the support schemes that are being implemented. It was heartening to hear that. Some of the people who class themselves as new

entrants but who perhaps do not quite fit the description under the European regulations might not be as happy as that young farmer, but new entrants will benefit a lot from the new policy in Scotland.

Nigel Don: The cabinet secretary has obviously been talking to some of the not-quite-so-new entrants to whom I have been talking, who feel that they are seriously disadvantaged relative to everybody else because they do not quite qualify for support. They got into farming just a fraction too soon and feel that they will be seriously disadvantaged for some time. Can he do anything to nuance the payments so that folk who got in just too soon can receive rather more and have a more equitable playing field?

Richard Lochhead: There are new measures in the SRDP, and as part of the CAP negotiations, that help new entrants. Clearly, we will hear only from people who define themselves as new entrants but who do not qualify for support. However, there will be hundreds of new entrants throughout Scotland who qualify for the SRDP support and will be covered by the new CAP, albeit that we took the decision—which many parties supported—to have a transition between the historical scheme and the introduction of the area payments. Of course, that is just one part of the overall payment, and there is a level playing field for the other parts from day 1.

We are talking to those who are aggrieved. The position is difficult. Europe has told us who qualifies and who does not in relation to people who had entitlement under the previous SFP and whose business has expanded. There are lots of people in that position, and it is difficult to say that, under the new legislation, this person is a new entrant, but that person is not. Europe has said that we must not differentiate. If we do it for some, we have to do it for everyone, which means that a farmer who is already getting the regional average, or a high payment, would get even more money out of the system because his business has expanded slightly since last time.

Every time we decide to give new categories of help, we have to take money out of the pot, which affects every other farmer in Scotland. That is why such decisions are difficult.

Nigel Don: I am grateful to you for explaining that on the record. Some people probably just need to be told that, unfortunately. Thank you.

Alex Fergusson: The committee was keen that the starting point for the new CAP should be the acreage farmed and claimed in 2013, but I understand that the Commission has said that we cannot do that because it would create a false limit or suchlike—no doubt it used more technical language. Am I right in saying that, if Europe insists that the start point be 2015, genuine new entrants between 2013 and 2015 will be ineligible for support?

Richard Lochhead: Discussions are under way with the European Commission. You are right to say that it has raised the issue with us, and we will have to make an announcement shortly on the final position. It has suggested that those who have expanded can be included only if we choose 2015, and that there would be limitations on who could be included in the new CAP if we chose 2013, which could have a counterproductive impact on some farmers. There are mixed views out there on whether we should move to 2015 now, but we will make the position public soon.

Alex Fergusson: How soon, if I may ask that?

Richard Lochhead: We have to meet various timescales for getting the final changes to Europe. However, the Commission is still looking at the issue, and we will not know the exact situation until we get a clear steer from it.

Alex Fergusson: Okay. Thank you for that.

The Convener: I have a final question. The CAP futures programme is being designed with the age profile of farmers—which is currently quite high—in mind. Is that aspect on track given the risks associated with it, which we have discussed? Is it dealing with matters related to sight or physical capacity to continue farming and so on, given that people in the farming world are obviously ageing?

Richard Lochhead: I will bring in Jonathan Pryce as it is clear that he wants to say something, but the answer is that we are ensuring that the local offices have a bigger role in helping people. As I said, we have to be careful in terms of advice. An advisory service is being funded through the SRDP. Advice will not necessarily come directly from our officials in local offices, but we recognise that it is important for people to be able to access computers and get some guidance on the on-screen options and how to fill in the forms.

Jonathan Pryce: The area offices will be available, as they are at the moment, to support applicants. I also emphasise that, while we are encouraging an increase in the use of IT systems so that customers apply online, we are absolutely maintaining the option of paper applications. We are not taking away anything that people already have. We hope that the new IT interface will feel so good that more people will use it, but those who choose not to use it or who have issues that mean that it is not easy for them to use IT will still be able to use paper.

The Convener: Good. That concludes the range of questions that we wanted to ask. I thank the cabinet secretary and his officials. We will

review our report to the Finance Committee after this meeting.

We will have a brief suspension for a comfort break.

10:54

Meeting suspended.

11:01

On resuming—

Community Empowerment (Scotland) Bill: Stage 1

The Convener: Agenda item 5 is evidence from stakeholders on the Community Empowerment (Scotland) Bill. I welcome the panel: Peter Peacock, policy director for Community Land Scotland; Sandra Holmes, head of community assets, Highlands and Islands Enterprise; David Prescott, chair of the board, Holmehill Community Buyout; Duncan Burd, rural affairs sub-committee, Law Society of Scotland; and John Watt, specialist in community land ownership. Welcome to you all.

The sound system is operated by the sound technician, so you do not need to press any buttons. I will indicate whom I am asking to speak; if you want to speak on a particular area, please indicate to me. We look forward to gaining the benefit of your wide experience in these matters.

I will kick off by asking about how the dialogue and consultation on the community right to buy and the crofting community right to buy have been conducted. We are told that there have been various elements to the consultation but, as far as we know, the provisions in part 4 have not been consulted on in the same way that provisions in other parts of the bill have been. Has the consultation on the part 4 provisions been suitable?

Peter Peacock (Community Land Scotland): Community Land Scotland has been making submissions about part 3—the crofting community right to buy—since 2012, when the first consultation on what was to become the Community Empowerment (Scotland) Bill took place. We made representations on the need to undertake work on part 3, which was followed up by our representations in the more formal consultations. We have actively made the case for change for about two and a half years, and we have had dialogue with officials and the Government on that.

As you will be aware, the Scottish Government has published a short consultation paper on part 3. We have made written submissions and I know that others have, too. A series of meetings have been taking place—Sandra Holmes was probably at one in the past week. There was one in Inverness and there was one in Harris earlier this week.

That consultation has been happening and we are not unhappy about it at all. We are very pleased that the matter has been picked up in the bill, because it requires attention. The consultation

is well targeted and what is proposed seems pretty spot on, although one or two things need to be tidied up.

The Convener: I point out that you are talking about part 3 of the Land Reform (Scotland) Act 2003.

Peter Peacock: Yes, that is what I am talking about.

The Convener: I know that you are, but I am explaining that for the benefit of my members, since we are dealing part 4 of the Community Empowerment (Scotland) Bill. That is why it is necessary for us to have a copy of the Land Reform (Scotland) Act 2003 beside us.

Does anyone else want to comment on the process so far?

Sandra Holmes (Highlands and Islands Enterprise): Since the Community Empowerment (Scotland) Bill was first talked about and before it was drafted, Highlands and Islands Enterprise has engaged strongly and actively in the process. I have lost count of all the submissions that we have made at various stages. We very much welcome the bill and, like Community Land Scotland, we welcome the recent proposals to include amendments to the crofting community right to buy at stage 2. Last week, along with civil servants from the Scottish Government, I took part in a discussion on those proposals that was hosted by Highland Council. We have submitted written evidence on the crofting community right to buy amendments. We think that it makes a lot of sense to pull everything together, particularly given that parts of the community right to buy in proposed new part 3A of the 2003 act are based on the existing crofting community right to buy.

The Convener: Very good. That opens up the question whether those provisions should be part of the proposed land reform legislation, but Sandra Holmes says that they are naturally part of the bill. Are we agreed?

Peter Peacock: Yes—absolutely.

The Convener: In that case, we can move on to the policy memorandum.

Alex Fergusson: This is really just a background question. Back in June, the convener of the Scottish Parliament's Local Government and Regeneration Committee wrote to the Minister for Local Government and Planning to seek clarification on some points relating to the policy memorandum. In what could be seen as fairly critical language, he said that the policy memorandum appeared to be little more than a "superficial overview" that did not supply sufficient material to allow for part 4 to be properly scrutinised. Correspondence took place and further detail was provided, but at the end of the day the policy memorandum devotes fewer than three pages to part 4 and at one point summarises 20 sections of the bill in just seven bullet points. Are you truly content that you have been provided with enough information to fully explain the purpose and policy aims of the bill? My guess is that you will say yes.

Peter Peacock: As I said to the convener, there has been dialogue on the issue since 2012. To be frank, I was quite surprised by that letter from the Local Government and Regeneration Committee to the Government. That was principally a surprise to me in the sense that, although I can understand why the Local Government and Regeneration Committee might have been less sighted on the matter than this committee, as Mr Fergusson knows, in a past life I sat roughly where he is now, and the then Rural Affairs and Environment Committee carried out an independent inquiry into the workings of the Land Reform (Scotland) Act 2003. In effect, the debate has been going on since 2010-11.

Community Land Scotland was not unhappy with the policy memorandum. It gave us enough to work on and it clearly reiterated the purpose of the Land Reform (Scotland) Act 2003, which is to further the achievement of sustainable development and to remove barriers to it. That is the core concept. Once we get that, all the provisions in the bill make sense. Therefore, we were not unhappy with the policy memorandum at all in that sense.

Alex Fergusson: Some members obviously felt that a case could be made that there were not enough details but, basically, you guys in the field were content with what came your way.

Peter Peacock: Absolutely.

Alex Fergusson: That is fine—thank you.

Sandra Holmes: It is complex to look through the proposed changes and the existing act, as that involves cross-referencing and looking at lots of documents. However, we are satisfied that there is a lot of good stuff in the proposals and we are keen for them to progress. After going through the details of what is in, what is out and the proposed changes, we see the outcomes as helpful and enabling and we are keen for them to be taken forward on the proposed timetable.

The Convener: In that case, we will move on to the financial memorandum.

Jim Hume: There seems to be a degree of uncertainty regarding the financial memorandum. Highlands and Islands Enterprise has stated that it agrees that there are difficulties in estimating demand, for example. Bearing that in mind, what specific costs does the panel anticipate for

communities and landowners, and what costs might public bodies have to bear?

John Watt: I will wear my hat as the chair of the Scottish land fund committee. The committee has the responsibility of managing the Government's Scottish land fund, and many of the cases of communities wanting to acquire property and land assets come to us.

Prior to this meeting, I submitted information about where we are and the number of cases that have come to the land fund that have gone through the community right to buy process to date. I included the national forest land scheme, which is a kind of community right to buy of a public asset.

The detail is in my paper, but I can tell you that we have a healthy pipeline of projects. We have £9 million over three years—the last tranche being £3 million for the next financial year. There is pressure on the budget, but we are managing that at the moment. Some of the changes that will happen if the bill is enacted might increase the pressure. For example, the extension of the community right to buy to urban areas will have an impact.

However, at the moment we are projecting that we will manage the pressure on the budget. We are careful about assessing the outcomes that each case will bring in relation to sustainable development and resilient rural communities, and we will continue to do that.

Jim Hume: Committee members have your paper, which gives a broad outline of what the budget is, but I want to bore down into where the budget goes. I want to know what types of costs—rather than the overall budget, which we appreciate—public bodies, community bodies and landowners face.

John Watt: Do you mean the applicants or the landowners?

Jim Hume: I mean applicants, landowners and public bodies. My question is for the whole panel.

John Watt: I will stick to the land fund for the moment. A team of public sector officials assists communities in the development of good projects. Sandra Holmes heads up the team. There are obviously costs to the public sector in relation to the development and application process—Sandra might comment on that.

Sandra Holmes: We put in a submission to the Finance Committee on HIE's corporate perspective on the part 4 provisions on the community right to buy. We see no significant direct costs coming to HIE. We will update some of our guidance and there will be a modest one-off impact on the organisation.

We support communities in their aspirations to own and manage assets, and that is where the bulk of our efforts go. We are already doing that, and most of the support that we offer goes to communities that are not planning to use the legislation because they have other routes to ownership.

John Watt mentioned that we support the Scottish land fund. That is a Scottish Government programme, which we deliver on the Government's behalf in partnership with the Big Lottery Fund. The Scottish land fund currently applies only to rural areas—that is, communities with a population of up to 10,000.

The bill will extend the application of the community right to buy to all communities, so it will take in communities with a significantly higher population. Our sense is that there will be a rise in interest in using the community right to buy, with a knock-on effect on demand. Some of the difficulties in trying to articulate the overall cost lie in the fact that the system is so demand led.

The key thing is to put the issue in perspective. The Land Reform (Scotland) Act 2003 was enacted in 2004, so we have had its provisions for a decade. I believe that there have been about 18—fewer than 20—applications under the provisions but, from my rough calculations, I think that there have been 110 acquisitions in Scotland on top of that. The 2003 act is enabling and it creates a positive environment, but most stuff happens outwith its provisions.

However, the extension from rural communities to urban communities is a key change, and it is pretty challenging to quantify the demand that is likely. If communities require public funds to enable acquisitions to progress, that will be a limiting factor. The right to buy is one thing; communities must then secure funding.

Since the Scottish land fund came on stream in 2012, there has been, as John Watt said, a very healthy pipeline. That is the enabling factor that instigates communities to be proactive and to see a route and a means to generate the finances that are required to enable a purchase. Within that, private financing is featuring to an increasing extent. Communities are getting commercial borrowing to make up the funding packages.

11:15

Peter Peacock: In previous evidence, we have said that we want to see all of this advance but, as John Watt and Sandra Holmes indicated, urban communities will come into the equation under what is proposed, which will mean that the potential demand on the land fund will grow. We are under no illusions, because we know that that must be cash limited at some point—that is a

budget matter for Governments over time. We are not arguing for an open-ended chequebook, because we recognise that there are public expenditure constraints. Although we might argue for the budget to be nudged up, we recognise that it competes against other things.

Jim Hume: That is useful.

The Convener: As no one else wants to comment on that, we will move on to Cara Hilton, who has a question about the 2003 act.

Cara Hilton: Good morning, panel. Given that the primary objective of land reform is to remove land-based barriers to the sustainable development of rural communities, how well has the 2003 act worked in practice? Have aspects of rural Scotland changed as a result of the act? Have the experiences of the 2003 act and land reform to date informed the drafting of the bill?

David Prescott (Holmehill Community Buyout): We tried to buy land, but the legislation did not work for us. However, it made us form a group, which was a huge positive. We will celebrate our 10th anniversary in January with a ceilidh—we are not giving up yet.

The legislation did not work for us for a variety of reasons, which I can go into but which are well documented on our website and which there is a bit about in our submission. I am no expert but, as far as I can tell, the changes that the bill proposes seem to deal with some of the problems that we had when we failed to secure our registration.

I admit that some of the things that have come out subsequently have made me worry about how we will go forward. We are continuing to go forward positively but, unless we can secure ownership of the land, we will have no community control over it at all—I can go into that in more detail. However, we have been through the planning process and have retained the original designation of the land as public open space in case somebody wants to try to buy it for its development value. The valuation is a big concern financially.

We have secured the land in the local plan as public open space, defeated one planning application and had another one withdrawn, as we had the support of Stirling Council's planning department. However, we have not been able to move forward and use the land, which we would like to do for the community. We would like to engage with the community and have a dialogue about how it can best deal with the land. We have ideas, but there will be lots of other ideas.

The bill is a good start, and the group and I are really pleased that the committee invited us to the meeting, although it is a bit frightening. However, we would like to work with the committee on the basis of our experience and help if we can.

The Convener: Will you briefly tell the committee about the couple of things that got in the way of the legislation working for you?

David Prescott: The first one was that we were refused in the first instance because we were not timeous and did not register beforehand. The land was in the local plan as public open space and it was always treated as that. However, the owner sold it as land with development potential and somebody bought it for that. He thought that he was on about a 5-1 win, but he had to overcome a group. Our first failure, though, was not securing the use of the land. As you probably know, we used the appeal process, but it was pretty hairy and did not take us very far forward.

In fairness, we were encouraged to reregister. I would not say that the process was easy—I did not do most of it—but we managed it. What killed it for us was that the owner had sold an option. We saw a piece of paper with "Option" on the top and practically everything else redacted, apart from the solicitor's name. We know not to whom that was sold, for what value, when that happened or whether the option is still extant. As a result, we have taken the view that we will not seek to reregister until we are in a position to know that we will not end up in the same situation. The stuff that has to be done—going out to the community, going through all the support processes and writing the document—is a big exercise. It is not a good idea to go to the community too often. People should really go to the community only when they have to.

Those are the two big issues that our experience has identified. I believe that the bill seeks to address them, but I am not qualified to say whether it will be successful in how it is framed.

The Convener: Your evidence is extremely valuable.

Peter Peacock: Cara Hilton asked about three points: whether the 2003 act has worked, whether it has changed rural Scotland and whether the bill has been informed by that. My experience of community land owning goes back to a past life, when I was involved with the Assynt crofters in the buyouts of Knoydart and Eigg before the 2003 act was passed. As you know, I got diverted into other things.

I have come back to the issue 15 years later, and I can honestly say that the landscape—in the broadest sense—has been transformed from the position at the time of the Assynt crofters buyout. In certain places, community confidence is much higher than it used to be. People are doing the

most remarkable things that, frankly, I would never have believed were possible back then.

That has happened partly because the 2003 act gave consent to communities to want to own their land and gave them a legal framework to do so. In a sense, through the act, Parliament and Government said, "We want you to do this and here's the law to help you do it." From that point of view, the act has been transformational. Notwithstanding that a lot of people do not use it, it has changed the environment in which such matters are dealt with, which has been excellent.

However, we know from experience that the 2003 act is hugely cumbersome, difficult and bureaucratic in a variety of ways, to the extent that communities find it almost impossible to deal with. That is why we now have a bill to revise it. For the most part, the bill is well targeted and picks up on the issues that communities have expressed concern about over time.

I have quite strong reservations about aspects of proposed new part 3A of the 2003 act, which might not be as helpful as they could be. We will undoubtedly come on to that. Part 3 of the act purports to provide an absolute right to buy. It is not actually an absolute right to buy, but it gives a community a chance to buy land that is not for sale.

The crofting community right to buy has completely changed the environment in the Western Isles. We have moved on from communities thinking about exercising their rights to compulsorily buy land and going through the process, which is horrendously complex. The mapping requirements in particular are horrendously complex; the committee might want to come back to that.

Nonetheless, one community took forward its case and another one started to take forward its case. That has led to a complete change in the environment. Now, landowners and communities in the Western Isles negotiate the future; they do not use the act, but they would not be negotiating but for the act. It has become hugely important as a backstop to allow negotiation to continue. I can pick up other points of detail, but that is the context.

The Convener: We will come to some of the detail very soon.

Before I bring in John Watt, Dave Thompson wants to ask a quick supplementary.

Dave Thompson: My question relates to Peter Peacock's references to complexity. I noticed that, in its submission, the Law Society of Scotland said:

"There are multiple amendments to certain sections of the 2003 Act of the Bill which are rather difficult to follow and this does not seem to sit well with the aim of empowering communities. The Society suggests that it would be simpler to repeal and re-enact part 2 of the 2003 Act."

It is slightly concerning if the Law Society finds the provisions difficult to follow.

Duncan Burd (Law Society of Scotland): I do not think that Law Society members find the provisions difficult to follow, but we have tried to put ourselves in the position of the common man in Scotland. When he sits down to look at such a cumbersome piece of legislation that cross-references different acts, that becomes difficult. We encourage the Parliament to make the legislation as simple as possible so that the man or lady in the street can pick it up. If the legislation for a bureaucratic process is heavy and cumbersome, it will frighten off a lot of people and you really do not want to do that.

Dave Thompson: Do you stand by the suggestion or recommendation that the 2003 act should be repealed and re-enacted rather than amended?

Duncan Burd: I recently attended the WS Society and crofting law group conference in Lochmaddy, at which we looked at the problems caused by the Crofting Reform (Scotland) Act 2010. When layers and layers of amendments are made to legislation, it eventually breaks down and becomes a money-making exercise for my profession. I take it that you do not want that.

The Convener: Most certainly not.

John Watt: Peter Peacock has said almost everything that I was going to say. I am almost as old as him, so I remember the Assynt crofters process.

The Convener: So am I. We should have an Assynt fest.

John Watt: When the 2003 act came in, the process was soon found to be difficult. My colleague Sandra Holmes has helped a lot of communities through the process, especially under part 3. Many of the big projects did not even attempt to use the act but, as Peter Peacock said, it was a useful piece of legislation to have in the background as a backstop if other things did not work.

I do not have the exact statistics in front of me but, under the first Scottish land fund, which was established in the early noughties, very few projects went through the community right-to-buy process. Most were negotiated settlements or sales. As the committee can see from the figures for the more recent Scottish land fund, only four or five out of 28 projects have gone through the process. It was useful to know that it was there,

but it was complicated to use and it is good that some of the difficulties with it are being addressed.

The Convener: Indeed. I suspect that we will have to talk about that in more detail.

Alex Fergusson: I thank any of you who have found something positive to say about the 2003 act, as I was convener of this committee's predecessor when the act was passed. I assure you that any impediments were not placed there on purpose. That is just a light-hearted comment.

What Duncan Burd just said highlighted that it might have been better to introduce the proposed provision as a separate piece of land reform legislation rather than to tack it on to the bill.

Duncan Burd: The bill's overall aim is such that it is the appropriate place for the provision. It does not need another piece of legislation that will simply frighten people away.

Alex Fergusson: Correct me if I am wrong, but you said that we are adding amendment on amendment to existing legislation and that that is not very satisfactory.

Duncan Burd: That is not ideal. From my experience of acting in a lot of buyouts, I know that people are incredibly nervous of the explanations that we lawyers give, whether it be to the landowner or to the prospective community group.

Alex Fergusson: That is fine. I just wanted you to clarify that.

The Convener: Let us move on to more detailed issues about land in which interests may be registered.

Angus MacDonald: The panel will be aware that the right-to-buy provision in part 2 of the 2003 act applies only to community bodies that represent rural areas. Section 27 of the bill will amend the definition of registrable land and the power of Scottish ministers to define excluded land to allow the community right to buy to apply throughout Scotland.

Duncan Burd might wish to expand on the written evidence from the Law Society of Scotland, which states that there are

"marked differences between a right to buy exercised in rural Scotland and one now to be exercised with regard to land in an urban setting which may well have a higher acquisition and development consequent cost."

Furthermore, there is a requirement to

"restrict the application of community right to buy in urban areas where there is an active development proposal. If such provision is not made then an unrestricted community right to buy could have unintended but significant adverse effects on investment decisions."

How will community confidence, cohesion and sustainability be affected by extending the community right to buy? Could there be different issues in an urban context?

11:30

Duncan Burd: The Law Society's membership includes landowners from across the rural and urban spectrum. The concern is that a small community in an urban environment might be interested in a particular asset that is part of a larger asset that is capable of development. In such a case, the development could become blighted and there could be a scenario of competing interests. It is important for the committee, as legislators, to include a safeguard to balance out the greater development good to the community. We have suggested one or two technical measures that could be added to give developers comfort. Development projects can take time to reach fruition; in the commercial world, time is important.

Angus MacDonald: That is clear.

Sandra Holmes: Highlands and Islands Enterprise would like parity of opportunity to be extended to all—communities are communities, whether they are rural or urban. It seems right that the opportunities should be open to all communities. We welcome the proposed amendments, which offer more flexibility in the structures to extend the opportunities even further.

It could be argued that land and building costs in an urban area might be at a premium in comparison with those in a rural area, but that is a secondary issue. We are talking about giving communities their rightful opportunity to engage, become empowered and, where they can, take control of assets to add to their empowerment.

Peter Peacock: The community right to buy seems to be working in many rural areas and, if that is so, why should the same opportunity not be available more generally? I see no reason in principle why it should not be available to all, and I see a reason in principle why it should be.

The community right to buy is almost certain to play out differently in an urban context. The situation is more complex, as it is more difficult to define the boundaries of an urban community and we are probably talking about much smaller landholdings and about sites that might be abandoned, neglected or in need of further development. I am sure that we will come back to this point, but I am thinking of individual buildings or gap sites that might fall into that category. The right will play out differently but, in principle, there is no reason why it might not play out properly in an urban context.

Blight is an interesting issue. When I spoke at a conference last week, a question about it was put

to me. I answered in this way: the blight that we experience in the areas that have bought their land in rural Scotland is not being caused by the community purchase; rather, the community bought the land to get round the blight that it felt was there, because the land was not being developed to its full potential by the current ownership structure. The communities that Sandra Holmes and John Watt help, through their roles, are interested in developing their assets, because they feel that that has not happened in the past. I am sure that the technical points that Mr Burd raised are worth considering, but it would be wrong to characterise the communities as causing blight, because that is not necessarily the case.

David Prescott: I will follow up on the point about blight. The land that we sought to buy, along with certain other sites in Dunblane, has been blighted by inactivity by the owners, in some cases over many years. I am thinking of sites in the High Street that have been left completely empty for the 17 years that I have lived in Dunblane. That is a key issue.

On the rural-urban split, we are considered to be a rural community—I think that we have just under 9,000 inhabitants—although I do not think that we thought of ourselves as a rural community until we engaged with the 2003 act. Certainly, the population is not substantially involved in rural activities. We were fortunate; a slightly bigger community would not have been in the same position, although I cannot see why such a community should not have had the same role. The fact that the issue is addressed in the bill tells us why the provision should be there: it is a means of enabling communities to empower themselves.

The planning process governs the value of a site. In our case, we think that the value has reduced. I would perhaps like to explore at some point how value is reflected, against planning provision, given that a gamble by a developer can inflate the price.

We are talking about ensuring that the community engages in the wider process of managing its community. In all fairness, a number of us who have become involved in the process have done that and are continuing to do so, including in the context of aspects of built development around the site in which we have an interest. We are trying to work with the developer—a housing association—to secure the best outcome for all parties. The process has become much more inclusive.

The Convener: It will be interesting to hear more about that in response to subsequent questions.

John Watt: I am wearing another hat now as a member of the Scottish committee of the Big Lottery Fund. The fund's growing community assets programme assists communities to acquire properties in urban contexts, through negotiated purchases. We are seeing that that approach has significant benefits in communities. The properties are usually small—sometimes they are even single buildings—but the community thinks that they can be put to a more positive purpose than is currently the case.

I agree with Peter Peacock that defining the community is more challenging in urban areas. We need structures that are broadly representative of the community, and acquisitions must be in the public interest—they must be for a positive community purpose. The cases that we process through the Big Lottery Fund are assessed on public interest and positive community benefit. If communities are given more rights to register an interest in properties in urban areas, it will be interesting to see whether there is a significant increase in demand.

Angus MacDonald: You said that defining communities in urban areas is a challenge. Do you foresee unintended consequences—if such things can be foreseen—or practical problems as a result of extending the community right to buy?

John Watt: One always has to deal with a legal entity in such situations, and there are basic rules about the nature of the legal entity, which bodies must and do follow. For example, there are rules to do with having open membership, having democratic control, not bringing about personal gain, not distributing profits to one another and the like. Such principles have to be there.

Communities in urban areas can begin to define their boundaries, as they do in rural areas, although doing so is more challenging because there are a lot more people in urban communities. I suppose that minority interest groups might try to usurp the process, but we can build safeguards into the system, in relation to who can apply and the structures that they use to apply, to overcome that particular unintended consequence.

Angus MacDonald: Can you give examples of safeguards?

John Watt: I meant in the type of legal structure that the applicant must have: open membership, democratic control, non-profit distributing—those kinds of principles.

The Convener: We might continue in that vein with Claudia Beamish.

Claudia Beamish: Thank you, convener, and good morning to the panel. The definition of community is a very complex issue, and it would be helpful for our discussions if we explored it.

I will build on what John Watt said. The panel will know that section 34 of the 2003 act provides

that the only type of legal entity that can apply to register a community interest in land is a company limited by guarantee. What type of entity should the bill enable to register a community interest in land? What are the practical implications of extending the bill to Scottish charitable incorporated organisations? What other types of bodies should be included by regulation or specified in the bill?

After the panel has answered those questions, I would like to move to issues of the extension or limitation of postcodes.

Sandra Holmes: We welcome the proposals to include SCIOs, because the SCIO structure can exhibit the characteristics that are exhibited by existing communities. As John Watt mentioned, a key tenet of companies limited by guarantee is their open membership.

We have been advocating that two-tier SCIOs should be included. There are two kinds of SCIO and a two-tier SCIO has a wider membership, which elects the board of directors for the day-to-day running of the organisation. That approach parallels companies limited by guarantee.

We are aware that there have been discussions about including bencoms—community benefit societies. We are definitely seeing more community groups considering becoming a bencom. We have not fully thought through the issue, but we will do if including bencoms is discussed at stage 2. We welcome in principle the extension of the provisions where that is appropriate and where there are safeguards of democratic and community control.

A benefit of a bencom is that it can generate private finance for its members. Currently, communities are looking to raise funding to develop the funding packages that are required for their purchases. A significant local benefit of funding from bencom structures is that they build in loyalty and give people a stake in the overall success of the business. People feel connected to and part of something when they have contributed to it.

Although we have not looked at the suggestion in detail, we welcome it in principle. We will give it further consideration if it appears at stage 2.

Claudia Beamish: Perhaps it will make the discussion easier if I highlight a couple of the other definitions of community, such as communities of interest, or wider definitions in relation to geographic area, equalities groups such as ethnic groups, or definitions of place such as allotment societies or community councils. Should those definitions be considered for use in the bill? How do they compare to postcode definitions that have been used in the past?

It is important for us all to understand how we can empower communities. I throw that comment in at this stage.

David Prescott: We have a company, and I am the chairman of the board. We are also registered as a charity. Our main fundraising is to pay the accountants to do the accounts for the company and the charity. We looked at becoming a SCIO and we concluded that, given our position, it was not worth us changing.

We have managed with the current system. It caused us a few problems: we had to change the memorandum and articles of association at one stage to meet one requirement, and for people who are not routinely involved in the bureaucratic processes that can be quite hard work.

On the definition of community, we took Dunblane as the community because the land that we have sought is right in the heart of the town. It was not easy to translate that into postcodes. Achieving 10 per cent of the people on the open register—we were not allowed to include people who had taken themselves off the register—was, in itself, a major task. Several people spent quite a long time in the library going through the electoral roll knocking out people who had signed who were not eligible under the definitions.

11:45

I believe that you should try to define the community in a more free-form fashion. It might be entirely acceptable to use postcodes, but perhaps it could also be defined by community council wards, for example.

This all comes back to something that I think important. I declare a slight interest: I am an honorary member of the Association of Community Rail Partnerships, which will tell you a little about where I come from. You have to leave the community to define the community interest. You then have to say whether it is the right definition and whether it represents vested interests or something inappropriate—I will not try to define that in any way.

You should set a much more diverse framework rather than say that the community has to tick certain boxes. It should enable people to understand that they must be inclusive, follow equality legislation and have open membership but also enable them to define their community by the need that they perceive and the way in which they would progress matters.

I will not try to be clever and say how that should be done; I leave that to others. However, if anybody wishes to develop any of those ideas and there is a dialogue about it, we would be happy to participate. It is a matter of coming up from the

bottom and not down from the top. The bill should be entirely enabling legislation. I genuinely think that the bill is groundbreaking, which is why I have spent quite a lot of time trying to contribute to it.

Claudia Beamish: That is helpful.

Peter Peacock: I echo everything that has just been said about helping communities to define their own place. The bill seeks to address the criticism that the postcode definition is too restrictive, open up more possibilities and give ministers power and flexibility to consider other things for which a community might argue. That is right and helpful.

On SCIOs and bencoms, SCIOs did not exist when Alex Fergusson dealt with the matter as convener on the Rural Development Committee. They now exist and it is right that the bill recognises that. However, it is equally right that other forms evolve. The sector is dynamic, and who knows what will emerge in the next wee while? Again, ministers are rightly giving themselves powers to update the legislation on that constantly.

The question on communities of interest is a good deal more complex. The bill comes from a concept of place and how we develop it; it is not about interest. However, within a place—in particular but not only in an urban context—if a local dramatic society or whatever wanted to purchase a piece of land to develop something or a building to convert it, it would be able to try to move that through the processes that are being developed. There would be no inhibition to that, but ministers would ultimately have to define whether such a registration of interest in the land was in the public interest.

Communities of interest are not excluded, but the bill comes from a different perspective: it is about place, not interests.

John Watt: The structure of the bodies that can apply for funding and use the right has evolved over time. For a long time, it was almost exclusively companies limited by guarantee. That was in a period in which public funding was perhaps more available. Some of the changes to bencoms, for example, are designed to allow such companies to raise private capital as well as to apply for public funding, which we all welcome given the difficulties with public funding. There are ways of achieving both flexibility in capital-raising ability and the community and public interest, and the challenge is to find them.

The bencom model is evolving. Again wearing my lottery hat, we have recently funded the community shares Scotland service, which advises communities on how to raise community shares for a variety of activities. You will probably see various prospectuses from community organisations that are raising money through that mechanism for projects. In many cases, there is a remarkable degree of success.

I ask Sandra Holmes to keep me right if I am wandering, but I recently came across one case in which the company that raised the shares was a bencom—it was an industrial and provident society—but it had built into its memorandum and articles of association the objective of transferring its surplus profits to a community-based charitable organisation. That link between a trading activity, which could be based on owning a land asset, and a community benefit charity is important. There are more complex models than those that have been seen in the past, but we have to look at them carefully, and the legislation should enable that to happen.

Sandra Holmes can correct me now.

Sandra Holmes: There is nothing at all to correct.

As time has moved on and communities have become more innovative, we need more sophisticated approaches. It is difficult to be prescriptive in primary legislation about entity types. We have advocated that, rather than limiting the provision to companies limited by guarantee, SCIOs and bencoms, the bill should set out the required characteristics. If we get the characteristics right, it will then be up to each applicant to demonstrate that its structure fits with the characteristics that are detailed in the legislation.

That approach would be more enabling and would accommodate future developments that we cannot anticipate at this stage. It would also allow communities to see clearly what is needed and it might help to take into account communities of interest.

Communities of interest have a legitimate role but, under the existing structure, the definition of "community" is centred on a geographic community. Currently, the geographic community has to be described using postcodes—although that might change—and the membership of the community has to be established to demonstrate that a majority of them are in favour. It is difficult to get a constituency of voters for a community of interest—how do we determine where the community of interest is and who would get a vote in a ballot?

The current provisions are based on a geographic community, but it might be more enabling and accommodating of future needs if the bill referred to the characteristics.

Claudia Beamish: To follow up on the issue of bencoms, would the bill have to be amended to enable the transfer of assets if something came to

a different organisation, such as a charitable organisation, as Mr Watt described?

On Sandra Holmes's point about a community of interest, I can give an example from my region, where there is a choral society in one town and people travel a considerable distance to it because of its reputation. If the society was to consider purchasing a building to be a venue for an arts hub, we would not want to restrict it. Therefore, Sandra Holmes's description of a way forward is useful.

John Watt: Some of my colleagues have probably read the bill more carefully than I have—

Claudia Beamish: They have certainly read it more carefully than I have.

John Watt: I think that it contains a provision that gives ministers flexibility on other legal structures, which we should welcome.

David Prescott: The emphasis should be on the people rather than the geographic place. The real community is the people, and the place that they live in is secondary, although I hate to say that and I do not mean it like that. The guiding principle should be to look after the people, and the rest will follow.

The Convener: I have a point that follows on from something that David Prescott said earlier. We have the kinds of constitution that are demanded of different sorts of organisations, and we have the kinds of constitution that are acceptable to the Big Lottery Fund. For example, a body in Evanton, where I live, had to change its constitution three times in order to access the funds that it finally got. Our discussion has not touched on that issue, but I wonder whether the bill will make the process involved simpler and whether we can recommend ways to make it simpler.

Peter Peacock: That is a very challenging question. I have two thoughts about it, one of which is that the issue could be dealt with by administrative means in the sense of getting together the Big Lottery Fund, Government officials and the Scottish land fund and ensuring that they are all asking for broadly the same thing.

Secondly, the flexibility that, as I understand it, ministers will have to add to the bill's proposed list should not be used sparingly when there is a need, as it would help to avoid the need for people to have to do very cumbersome and difficult things. In fact, one part of the bill that we might come to implies that people have to do more of those things in order to comply with the bill's requirements, which will take up a lot of energy and effort. However, I think that flexibilities are emerging that will help.

John Watt: I am on slightly dangerous ground defending the Big Lottery Fund.

The Convener: Definitely.

John Watt: However, we have always attempted to ensure that our programmes are aligned with the legislation. Therefore, if the legislation changed and constitutional models that were more flexible were to be used, I am sure that the Big Lottery Fund would be enthusiastic in entering into dialogue about alignment.

The Convener: That would be very helpful indeed.

Sandra Holmes: We hold template articles for communities. HIE set up that facility and manages it—we update the articles if there are any changes to company law. We went to some lengths to consult the Scottish Government to ensure that our template articles fitted with the community right to buy provisions. We also checked them with the Office of the Scottish Charity Regulator because of certain provisions in charity law.

We have a template on our website that anybody can access. If people do not deviate significantly from the template, it will meet the community right to buy provisions and should get an organisation a long way towards getting charitable status if it believes that that is appropriate for it. If any changes come through from the process of this bill, we will update the template accordingly. We can do quite a lot of enabling activity outwith the legislation. Clearly, we are all looking to smooth the path as much as we can.

The Convener: Thank you. That is a helpful point that we will bear in mind as we go along. Have you finished your questions, Claudia?

Claudia Beamish: Yes.

The Convener: We have a question from Dave Thompson on detailed procedures and requirements.

Dave Thompson: A number of the witnesses mentioned in their submissions issues to do with registration. Holmehill Community Buyout said that

"The requirement to pre-register for a right to buy is unrealistic"

and HIE stated that

"late registrations are very much the rule rather than the exception."

Community Land Scotland said that

"It would be best to accept late registration as the likely norm and of itself need not be justified by any prior action or lack of action".

I am interested in all of that because I wonder whether we should have early registration at all.

Should we not just have a registration system that kicks in when a community is made aware that land might be available, rather than communities having to do an awful lot of work beforehand in trying to identify what land might be available in the future, which would be pretty difficult? I would like to hear your views on whether we need early registration. I think we should still have quite tough rules on registration. Perhaps they should be even tougher—which, I think, Community Land Scotland recommended in its submission.

12:00

Peter Peacock: It is a hugely important issue, because what is emerging—Sandra Holmes will be able to comment on this much more than I can, because she has seen an awful lot more cases—is that communities do not approach the world by thinking about the land around them in the abstract. They do not think, "Is there anything that we need to think about here?" or, "What land do we have to register an interest in?" That would be quite cumbersome for the reasons that we have heard, and it is not the real world of communities. Experience shows that. It seems to me that the norm will increasingly be that communities will pay attention to such things only the minute that the land comes on the market. We should accept that as the norm. Therefore, the challenge is in finding the right tests and hurdles while not ruling out that situation.

I was interested in the dialogue that went on last week between Dave Thompson MSP and the bill team's Dave Thomson—it became a bit confusing. Dave Thompson MSP asked why early registration is necessary. I went back and read the policy memorandum to the 2003 act, and it became clear to me that there were two things at work in requiring early registration. First, at the time when the policy memorandum was written, there was real concern that having a free and open right to buy without people having to register would have a universal impact on property rights and the property market. The logic of having people register was that the right to buy would apply only to those who had registered—it would not be a universal right. Secondly, it is bureaucratically tidy to know in advance what land is likely to have to go through the process. I think that those are the two reasons for that requirement.

The other thing that was interesting in the dialogue between Dave Thompson and Dave Thomson was that the bill team's Dave Thomson made it clear that the situation that Dave Thompson MSP was referring to—which I think you called a "light-bulb moment", when people suddenly think, "We're going to have to do something about this"—is not provided for in the bill. The key question is, how do we provide for that situation? Also during the dialogue last week, I was struck by the thought that what is now proposed—that a community must show that it has taken prior steps or done prior work sufficiently in advance of the land coming on the market—is potentially difficult and damaging because that requirement will be impossible to meet. I think that the bill team has constructed a mechanism simply to deal with situations in which a community has taken prior steps and done prior work, which makes it easier for that community to get registered. However, the key question is this: what about communities that have not done that? They will be the norm.

In my view, late registration must be allowed to happen in that situation, but there must be suitable tests to make sure that it does not just happen automatically. The challenge is in finding the right tests. Two of them are in place already: an application has to show both greater community support than would be required for a normal registration, and that the proposal would be in the public interest and would further sustainable development. Another test could be added, as we have suggested. It is a very important issue. If we do not get it right, communities will automatically be excluded from using the provisions in the 2003 act.

Alex Fergusson: I was going to raise this issue later, but Mr Peacock has raised it just now. Community Land Scotland has suggested that the 2003 act could be amended to state that

"eligible land would be land, the sale of which to a community body, would contribute to the achievement of a greater diversity of ownership of land in Scotland."

I assume that that is the additional test that he just referred to.

Peter Peacock: No. That would be further on in the process.

Alex Fergusson: In that case, I will leave my question until later. I am sorry—I thought that that was what you were referring to.

Peter Peacock: I am glad that we have got advance warning of that question.

David Prescott: The light-bulb moment for Holmehill was when the "For Sale" sign went up on a piece of land that was in the planning process and that we had free rein to wander over. Everybody regarded the land as being ours—that is, as belonging to the community. When the land suddenly went up for sale with development potential—whatever the term is—we thought, "Hang on a minute—that's not what we've got." However, there is no way that the community would have found a way to register, particularly as it needed to get a petition, membership and voting numbers. Also, it would need to register again

every five years, with everything that goes with that. Ours was a typical experience.

I am quite sure that many communities, if we expand the provision to urban environments, will start to have those light-bulb moments, as community facilities that they have enjoyed for many years are suddenly turned off or shut. I can think of a few examples—I am sure that all of you can, too—in which something has been provided to the community by the private sector and suddenly the private sector stops providing it. It might be of community value and the community might wish to retain it, but it cannot register somebody else's property. People do not go out registering somebody else's property on the off-chance that such a thing might happen.

I think that you are going to see an awful lot more such responses. If a community is going to be empowered to look after itself and develop itself and therefore to become much more financially, emotionally and generally sustainable, you genuinely want those facilities to be taken into a form of ownership that may be able to survive when the private sector has not been able to survive because that form of ownership uses a different form of provision of labour through volunteering, and all the things that go with that.

Sandra Holmes: I can offer a slightly different take on things. We would certainly support communities being proactive and putting steps in place in advance of something coming on to the market. That is how things have been in relation to the 2003 act. The reality, as has been borne out, is that communities respond to opportunities. That is partly because the process of timely registration is quite onerous; it means forming a company and getting support from 10 per cent of the community. Also, the application pertains only to one asset—it could be one building or one bit of land—when it might need multiple assets. If the community just wanted to get a couple of acres of land, it would have to do multiple applications. It is a lot of work to go through when the community is not guaranteed success in the process.

The difficulty with a late registration is that when a community applies late, it has at the moment to satisfy the good reasons test. My understanding is that the good reasons test was put in to enable the 2003 act to work in the earlier stages of the process. Good reasons were used later that had perhaps not been envisaged. We welcome the removal of the good reasons test, but we are a bit concerned about the proposed replacement provision, which talks about "relevant work" and "relevant steps" being needed to show that a community is being proactive.

We envisage that there could be a bit of a hybrid. If a community is being proactive—if it can demonstrate in community council minutes or through a development plan that it has aspirations to own a building or a development plot and it can articulate that—later on, if that asset comes up for sale, the community has put that marker down. That would hopefully enable the community to demonstrate that it has taken relevant steps and carried out relevant work because the process of responding to a late application is quite challenging. Within a very short period, the community would potentially have to form a company and get members of that company. It would also have to get signatures from more than 10 per cent of the community, because it would be a late registration, and then the community would have to make an application.

Assuming that a late registration application is accepted, the community is then straight into having to raise the funds for the purchase. That is where the current part 2 of the 2003 act gets quite a lot of bad press because that is a very onerous process. I think that something can be done to change that. We can still ask communities to be proactive but from a more general, strategic point of view. Those "relevant works" and "relevant steps" requirements could fit in with that approach, so the community could have that marker down. That would open up greater opportunities. I think that approach would be more workable for communities—as well as for the supporting agencies, because it is quite difficult for us to be able to respond very quickly when something is going through a late procedure. At the moment, there is a good chance that late procedures will not be successful.

Peter Peacock: I want to come back on that and to answer Mr Fergusson's question that I did not answer. The issue is sortable; indeed, it is not too difficult to sort. Sorting it would require—notwithstanding what Sandra Holmes said, which would be the preferable position—that when a community has not registered its interest it should nonetheless be allowed to make its case to the minister, and there should be criteria against which the minister can judge such cases. For example—I know about this because I attended a meeting about it—we had phone calls from people in Blairgowrie when suddenly, overnight, the Co-op's farms came on the market. No one would have expected that, so why would they have registered an interest? As soon as the farms came on the market, people thought that they should do something about it.

I also had an email from someone in Donside who said that a piece of land that was central to the community had suddenly come on the market. They had never in their wildest imagination expected that to happen and they were now thinking about what they could do about the situation.

All that we are arguing for is an opportunity for such matters to be properly considered, and for there not to be just a simple test. To look at the matter from a landowner's point of view, they may have done a lot of work to prepare the ground for a farm to come on the market, so they would want the sale to be expedited. There must be some pressure to do that.

We suggested to the bill team an extra test that might be put in the bill to cover such circumstances. Applications have to satisfy a requirement for high support in the community and must be strongly indicative that they are in the public interest, in the current basic test. We also wanted something to be included about there being a reasonable likelihood that the community could conclude the deal. The last thing we want is for a community to go through a process in which there is no reasonable likelihood that it will be able to raise the money, or whatever. That test would be another little hurdle that we think would be fair. We can find a workable answer, which is the important thing. We have not got that yet.

John Watt: I want to table an idea. As you know, the land reform review group of which I was a member produced a menu of rights for communities. The first right that we suggested was a "right lite" whereby a community could simply register an interest. Under the 2003 act, there is a right of pre-emption. However, if there was a right to register an interest and to be notified when land was coming on to the market or ownership was changing, that would trigger the process of the "heavier" right of registering a right of pre-emption. We thought that that might be a way of getting round everything becoming a late registration.

The Convener: We will be taking quite a bit of evidence on that matter, but it is important to get views on it now as we are getting suggestions for amendments. It is a good idea to get those in at an early stage for the committee to consider before it reports.

Claudia Beamish: I understand that the land reform review group's written evidence recommended that re-registration of an interest in land should be needed only every 10 years rather than every five years, given how onerous registration is and the complexities for communities. Does the panel have any comments on that?

John Watt: I reiterate that the process of re-registration every five years is onerous and that 10 years would be a more appropriate timescale.

David Prescott: Holmehill Community Buyout looked at the issue, too. With re-registration communities must, in effect, do the same thing again, so there is a risk of registration fatigue. An issue that we have not perhaps understood properly is refreshing—which is how I would prefer to describe it—of registrations rather than redoing them. In doing that, we would need to ensure that we had obvious community support. It would not necessarily be about finding another 10 per cent of the community who were prepared to sign things, and completely redoing the documentation. In Holmehill's case, for example, I would expect that to include support from the community council, as elected representatives. If they did not support the case, we would have more difficulty. There is also the general issue of what reflects community support and what reflects community opposition, both of which are equally valid. I see the need to refresh registrations and to make sure that people are still supportive, because of the impacts on someone's private property, but the measure needs to be proportionate.

12:15

Peter Peacock: I agree entirely with that. CLS argued in our submission for a 10-year period before re-registration, too. I noticed that, last week, the members of the bill team signalled that they plan to simplify the form and the process. That will be welcome, but that does not negate the point that there should be a longer period. It might be that there should be an honourable compromise.

Dave Thompson: Another thing in the same area is the bill's requirement for a community to identify ownership. In some cases, that will be extremely difficult for the community to do. Does the panel have any comments on that?

Sandra Holmes: I agree that identification can be challenging. We would seek a modification to the requirement: the community should be required to try to achieve identification of the rightful owner but, if that cannot be done, it should be sufficient for it to demonstrate the steps that it has gone through to try to identify the rightful owner. That should be deemed to be reasonable.

The Convener: The issue relates to wider issues in the land reform agenda. It will be interesting if that point is made later today or in detail.

Peter Peacock: I agree with that entirely. My understanding—I stand to be corrected—is that, with regard to compulsory purchase orders, there is a procedure that allows a local authority to proceed with a compulsory purchase even if the owner cannot be identified, as long as all reasonable steps to identify the owner have been taken. Clearly, however, it is best to identify the owner.

Last week, the members of the bill team talked about an absolute requirement to identify the owner. In response to that, I direct them to the

argument that I have just made. However, they also suggested that there is an alternative procedure. I think that they were referring to the Queen's and Lord Treasurer's Remembrancer, to whom bona vacantia land falls. The suggestion was that if the owner could not be found and the land were declared bona vacantia, you could approach the Queen's and Lord Treasurer's Remembrancer to purchase the land. However, I do not know whether that would work—perhaps it would, but that would have to be checked out. I would prefer it if we sorted out the arrangements in the bill.

David Prescott: Subsequent to Holmehill trying to deal with the registration and so on, I happened to be in Edinburgh, so I went to Registers of Scotland. The system there worked extremely well and was extremely user friendly, and I got all the information that was held there. That information does not necessarily correspond with the owner's claimed ownership, but my view is that a reasonable test of reasonableness for a community body should involve whatever is on the public record and that, if people want to hide their land ownership, that should not be a way of avoiding being part of the community.

I know that people can get professionals to access the land register if they cannot get to Edinburgh, which costs a little more, but it struck me that that was an extremely good way of moving forward. I was genuinely quite impressed and feel that Registers of Scotland is one of the places where options should be registered. That would mean that options would be held on the public record even if—as I accept might happen—they were redacted in the interests of safeguarding confidential information.

Alex Fergusson: It might be a bit unfair to ask for a lot of detail on the Queen's and Lord Treasurer's Remembrancer, but I have a question with regard to a constituency issue that I very much hope will become the subject of proceedings under the community right to buy. My understanding is that, since the establishment of the Scottish Parliament in 1999, land that falls to the ownership of the QLTR effectively falls to the Scottish Government, as Scottish ministers now have control—if that is the right word—of the QLTR. Am I wrong about that?

Peter Peacock: I simply do not know the detail of that. If it is being suggested that you must know who the owner of the land is or go through the QLTR route, I think that you would have to check out all the details around taking the QLTR route in order to confirm that that would be robust. On the face of it, if the QLTR owned the land, it could perhaps give a first right of refusal to the community, which might satisfy the matter. I do not know whether that is possible.

The Convener: We will take that on board.

Alex Fergusson: I am sure that we will explore the matter in due course.

Dave Thompson: Peter Peacock, you mentioned this point; I think is also in your submission. When we get through this process, there will be an act and that is fine. However, you said that a lot of negotiation is going on, with the bill in the background. My point is that, rather than have people go through strict legal processes and procedures, which would make a lot of money for lawyers and take longer, we should facilitate mediation. There are a lot of good mediation organisations in Scotland. Last week, I was at an excellent event, run by John Sturrock with American mediator Ken Cloke, here in the Parliament. We should build mediation into the bill to enable HIE or whoever to facilitate discussion between a landowner and a community so that they are not at legal loggerheads.

Peter Peacock: I absolutely agree. It is striking that, where a landowner and a community can sit and work things out, that is by far the best way of doing things. However, there are examples where that is really difficult. I will not labour this, but a case has been running for a long time that, ultimately, has been sorted out—I hope it has been sorted out—by bringing the parties together with a trusted third party. That has been done purely on an ad hoc basis, though. The third party happened to live locally to the two other parties and it seems to have worked—or it has certainly added to the process. We have to be much more deliberate.

My understanding is that, although HIE and the Scottish Government team that deals with these things will recommend to a community that it is better that it negotiates, they do not have powers to do anything about that. I would have thought that a simple power to enable a minister to facilitate negotiation would help enormously. That could be by ensuring that a mediator was appointed, or whatever.

The Convener: There is the Arbitration (Scotland) Act 2010 and the organisation that has been set up to arbitrate in business. That might be something that we can take on board in our report—we could see how that organisation fits in with the concept of mediation in a more formal sense.

Sandra Holmes, you talked about demonstrating reasonable behaviour. There are issues to do with periods of activity, interest, time limits, the appointment of balloters and so on. We have detailed evidence from you on that. Do you want to make any other points on the procedures and requirements?

Sandra Holmes: I have got one point. It is in our evidence, but I would like to raise it briefly. It is to do with section 31(4)(aa)(iii), which I will put into plainspeak. When communities look at taking forward a project, the starting point might be a community council or a group of individuals. It is sometimes later on before the entity—the community body—is set up. Section 31(4)(aa)(iii) says that any work that was done would have had to be done in the name or under the guise of a community body that had not yet been set up. We would really welcome that being decoupled, because it is common for a sub-group of a community council, or interested people who come together, to do the foundation work and the initial feasibility study. That often happens for projects outwith the legislation, but it is tried and tested practice.

We support organisations in those formative stages and our sense is that the work of that organisation or that group of individuals coming together on behalf of the community is no less valid than had it been done under the community body that might be formed later on. There is a time and a place to form the community body, but there will always be preparatory work. It is a minor issue, but it could have quite significant consequences if it stays in the bill.

The Convener: Thank you for that. We move on to abandoned and neglected land.

Nigel Don: We have heard a lot of talk about processes and aspirations, but I would like to look at the text. For the record, I am on page 29 of the bill, which is section 48. However, numbers such as 97C refer to the section that the bill will put into the 2003 act. I hope that anybody reading the *Official Report* will have a clue about what we are doing.

New section 97C(1) of the 2003 act states:

"Land is eligible ... if ... it is wholly or mainly abandoned or neglected."

In light of the discussion that we have had and the discussion that we had last week, it is still not obvious to me why those criteria should be in the bill. First, can anybody explain or justify the rationale behind them? Secondly, what on earth do they mean anyway?

Peter Peacock: I will kick off. We very much welcome the principle of part 4. We welcome section 48, because it fills a gap in the current provisions, which is that the public interest in ownership of land cannot be tested other than with crofting land. It is therefore an important principle and we welcome it. We see it very much as a power of last resort, rather than one of first use.

However, as you suggest, the devil is in the detail and we have some serious reservations. I am not clear why the "abandoned or neglected" provision has been introduced. There was a dialogue about that last week between Mr Thompson, Mr Thomson and the solicitor who was at the meeting. I have thought further about it, and there are probably two potential reasons for the provision. One is that it is there for a European convention on human rights reason—to try to ensure that what is, in effect, an interference in a property right is less challengeable under the ECHR than would otherwise be the case.

If that is the case—and I am not clear that it is—I am not clear that the provision is required, because it seems to me to be a substantially greater hurdle than is required, for example, by the crofting right to buy under part 3 of the 2003 act, which is simply founded on whether further sustainable development is in the public interest.

The other reason is an innocent one, if I can put it in that way—not that the other one is sinister. It is simply that the provision is there only to provide for what is abandoned or neglected land. If that is the case, it is not unreasonable. The problem is that, because it is the only definition in the bill, it could lead to the unintended consequence that land that is not

"wholly or mainly abandoned or neglected"

but is nonetheless in need of sustained development is ruled out of consideration. That is the big trap in the bill.

It is important to clarify precisely why the provision is there. I do not think that it is impossible to work through it, but at present it is not entirely clear why it is there.

David Prescott: Until June last year, we could well have defined our land as neglected by the landowner, who had done absolutely nothing for several years. When he came up and chopped down all the trees and suchlike, that was not neglect. What he did was pretty awful. It was illegal and various other things, but it would not fall into the "neglected" definition, and the land was certainly not abandoned, because he did know his property rights.

I agree with Peter Peacock. This is a small and specific example, but my concern is that, in our case, the land is not able to be used in the way in which the planning designation and the community at large have defined that it should be used. The community has set out its stall, but the value of the land is being damaged.

This is an entirely personal view, but I have an issue with the ECHR. There are property rights, but property owners also have responsibilities to their communities, and rights and responsibilities need to be somewhat balanced. I know that this sounds terribly bold. I am not saying that we

should be able to take over everybody's land, but if someone is part of a community, they have a responsibility to try to live and work with it—all of us do. There has to be some kind of balance there, rather than property rights exclusively swamping everything else.

The Convener: Indeed. Thank you. John Watt wants to comment.

John Watt: I, too, was surprised to see such a restriction of potential rights. I would prefer to have something in the bill about fulfilling the greatest potential for sustainable development, rather than a requirement that land should be proven to be "abandoned or neglected".

As Peter Peacock said, the ECHR may have been in the back of the minds of those who drafted the bill. I suspect that they may also have been thinking about the urban situation, in which abandonment and neglect can be identified more easily than it can in a rural situation, especially for larger tracts of land.

12:30

The Convener: So we are talking about gap sites. The provision was probably written when the drafters were considering extending the bill to cover urban buildings.

Nigel Don: I have jumped on to the new section 97G(6)(ii) to be inserted in the 2003 act. I wonder whether the comments that have been made so far also suggest that sustainable development ought to include leaving land wild. There may be areas where one might want a meadow and other things around it to be left alone. Could that be part of the current definition of sustainable development?

Peter Peacock: Sustainable development is defined in three ways. That is the problem at the heart of the definition of "abandoned and neglected": it deals with one of the three definitions of sustainable development but not necessarily with the other two.

As the committee will know better than I do, given that it deals with sustainable development all the time, the concept relates not only to the environmental component that Nigel Don has just described, but to economic and social development.

The difficulty with sticking to a definition of abandonment and neglect is that it appears to relate to the physical construct of the land rather than to sustainable development. The whole policy purpose of the bill, and of the original 2003 act, is about furthering sustainable development.

There is a bit of a trap here, given the way in which sustainable development is currently defined. The issue can be sorted—for example, it would be possible to have a third criterion. If the aim of the requirement for a building to be proven to be "abandoned and neglected" is as the convener described—which I can readily see that it is—the bill could specify that a building can also be proven to be in need of sustainable or sustained development. That would allow the social and economic considerations to be taken into account.

There is another way to do it. The bill as it is currently drafted seeks to define some of the factors to which ministers must have regard in relation to "abandoned and neglected" buildings. However, there is a problem, because the phrase "abandoned and neglected" suggests only the physical element and not the wider parameters that I have just described. A third criterion could be added, or abandonment and neglect could be defined in the text of the bill.

Such a definition would allow us to consider economic and social development as well as the physical attributes of the land. There are problems with the definition as it stands, but I think that it can be sorted. The members of the bill team, in their discussion with Nigel Don at committee last week, seemed to say that they were looking at how some of those elements are defined in the text of the bill. The situation will depend on where that consideration takes us, I guess.

Nigel Don: I hope that others may have some comments on that aspect. I read the meaning of my discussion with the bill team in the same way as Peter Peacock did, but I think that the team probably needs a bit of help. To be honest, my interpretation—which came up in that discussion—is exactly what we have just discussed.

If there is a gap site in a town, we think that we know what it looks like. It may in fact be an old coal yard or something similar, with a wooded area behind it. It has not been abandoned: that is just the way it has aye been. One can see how, although such a definition would work in many environments, it might have absolutely nothing to do with other environments.

We need to expand the definition, and I guess the bill team would like some help on that. Does anyone else have any comments as to where the team might go?

David Prescott: The view that was presented to us when we started was that development is all about steel, concrete, tarmac, bricks and all the rest of it. That was an issue, because our view was that development is about environmental and social benefit and providing a facility for the community.

We did not intend to leave the land to go wild—in fact, our aim was quite the opposite. We

recognise that most of the trees will, in time, need to be cut down because they are reaching the end of their 200 to 250-year lifespan. Therefore, we need to develop, in as much as we need to change and move on and try to maintain and improve the environment.

We had this very real problem: sustainable development is what we wish to do and we believe that is what we should achieve, but unfortunately we cannot get it through the current planning process. Although we have land that is public open space, the only protection that we can secure is a tree protection order. That does not do anything to address the other issues—it just stops the trees being chopped down without informing the council. There is no development capability.

We have a long history of this issue and trying to improve the land and I could explain it in detail if you wish, but now is probably not the time.

The Convener: Indeed, this is a long and involved process as it is.

Nigel Don: May I move on?

The Convener: Dave Thompson has a supplementary question to ask before we move on.

Dave Thompson: I want to raise a related point about the ownership of the land. I am referring to new section 97H(c) of the 2003 act:

"that, if the owner of the land were to remain as its owner, that ownership would be inconsistent with furthering the achievement of sustainable development in relation to the land".

That will be almost impossible to prove. Given that we now have the Pairc judgment in relation to crofting and the minister has approved the criteria laid out to define sustainable development, do we need the section at all?

The Convener: Rapid comments, please.

Peter Peacock: Frankly, this is a killer clause. It is a matter of interpretation, but on the face of it, one could demonstrate that a piece of land, in current terms, was

"wholly or mainly abandoned or neglected",

yet it could also be found that, in itself, the ownership of the land by the current owner was not inconsistent with furthering sustainable development and therefore the minister would be bound to reject the application. That is why it is potentially a killer clause.

I do not understand, although it probably can be explained, why the test is necessary if there is already a series of criteria that the minister must use—such as agreement that it is abandoned or neglected land—to judge whether it is in the public interest to further sustainable development. Would it be wise to leave open a situation where it has been proved that land is abandoned or neglected, but the application could still be rejected because the current ownership was not, of itself, inconsistent with furthering sustainable development?

The two tests seem to be in opposition to one another. There is some tricky stuff in that.

Roderick Campbell: The Law Society of Scotland draws a parallel with the procedure for compulsory purchase. Can you expand on that point and tell us whether there is any guidance on compulsory purchase that might help us in dealing with the question of abandoned or neglected land?

Duncan Burd: If you are unable to identify the true owner of the land, compulsory purchase involves an advertising mechanism. Something as open and transparent as that mechanism might help under community right to buy.

Roderick Campbell: That would not specifically address the point about abandoned or neglected land, per se, as it relates only to ownership.

Duncan Burd: It would in effect identify the owner through advertisements in *The Edinburgh Gazette* and local newspapers.

Roderick Campbell: Yes, but it does not help us with the definitional aspect of "abandoned or neglected".

Duncan Burd: No, and I do not think that the Law Society of Scotland wants to comment more fully on those definitions at this time because it is a minefield.

Roderick Campbell: Okay.

Duncan Burd: If the committee is willing to grasp the nettle and provide a definition then we will comment on it at that stage.

Nigel Don: That is fascinating. We give you minefields, although not intentionally.

New section 97G(5)(b)(i) requires us to specify

"the owner of the land".

In the light of what has just been said, is that not a problem in itself?

Peter Peacock: That goes back to the point that we made earlier about identifying the owner. It runs through part 32 and new part 3A. If I understand what Mr Burd said, as long as the community makes every possible effort and follows all the procedures to identify the owner but cannot, that should not be an impediment to the community getting permission to pursue the purchase of the land. It is in the bill.

Nigel Don: We have already discussed section 97C(3)(e). I do not want to try the law in Latin. Why should land that falls to the Crown because

the owner cannot be identified or because it falls in succession and there is no successor be exempt? Can anybody explain that to me? The answer I got to that question last week was that it is about process, but I do not really buy that. It might be about process, but surely it should be open to the community to have access to that land.

Peter Peacock: That is my view, but it is in the bill because, by definition, the owner cannot be defined, so the land falls to the Crown. That is why bona vacantia is mentioned. The land is excluded because nobody can identify the owner and if the owner cannot be identified, the land is excluded. The point would be whether a community can exercise any rights over land if it is in the ownership of the Queen's and Lord Treasurer's Remembrancer.

Nigel Don: Forgive me, but that is the policy point that I want to address. We tend to leave out the Crown. Almost the first lesson we learn in law is that the Crown will be excluded. Why? Why on earth should it matter that the land is known to be in the possession or occupation of the Crown? Can anyone rationalise why that should be the case? No? Thank you. Okay, I will push on.

New section 97G(6)(d) requires us to say that we know about all the rights and all the interests in the land—I am glad that there is a lawyer here—and to say anything we know about the "sewers, pipes, lines, watercourses" and other stuff that is under the ground. Why is that a good idea? Why is it in the bill? Can anybody convince me that it is not a daft idea because it is almost impossible to know what is under the land until it has been dug up, which is a stupid thing to do?

Peter Peacock: I do not understand it. In our written submission, we made the point that that requires clarification, and that such land should be eligible rather than not eligible.

Nigel Don: I am sorry; I am rather feeding you the words, but I am hoping that people will disagree with me.

The Law Society's submission talks about clean title under a compulsory purchase order and suggests that a community would not get clean title under the bill. Do you have any further thoughts on whether a community should get clean title if it has gone through the proposed process?

Duncan Burd: It would guarantee that the title was immune to subsequent challenge.

Nigel Don: Apart from the obvious opportunity of business for lawyers, is there any real downside to that?

Duncan Burd: No.

Alex Fergusson: If we remove all the criteria that we have been talking about, how do we ensure that this is the policy of last resort that Mr Peacock referred to in his opening remarks?

Peter Peacock: We are not arguing that we should remove all these criteria. Mr Thompson made a particular point about one part and having to demonstrate that keeping the land in its current ownership would be inconsistent with sustainable development. It is just not possible to prove that.

Our hope is, and the bill specifies, that the community would also have to show that it had tried all other means to get the land before it made the application. Other means would be things like seeking to negotiate or discuss matters with the landowner, making an offer for the land and so on. Those are entirely appropriate tests. That puts this test at the end of the queue. If the community could not show that it had tried to get the land by other means, it would not be able to progress with the application under the new section 3A. That makes it very much a fallback power. Nonetheless, it is that power that focuses people's minds and, as we saw in the context of the crofting right to buy, gives rise to the climate in which debate and discussion about negotiated land purchases can proceed. I hope that that answers your question.

12:45

The Convener: We move on to the interpretation of "sustainable development", which might offer an escape tunnel to get us away from this debate. Nigel Don will kick off questions on that.

Nigel Don: We have probably covered everything that I thought that we needed to cover. I was particularly concerned about wild land meeting the sustainable development test, which I think might be the case in some places.

The Convener: If no one wants to comment on that, Dave Thompson wants to come in.

Dave Thompson: I just wanted to reiterate the point that the crofting legislation and the Pairc judgment give us a clear steer on the issue.

Duncan Burd: I declare an interest, because I have been involved in Pairc—I have dragged it out for 11 years. [*Laughter*.] It is still in court, so it is sub judice. The 2012 ruling was simply a sideshow to a sheriff court action that is still on-going.

The Convener: Right. We will not get involved in Pairc—

Duncan Burd: I think that that is proof in itself that the 2003 act is full of pitfalls.

The Convener: Yes.

We have teased out issues to do with sustainable development quite well, but it strikes me that we still need to know whether the panel thinks that if ministers are going to find it difficult to satisfy the sustainable development test in relation to land, that will be inconsistent with the aim of furthering sustainable development. Should we put something in the bill about how land is defined in that regard? In the past, there has been a sense that we have not been talking about development of the sort that we discussed in relation to Dunblane. We have to be clear about what we are talking about. There is a much wider approach to defining land that should be in community ownership.

Peter Peacock: This is really difficult legal territory. The whole purpose of the 2003 act was to promote and remove obstacles to sustainable development. Notwithstanding what Mr Burd said, in the Pairc case the judges commented that sustainable development is a well understood term, which relates to

"the use and development of land."

I suppose that what it comes down to is how we describe the use and development of land. What ministers thought about that is openly revealed in the early decision letters about Pairc, both when they refused an application and explained why it did not meet the sustainable development test, and later when they approved the application and showed why it did meet that test.

There is quite a lot of case law—I mean that in the general rather than the technical sense—about what sustainable development means. In that sense, the issue is not too difficult. The key thing is to allow a community to make the case that what it proposes would advance or further sustainable development. The problem with the current definitions around abandoned and neglected land is that it appears that such a case cannot be made. However, that can be dealt with.

David Prescott: I feel, having been through it all, that the planning process sets out a framework for the development concepts in a physical community—whether it is truly sustainable development, I will not try to argue. However, certainly in the urban environment the issue is whether the use of the land is in line with the planning designations on the land, which are democratically derived and fully consulted on and picked over, and whether a community's proposed changes recognise that the current usage is no longer the right one and a second stage is sought—that is probably a bit complicated to work through.

The planning process has a lot to offer in urban areas. I will be quite honest: if the land that we wanted to buy had already been designated as land for building, I would not have expected us to have got the right to buy, and we would not have started. I freely admit that. The land was designated as open space, and that is what we wanted it to be, for the community to use.

There are interesting cases of planning applications for developments that in effect would blight the land, which will keep being rerun—for ever. Such things need to be thought through. The planning process is an extremely strong place from which to start in a more urban environment.

The Convener: That is a good point for us to take on board. We rely on the planning process to get things right, having taken on board the community's views. We all know that sometimes planners use wider criteria to override what communities want. I can think of examples of appeals in that regard.

I think that we agree, in general, that the agreed local plans are materially helpful and can back up what ministers have to do when they must make a decision.

I do not know whether we will see all the witnesses again. It is entirely possible that we will do, at another stage in the process. A point that I want to make is that the bill will amend part 3 of the 2003 act with regard to crofting, and I hope that the changes at stage 2 are not so major that they affect the proposed use of part 3 in relation to the community right to buy.

Peter Peacock: We have seen what the Scottish Government proposed in its consultation, and I know from meetings that have taken place over the course of the past week or two that a pretty clear consensus is emerging across all the interested parties. I hope that I can reassure the committee that it need not worry too much about the issue, which looks like it is heading in the right direction. The Scottish Government is dealing with the matter entirely appropriately, by the looks of things.

The Convener: Thank you.

We have had a long session, which I will bring to a close, because the committee has other business to deal with.

At our next meeting, on 3 December, the committee will take evidence from the minister on a draft affirmative Scottish statutory instrument—the Public Water Supplies (Scotland) Regulations 2014—and will take evidence on the Community Empowerment (Scotland) Bill from two panels of stakeholders.

12:52

Meeting continued in private until 13:01.

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