The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE

Wednesday 3 December 2014

Session 4

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RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE
31st 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)
*Alex Fergusson (Galloway and West Dumfries) (Con)
*Cara Hilton (Dunfermline) (Lab)
*Jim Hume (South Scotland) (LD)
*Angus MacDonald (Falkirk East) (SNP)
*Michael Russell (Argyll and Bute) (SNP)
*Dave Thompson (Skye, Lochaber and Badenoch) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Susan Carr (Community Alliance Trust)
Malcolm Combe (University of Aberdeen)
David Cruickshank (Lambhill Stables Development Trust)
Rory Dutton (Development Trusts Association Scotland)
Simon Fraser (Anderson MacArthur)
Jon Hollingdale (Community Woodlands Association)
Sarah-Jane Laing (Scottish Land & Estates)
Aileen McLeod (Minister for Environment, Climate Change and Land Reform)
Professor Alan Miller (Scottish Human Rights Commission)
John Mundell (Inverclyde Council)
Wendy Reid (Development Trusts Association Scotland)
Dr Colleen Rowan (Glasgow and West of Scotland Forum of Housing Associations)

CLERK TO THE COMMITTEE

Lynn Tullis

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

Rural Affairs, Climate Change and Environment Committee

Wednesday 3 December 2014

[The Convener opened the meeting at 09:30]

Interests

The Convener (Rob Gibson): Good morning and welcome to the 31st meeting in 2014 of the Rural Affairs, Climate Change and Environment Committee. Before we move to the first item on the agenda, I remind everyone present to switch off their mobile phones, as they may affect the broadcasting system. Committee members and others may use tablets to view meeting papers in digital format.

I wish to say a few words about Nigel Don. On behalf of the committee, I thank him for his hard work and contribution during his time with the committee. I wish him well in his new role on the Public Audit Committee, which has gained a true statistician.

Agenda item 1 is a declaration of interests. I welcome Michael Russell, the new member of the committee, and ask him to declare any relevant interests.

Michael Russell (Argyll and Bute) (SNP): I declare three relevant interests: I was a director of, and am a member of, the Colintraive and Glendaruel Development Trust; I am a member of Argyll Community Housing Association, which is involved in the provision of rural housing; and I have a contract with Scottish Hydro—SSE—for the provision of renewable energy through solar panels. A less relevant interest, I suppose, is that I am a former Minister for Environment.

Thank you for your welcome.

The Convener: Not at all—welcome to the committee.

Decision on Taking Business in Private

09:31

The Convener: Agenda item 2 is a decision on taking business in private. To be clear, the committee is asked to decide whether consideration of our draft report on the draft budget 2015-16—on which we have already taken evidence in public—should be taken in private at future meetings. Are we agreed?

Members *indicated agreement.*

Subordinate Legislation

South Arran Marine Conservation (Amendment) Order 2014 (SSI 2014/297)

09:32

The Convener: Agenda item 3 is subordinate legislation. The committee has a negative instrument to consider. Members should note that no motion to annul the order has been received. I refer members to the accompanying paper and invite comments.

Michael Russell: I have a constituency interest in the area of sea concerned. There was a difficulty with creel fishermen who were not consulted at the start of the process, which was truncated and urgent. When drafting is done in future, the interests of all users of the marine environment should be borne in mind.

The creel fishermen went through a period of some considerable worry while they waited to discover whether they would still be able to access the waters. I understand that licences are now being given, but that point should be noted for the future.

The Convener: That is very useful. Fortunately, we have the relevant minister with us—or perhaps not. However, I am sure that we will be able to pass the point on to Richard Lochhead to remind him about the matter.

Is the committee agreed that it does not wish to make any recommendations in relation to the order?

Members *indicated agreement.*

Public Water Supplies (Scotland) Regulations 2014 [Draft]

The Convener: Dr Aileen McLeod, Minister for Environment, Climate Change and Land Reform, has joined us for the first time. Welcome to your post, minister.

The Minister for Environment, Climate Change and Land Reform (Aileen McLeod): Thank you.

The Convener: On behalf of the committee, I congratulate you on your new role. We welcome you here, and we very much look forward to working with you.

I take this opportunity to thank the previous Minister for Environment and Climate Change, Paul Wheelhouse, for his valued contribution to the committee's work. I wish him all the best in his new role.

Agenda item 4 is also subordinate legislation. The new minister will give evidence on the draft Public Water Supplies (Scotland) Regulations. The regulations have been laid under the affirmative procedure, which means that the Parliament must approve them before the provisions come into force. Following the evidence session, the committee will be invited to consider the motion to approve the regulations, under agenda item 5.

I welcome the minister and her official, Sue Petch, who is the deputy director of the drinking water quality division in the Scottish Government.

Angus MacDonald (Falkirk East) (SNP): I feel obliged to declare a non-pecuniary interest, as a close family member in Stornoway has an action against Scottish Water in the Court of Session that relates to water quality. I will therefore recuse myself from items 4 and 5 and will take no part in those discussions.

The Convener: Thank you.

Minister, do you wish to make a statement on the regulations?

Aileen McLeod: Yes. Thank you for the opportunity to make some opening remarks.

First, I would like to put on record how much I am looking forward to working with the committee in my new role. I am keen to be as helpful as I can be to the committee in its work, and I am sure that I will be a regular visitor.

I have with me this morning Sue Petch, the deputy director of our drinking water quality division, who may help to answer some of the committee's questions.

In Scotland, 97 per cent of the population receives water from public water supplies that are provided by Scottish Water. The other 3 per cent of the population receives its water from private water supplies, which are regulated under private water supply regulations.

As the committee is aware, Scottish Water is a statutory body that delivers drinking water to 2.4 million households throughout the country. Water that is provided by Scottish Water for the purposes of human consumption must meet the same quality standards regardless of the size of the supply or the location in Scotland.

The main purpose of the regulations is to ensure that the quality of Scotland's drinking water continues to be of a high standard and satisfies the requirements of the European drinking water directive. In particular, the regulations aim to protect human health from the adverse effects of any contamination of water that is supplied by Scottish Water. They do so by setting out the requirements to be met and by detailing how those

may be enforced so that consumers receive a supply of safe and clean drinking water.

The requirements of the European drinking water directive in relation to public water supplies in Scotland are currently implemented by the Water Supply (Water Quality) (Scotland) Regulations 2001 and various amendments to those regulations. I believe that it is time to replace the existing regulations with a new set of consolidated regulations to aid transparency and enable some revisions and new provisions to be introduced.

The new provisions include, first, a requirement to risk assess each treatment works and its connected supply. Although provision for risk assessment was not included previously, Scottish Water has been risk assessing its treatment works since 2006 as a requirement of the directions that Scottish ministers give it. That approach is promoted by the World Health Organization and has been embraced by many regulators throughout the world.

Secondly, the regulations include a new provision that requires Scottish Water to identify drinking water abstraction points and monitor the quality of water at those points. That aligns with the requirements of the European water framework directive.

The regulations also introduce new offences. It will be an offence for Scottish Water to supply drinking water that has not been disinfected and subjected to adequate treatment and to supply drinking water from a treatment works in contravention of the requirement of a notice.

The duty to treat water and to disinfect is included in the regulations with the specific aim of protecting public health. We believe that, given the gravity of that duty, it is appropriate that it should be an offence for Scottish Water to supply any water if it has failed to fulfil that duty.

In addition to those new requirements, we have included a number of minor changes. For example, the standard for taste and odour was a specific quantitative value in the previous regulations. It now mirrors the standard in the directive, which states that the taste or odour of the water must be “Acceptable to consumers” and that there must be “no abnormal change”.

A very high standard of drinking water quality is important for Scotland, in relation to the health of not only the people who live here but the large number of visitors who come here each year. It is therefore important that we continue to ensure that the standard of water in Scotland is the best that it can be.

I ask the committee to support the regulations, and I am happy to answer any questions.

Graeme Dey (Angus South) (SNP): Thank you, minister, and welcome.

We are told that a considerable financial impact is not anticipated, because the number of such failures in any year is expected to be low. What is the basis for that assertion? Do you happen to have the stats on the number of breaches that have occurred previously? For clarity, what is the reason for the change to the new requirement in part 6 of the regulations that Scottish Water, rather than local authorities, will carry out the duty?

Aileen McLeod: You asked about part 6. The Water Quality (Scotland) Regulations 2010 introduced a requirement to investigate failures in public buildings. The regulations were put in place specifically to address any infraction risks that there might be if Scotland had not transposed that specific requirement of the drinking water directive when the original transposing regulations were made back in 2001. When the 2010 regulations were made, as the local authority was given the power to take enforcement action against building owners, it was believed that the local authority should carry out the investigation. However, the practical implementation of that requirement has not been straightforward.

For any sample failure, Scottish Water must determine whether that failure is due to its supply at the point of entry to a building, regardless of whether it is a domestic or commercial property. It must investigate that and, if necessary, carry out inspections to ensure that any backflow of contaminants into the public supply could not occur.

When failures in public buildings have occurred in the past three years, local authorities have often been reliant on Scottish Water to carry out the investigation. A specific example of that was a serious contamination incident back in 2012, which involved antifreeze from an air-conditioning system entering the domestic distribution system at a laboratory. In that example, the local authority did not have the necessary expertise to investigate the failure.

Our policy is very much for Scottish Water to be required to investigate any such failure and to be able to recover its costs. You asked how many failures there have been. In 2013, there were failures in four public buildings.

Graeme Dey: Thanks. That is useful.

Jim Hume (South Scotland) (LD): I welcome the minister to her new post and look forward to working with her—constructively of course—in the future.

Why was the consultation period only six weeks, which does not seem very long? The policy note states that it is not thought that the regulation will

have any "significant financial effect". How robust is that statement?

Aileen McLeod: The consultation generated 11 responses, including from Scottish Water and eight local authorities. No particular concerns were raised during the consultation. Some of the points that Scottish Water raised may be addressed in guidance; certainly, the Scottish Government said that it will consult Scottish Water in preparing any such guidance. Scottish Water agreed in its response that a business regulatory impact assessment was not needed, because there would be no additional costs on businesses.

Jim Hume: That is fine. Thanks.

The Convener: There are no further questions from members, so I thank the minister.

Do you wish to sum up, minister?

Aileen McLeod: I am quite happy not to.

The Convener: We will move to agenda item 5.

We can now debate the regulations for up to 90 minutes, if members feel so inclined—I hope that they will not. If you want to shorten the winter, that is the way to do it.

I invite the minister to move motion S4M-11703.

Motion moved,

That the Rural Affairs, Climate Change and Environment Committee recommends that the Public Water Supplies (Scotland) Regulations 2014 be approved.—[*Aileen McLeod.*]

Motion agreed to.

The Convener: I thank the minister and her official for that brief appearance. I am sure that we will be seeing more of you in due course, minister. I look forward to that.

Aileen McLeod: Thank you very much, convener.

The Convener: We will have a brief suspension to allow for a changeover of witnesses.

09:45

Meeting suspended.

09:47

On resuming—

Community Empowerment (Scotland) Bill: Stage 1

The Convener: The next agenda item is evidence on the Community Empowerment (Scotland) Bill from two panels of stakeholders. With the first panel we will focus on the rural context of the bill, and with the second we will focus on the urban context and European convention on human rights issues.

I welcome the first panel, which consists of Jon Hollingdale, who is the chief executive of the Community Woodlands Association; Simon Fraser, who is a solicitor from Anderson MacArthur Ltd; Malcolm Combe, who is a lecturer in law in the school of law at the University of Aberdeen; Rory Dutton, who is a development officer for the Development Trusts Association Scotland; and Sarah-Jane Laing, who is director of policy and parliamentary affairs for Scottish Land & Estates.

I refer members to the papers. We open questions with Graeme Dey.

Graeme Dey: Good morning. My questions are more scene-setting questions than anything else. Are panel members satisfied with the extent of the dialogue and consultation on both the community right to buy and the crofting community right to buy? Would it have been more appropriate if the part 4 provisions had been included in separate land reform legislation?

The Convener: The microphones are controlled centrally, so the panel need not switch them on and off. You can just indicate to me that you want to speak, and I will bring you in. Who wants to kick off?

Jon Hollingdale (Community Woodlands Association): In general, we were happy with the extensive consultation process. We concentrated more on part 2 of the bill than on the crofting community right to buy—we did not respond on that.

On which bit of the legislation should go in which bill, a year or two ago, when it became apparent that there was a double stream—the land reform review group and the Community Empowerment (Scotland) Bill—several of us asked whether the community right to buy would be better in the land reform work. At that time, we did not know that a new land reform bill would be coming, so we were happy that something was being done on some of the issues with the community right to buy. If the Community Empowerment (Scotland) Bill was to be the

vehicle to make that happen, we were happy with that. With the benefit of hindsight, I can say that it would perhaps be better in the proposed land reform bill, but we did not know about that at the time.

Simon Fraser (Anderson MacArthur): The consultation on the crofting community right to buy was fine. The suggested changes to part 3 of the Land Reform (Scotland) Act 2003 have come along pretty late in the day, and it will be essential to ensure that the enhanced community right to buy—which, in a way, mirrors the current crofting community right to buy—is brought into line with whatever is done to the crofting community right to buy as a consequence of the new measures.

Malcolm Combe (University of Aberdeen): There was an exploratory consultation and a follow-up consultation, so there has been plenty of chance to get involved.

On the positioning of measures within a bill that might be headed "land reform", we might hark back to the passage of the 2003 act, when some people thought that the access provisions should not have been in part 1 of that act but in an access act. However, to some extent, as long as the law is on the statute book, it is fine. It would be optimal if the bill had a better and clearer title, but as Jon Hollingdale mentioned, because of the way in which things have developed, we can see why it has ended up under the heading of community empowerment as opposed to land reform.

Rory Dutton (Development Trusts Association Scotland): We are happy with the consultation. We were interested primarily in the other elements of the Community Empowerment (Scotland) Bill in its early stages. Perhaps, with hindsight, part 4 of the bill could have been part of the broader land reform agenda, but we have no complaints so far.

Sarah-Jane Laing (Scottish Land & Estates): On the crofting community right to buy, we are more than happy with the consultation that is taking place throughout the country at the moment; the discussions on the Community Empowerment (Scotland) Bill have been lengthy and extensive. We would probably have liked more consultation on the definitions of abandoned land and neglected land, which I am sure we will talk about later.

On where the community right to buy should be placed, we have all agreed that land reform is a process. It is not necessary for all land reform measures to be in one bill: land reform is affected by various pieces of legislation. However, we need to ensure that people have clarity about what is happening. Simon Fraser referred to how changes impact on other changes; I worry that there might be some confusion if we have parallel pieces of legislation dealing with the same issue.

The Convener: Part 3 of the 2003 act, on the crofting community right to buy, is almost a live issue in terms of court proceedings, so it is important that changes to that, which we will investigate further and debate at stage 2, be dealt with before amendments are made to the community right to buy so that we are at that stage up to date with what the regulations will say. It might address Simon Fraser's point if things are dealt with in that order. If we are agreed about that, it is something to note for the future.

Alex Fergusson (Galloway and West Dumfries) (Con): Good morning, panel. This question, too, is a bit of a scene setter. Back in June, the convener of the Local Government and Regeneration Committee wrote to the Minister for Local Government and Planning expressing a few concerns about the information that was provided in the policy memorandum. In fact, he described it as

"little more than a superficial overview",

which is quite a criticism. Correspondence went back and forth and a few things were clarified.

However, at the end of the day, the policy memorandum devotes fewer than three pages to part 4 of the bill. At one point, it summarises 20 sections in a mere seven bullet points. My question is simple: does anyone feel that they were not provided with enough information to explain the bill's aims, policy choices and provisions fully, or were you satisfied that enough information was provided?

Sarah-Jane Laing: As a Community Empowerment (Scotland) Bill stakeholder, Scottish Land & Estates got quite a lot of information, but that information was not fully reflected in the policy memorandum. The Scottish Government did a great job in developing the plain English guide, which was very useful. However, I am not sure that we have had enough information. I have come to that conclusion having discussed elements of the bill, because we have different people saying provisions mean different things. That means that, somewhere along the line, the explanatory notes and the policy memorandum are not providing enough information on what is to be delivered.

Jon Hollingdale: I would largely echo that. On a policy level people who are involved regularly in the subject all understood what was meant and probably what was intended. What was missing—we will probably pick up this later—is how certain provisions are expected to deliver the outcomes in the policy memorandum. On a line-by-line basis, there are gaps. Although the Government wants to achieve X, it is saying Y. That does not appear to work for us.

Malcolm Combe: I start from a slightly different position from most people because I am really interested in such matters and I engage regularly with legislation. I do not find the approach to be too problematic, but I appreciate that my starting point is perhaps a little bit different. I thought that there was a fair amount of explanation that allowed me to understand the bill.

Alex Fergusson: By the sound of it, the differences will come out in further discussion.

The Convener: I think that they will.

Alex Fergusson: I am happy to leave it at that for now.

Jim Hume: Good morning, panel. On part 4 of the bill, the financial memorandum states:

"It is not anticipated that the provisions should impose any significant additional costs on the Scottish Government."

However, it also goes on to state that

"there is a large degree of uncertainty on the level of costs that may be incurred"

by communities and landowners. What costs do panel members anticipate will come from the legislation for rural communities, landowners and public bodies?

Rory Dutton: I point out that you need to view the cost of part 4 in the wider context in which the Community Empowerment (Scotland) Bill sits. If there is to be significant community empowerment and more transfers of assets and land ownership, greater support will be needed for community anchor organisations in capacity building, training support and financial support. You cannot look at the cost of that measure alone or look at the bill's financial implications in isolation because they are part of a wider community empowerment agenda.

Sarah-Jane Laing: Many of the provisions are demand driven, so it is very hard to gauge the costs to the Scottish Government—especially if it is to take on the costs of running ballots and other elements. We do not know what demand will be for use of the provisions, especially if they are extended to urban Scotland. It is very hard to pinpoint the exact costs.

Jim Hume: To develop the issue, could we look at some of the related costs, such as legal costs and the cost of setting up plans? It would be useful for us to know about the specific costs.

Simon Fraser: In general, the costs that fall on the community—if I can look at the issue from that end—will tend to be met if not from public funds, then from lottery funds and other such sources. In the early stages, there may be a bit of pump priming from Highlands and Islands Enterprise, but that will not be a vast amount.

Inevitably, costs will have to be met. The average community seeking to take on a project will not necessarily have the funds to do so itself, even in the initial stages. In the past, HIE was able to assist substantially, but such assistance seems in the main to have been moved to the Scottish land fund purse. However, there will be a cost that must be met from some source.

10:00

Jon Hollingdale: The biggest cost, overwhelming everything else, is acquisition of assets at the end of the process. If we have a Scottish land fund of £10 million a year, then there is £10 million of Government money at the moment going towards acquisition. I am sure that that money would be spent, but it is very difficult to predict what proportion of those acquisitions would come through the new provisions. Even if there were no community right to buy, or it did not work at all, it is still quite likely that there would be £10 million-worth of community acquisitions coming through the national forest land scheme, local authority asset transfers or private sales. Picking out the impact of the provision is hard: the community right to buy purchases so far have been a relatively small proportion of the overall big picture. It is difficult to give clear numbers.

The other direct costs are those on whichever branch of the Scottish Government ends up administering the scheme—on-going staff costs, ballot costs and so on. Even if there were 100 ballots a year, which seems to be highly unlikely, at £3,000, £4,000 or £5,000 each, that is still equal only to the cost of one acquisition of 100 hectares. Those costs are relatively small, but are demand driven and difficult to pick out exactly.

Jim Hume: We do not have a crystal ball, but we have to try and think about these things. Will we need additional support for applications, especially if there is an increase in applications, and if so, what form of additional support?

Jon Hollingdale: Yes—additional support will possibly be needed. Rory Dutton and I both work for organisations that provide such support to our members. If, as a result of the legislation, the floodgates open, we would be swamped by demand. However, I do not think that that is very likely: we expect a gradual increase in demand, although we might need some help to meet that. It is not a vast task, and it is not likely to be an extra vast task for HIE or whichever part of the Government is supporting and administering the scheme.

Malcolm Combe: Some support already exists. A community might have to incorporate as a company limited by guarantee: that already had to be done under the 2003 act, so it can look to the

sources of help that already exist. It is just a case of beefing up the available support.

An analogy might be the recent introduction of the crofting register, which obviously has some administration costs, but—to quote a phrase—you cannot make an omelette without breaking eggs. There will be costs somewhere, but if the policy aim is to be met, the costs will have to be met.

Claudia Beamish (South Scotland) (Lab): I have a quick supplementary. One or two panel members have mentioned HIE. I wonder about support beyond the Highlands and Islands in relation to communities and costs, especially in view of the fact that the land reform review group has made recommendations about the different bodies that might be set up. Of course, that might not happen, despite the announcements about the consultation, but we should not to pre-empt the new land reform bill. Do you have comments on support for communities beyond the Highlands?

Rory Dutton: The Scottish Government is funding a strengthening communities programme, which we are helping to deliver in partnership, for a relatively small number of communities outwith the HIE area—about 25 groups that are already established. That sort of capacity building is very welcome and we would like to see it rolled out further.

There are also small grants schemes—for example, investing in ideas, which is funded by the Big Lottery Fund. I concur that where there is opportunity but no established group, there is a deficit in support to get an organisation up and running in order for it to then be able to take advantage of the legislation. It is a lengthy process.

Jon Hollingdale: There is a distinction to be made between financial support and the support of helpful folk in talking people through the application process. To some extent, the latter is less of an issue because there are organisations such as ours and DTAS to do that across Scotland, and if there is less of that support outside the HIE area that is less of a problem. The big issue is that HIE has also been able to support the development of community groups financially in a way that Scottish Enterprise has not—or in a way that has not happened in the Scottish Enterprise area. That is a gap that the CWA and DTAS are not in a position to fill. A long-standing issue has been whether Scottish Enterprise, or whatever body works outside the HIE area, should have a strengthening communities remit, but that has not come yet.

The Convener: Yes—what Scottish Enterprise does in that respect is a long-standing issue that has been raised in committee after committee. We take that point on board.

Let us move on to the Land Reform (Scotland) Act 2003 and the removal of land-based barriers.

Cara Hilton (Dunfermline) (Lab): Good morning. An objective of the 2003 act was to remove land-based barriers to the sustainable development of rural communities. How well has that worked in practice, and how has rural Scotland changed as a result? In its written submission, the Community Woodlands Association states that

"the complexities and hurdles contained within the act have severely limited its use on the ground".

Does the panel agree with that statement?

Jon Hollingdale: The number of successful acquisitions under the 2003 act is pretty low; I think that there have been about 16 in 10 years, which does not seem a hugely positive track record, although the act has a wider symbolic value. The act sets a framework, and it has been easier to negotiate settlements for other transfers to community ownership because the act is there. In that respect, the act has had a very positive effect.

Nevertheless, it is probably fair to say that there has not been a step change in the rate of community ownership. Our membership is roughly 150 organisations, and the median date of establishment is 2002 to 2003—in other words, half of them were around before the 2003 act was passed. A lot of the big, iconic buyouts predate the 2003 act, so it did not completely change the practical delivery or extent of community ownership in a radical way. It has definitely helped, but perhaps not to the extent that we had hoped it would.

Malcolm Combe: I echo a lot of what Jon Hollingdale said. I checked the register of community interests in land yesterday, and it currently contains 175 registered interests. Some of them have been deleted and a few have been activated, and 40 of them relate to Fife. There were a lot of registrations around Kinghorn loch, where there was individual ownership, so some of the registered interests can be discounted because five applications could represent one community, if you know what I mean.

As Jon Hollingdale said, the 2003 act has maybe not had a marked effect. Symbolically, it has some value but, bureaucratically, not many changes have been effected because of it. For example, there were a lot of attempts to take on the old Krystal Klear bottling factory in Lochwinnoch, but nothing really happened. The 2003 act may not have been effective in that particular instance, but whether it has been effective overall is a more difficult question to answer.

Rory Dutton: As Jon Hollingdale said, it is important that the 2003 act is in the background even if things do not appear in the statistics. For example, local authorities are aware that a community might register to buy a property under the community right to buy if things do not start to move.

The absolute numbers are low, but the bottom line is that it is not a right to buy so much as a right of pre-emption if a property comes on the market. Tied to that is the fact that registration expires after five years. Volunteer organisations already find the registration process quite onerous, and the question is whether they can go through it every five years. For me, the bottom line is that this is a right of pre-emption, and a lot of assets that communities will be interested in simply do not come on to the market.

Sarah-Jane Laing: I do not disagree with anything that has been said so far. As Jon Hollingdale pointed out, the transfers that have happened through the 2003 act are only one part of the picture, but I think that everyone will agree that the act itself has probably not delivered on the aspirations that many people had when it was introduced.

Cara Hilton: As a wee supplementary to that, how have the experiences to date informed the bill as currently drafted?

Sarah-Jane Laing: One of the things that come through in the bill is that ownership is only one aspect of empowering communities. The bill takes into consideration the need to understand how community planning works, what a community's needs are and whether ownership will actually meet those needs, and it starts to look at community ownership in the round of an effective local decision-making and community planning framework.

I do not think that the bill goes far enough, but it is a start. A lot of the problems about relationships and communication and other barriers to development have been drawn out because of the problems that people had with the 2003 act, and they have been recognised in the bill.

The Convener: But it still does not go far enough.

Sarah-Jane Laing: No.

The Convener: Please explain.

Sarah-Jane Laing: You cannot legislate for all aspects of community planning and local decision making. I would have liked the bill to include something about the role of community councils and the effective part that communities play in local decision making by local authorities and other agencies. For me, the community planning aspect seems like it will be just be the same agencies around the table; it does not feel like a bottom-up approach that involves communities of geography and communities of interest. We have made the same comments about the community planning parts of the bill to the Local Government and Regeneration Committee but I think that the framework within which community ownership sits is very important, especially from a rural point of view, and the community planning partnerships will need to be working effectively.

The Convener: Indeed.

Jon Hollingdale: First, I agree with Sarah-Jane Laing that ownership is not the only means by which communities can achieve their objectives, and the fact that the community right to buy has been put into the bill's broader scope is a useful recognition of that. After all, many other bits of the bill support community aspirations without the need for ownership.

Although the bill contains a lot of positive amendments to the Land Reform (Scotland) Act 2003, they are at some level a bit cosmetic and do not address certain structural problems in the legislation. They will undoubtedly smooth the process and ease matters, but it is a bit like putting airbags and a catalytic converter into a car with only one gear at a time when petrol is being rationed. It is not going to go very much better, and to my mind it is a bit of an issue that the bill has not addressed some of the fundamental structural problems with part 2 of the 2003 act and the ways in which it does or does not work.

The Convener: Such as?

Jon Hollingdale: The good things include allowing Scottish charitable incorporated organisations to be community bodies. However, even if your community body is an SCIO or a company limited by guarantee, that will not change the fact that you will still have to go through the registration process, sit there for five years and then reregister endlessly until the landowner decides to sell, if they ever do. Questions such as whether we need a two-step registration process that is very much at the seller's whim are far bigger and more fundamental than what form of community body is sitting there, waiting for the land or whatever to become available.

The Convener: We will come back to the issue of registration in a bit more detail.

Jon Hollingdale: The other week, I made a point of looking at the register to get the up-to-date statistics, and I found that of the 175 or so registrations that had been listed, 124 were deleted. We are not talking about 124 separate communities—as we have said, a single community can make multiple registrations—but we are still talking about 124 out of 175 instances in which the community has done a lot of work to

get to a certain stage in what is not an easy process, and it just has not happened. Another 30 or so are sitting there waiting for the land to come up, and in another 16 cases, the registration has gone through. If the majority of communities are not able to progress through the scheme, that suggests that there is a structural issue to deal with.

10:15

The Convener: Did you want to come in here, Dave?

Dave Thompson (Skye, Lochaber and Badenoch) (SNP): I was going to pick up on a general issue. I am happy to deal with it just now, if you would like.

The Convener: Well, it might be an idea, since we are talking about registration.

Dave Thompson: Okay.

Good morning, panel. I am interested in your views on whether pre-registration is needed at all. A lot of the evidence that we have taken indicates that a great number of registrations have been what might be called "late"—I put that in inverted commas—what with the work that communities have to do to register an interest. They also have to anticipate what is in the minds of the landowners, which is basically impossible. How is a community to know whether a particular piece of land that has been under one ownership for hundreds of years is suddenly going to come up? Why would a community register an interest in property that has not been on the market for a long time? Should we just simplify the process and, as the norm, allow communities not to have to pre-register or register early, which would mean that they would not need to reregister?

Moreover, if reregistration is required, I think that five years seems like a very short time. Perhaps the period should be extended, with a much simpler process in which people simply say something like, "I want to reregister." I want to hear your views on the matter, because I wonder whether there is any need to register early.

Rory Dutton: I agree that we need to take a good look at the issue. After all, registering in the first place is a big job, and some people get scunnered and give up at that stage. You are also right to suggest that five years soon pass, and then people have to think about reregistration. It would be great if we could extend the period to 10 years or whatever, or if we could consider options for doing away with the process altogether.

I do not have any stats for late registrations, but in a lot of those that we get involved with and speak to people about—as you said, people cannot anticipate what land will come up, and there are probably several different assets that could make a key difference to their community—the question is whether they register interest in all the assets just in case one of them comes up. Moreover, there might be several different ownerships involved, and I think that greater emphasis on what are now being called late applications would certainly help.

As for pre-registration, I can see why it exists, but I think that options for doing away with it are definitely worth exploring.

Jon Hollingdale: As I understand it, the idea behind pre-registration is to encourage communities to be proactive, and I think that we will agree that being proactive and thinking ahead are generally better than simply being reactive to opportunities. However, having been encouraged to be proactive and make these registrations, communities are then not rewarded for doing that. As you suggested, once we get past the individual iconic sites—this particular lighthouse, say, or that disused military base, which the vast majority of communities do not have—the process becomes much more generic.

If I were designing things from scratch, I would have a system in which communities, however they might be structured or defined—whether, for example, they had community anchor organisations or whatever—would carry out community development planning and identify the sort of land and buildings assets that they needed to deliver the things that their community wanted, whether that be land for allotments, affordable housing, a children's play park or a community woodland. If they had specified that they needed land for affordable housing, clearly certain types of land would fit that specification; after all, the 1,000 hectares out on the moor would not be useful in that respect. A specification would be laid down and when land came on to the market, communities would have the possibility of pre-emption if that land fitted their previously announced specification.

France has a system—you will be pleased to hear that I will not give you the French name—for land development and rural settlement associations that has standard pre-emption on land when it comes on the market. When someone sells land in rural France—I do not know where they draw the line around rural France—those 20 or so organisations that are run on a regional basis decide whether they want to pre-empt, to buy in and then sell on if it is in the public interest to do so. I do not know how public interest and sustainable development are framed, but if it is for the good of the community, those organisations will buy and then sell to the local farmer or whatever.

I do not see why we cannot have a similar system that has an automatic right of pre-emption so that someone can at least have a look at the sale and decide whether it fits with an existing community development plan; if it does, the community can be given the option and if it does not, the open market sale can go on. That does not breach European human rights rules, otherwise the system would not have run like that for 40 years in France.

The Convener: But it makes a difference when you have got local government and regional government to focus on the plans that you are talking about.

Jon Hollingdale: Yes. It is a whole different structure, but the principle would be workable.

Malcolm Combe: One of the purposes of registration has been alluded to. It focuses the community, singles out an asset and programmes what the community will do. The second role of registration is publicity for the landowner, who has the legitimate expectation that they should know what is happening to their land. Registration puts the landowner on notice that the community is interested and that is fine.

However, to a certain extent, publicity could be achieved in another way. A comparison has just been made with France, but in Scotland you could look at part 3 of the 2003 act on the crofting community right to buy. Under that, there is no need to register because the publicity relates to the fact that the land is under crofting tenure, is part of the common grazings or is certain eligible additional land. Whether an owner of rural land should just be on notice that any land that they own could be susceptible to a right of pre-emption, whatever right that might be, is a policy question.

Doing away with registration would do away with the focal point of getting the community mobilised and might do away with some publicity aspects, but that is not necessarily a bad thing in and of itself. There are other models.

On the point about late applications, the first big bit of litigation under part 2 of the 2003 act was to do with Holmehill near Dunblane. When the community saw the “For sale” signs, it realised that the hotel development was suddenly happening and it tried to go through the section 39 late applications route, which has bigger hurdles in the form of sustainable development and public interest tests.

The Convener: We have heard evidence on that case.

Malcolm Combe: I will gloss over it; that will have told you more than I can.

My third point is about the five-yearly renewal. Having a from-scratch five-yearly renewal is probably an unnecessary administrative burden. It should be a quick question about whether the community still wants to have a registered interest. Assuming that the register is to stay, it could be a lot simpler and the renewal system could be part of that. A fast-track system would certainly help.

Sarah-Jane Laing: The driver for registration should be the community’s needs. Whether the landowner is likely to put the land on the market at any time in the future should not be irrelevant, but it should be a secondary driver. We have talked about rural housing and rural buses and how you do not stand in the road if there are no buses coming. That does not mean that there is no need for a bus. It is the same with registering an interest. A community that registers its interest is indicating that it has a need that it feels will be met by that piece of land. That is quite a positive step.

Malcolm Combe talked about the owner being put on notice. In some cases, registration has been the first step in a dialogue with owners that has often led to asset transfers outwith the terms of the 2003 act. I agree that if we are going to look at reregistration, there is no reason why it should not be simplified.

The Convener: A couple of members have supplementary questions.

Dave Thompson: May I just come back on that, convener? I understand what is being said, but the Holmehill example is interesting in that it was a public area, to all intents and purposes. The local people thought that it was public and they had used it for decades or more. Why would they ever think that they would have to register an interest in something that they thought was theirs anyway, although legally it was not? The legislation caused them problems; the evidence that we heard last week was that the conditions about late applications and all the rest of it made it virtually impossible for local people to get in there and do anything about it. There are obviously serious problems and issues.

Convener, can I ask a question about the good reasons test and what is replacing it, or would you rather take the supplementaries?

The Convener: I will take the supplementaries from Alex Fergusson and Graeme Dey, and then you can move on to that.

Dave Thompson: Okay.

Alex Fergusson: I will be as brief as possible. Sarah-Jane Laing has just put much more eloquently than I would have done some of the point that I was going to make. Personally, I am inclined to the view that some sort of process is necessary, albeit a simplified one—I am very open to that argument, particularly when it comes to reregistration. A process of some sort would help

to underline and strengthen a commitment by the community and alert the owner to the possibilities that might exist through a right to buy.

My question is for Jon Hollingdale. You said that, having gone through the process, people would have to hang around and wait for the land to come on to the market, or words to that effect. Forgive me if I have put words into your mouth. I would be interested to know what your answer to that is, because it seems to me that, if people are not going to hang around and wait for the land to come on to the market, we are talking about an absolute right to buy as opposed to a pre-emptive one. Will you expand on that? Is that what you are advocating?

The Convener: Just before Jon Hollingdale answers, Graeme Dey has a supplementary to the supplementary.

Graeme Dey: It very much fits in with Alex Fergusson's point. Malcolm Combe commented that, instead of a full, five-year reregistration process, we could simply go back and say, "Do you still have an interest?", but "you" might be a different entity. I have a planning application in my constituency that, if it is granted, would see a community's housing footprint increase from 100 homes to 300 homes within four to five years, so the nature of that community could fundamentally change.

The Convener: I ask Jon Hollingdale to respond to those two points.

Jon Hollingdale: On Alex Fergusson's point, we agree in principle that there should be an absolute right to buy, but I suspect that we will talk about the part 3A bits. My concern is more about why communities do not use the part 2 registration process as part of proactive planning.

As you say, as the bill is constructed, there is no mechanism to make anything happen once people have achieved their registration. If a landowner suddenly becomes aware that there are community interests and aspirations, they can either say, "Let's go through the process"—that has happened with a few landowners where the right to buy has worked—or they can say, "Let's come to a negotiated settlement." However, if they are not interested, there is nothing that people can do.

The reality of community bodies is that they are set up to do a range of things and to deliver community aspirations, and they will choose the routes that appear to achieve things for them. A community body is not going to sit there with existing registrations and nothing happening. It will focus its attention. If it has five ways to try to achieve the multiple things that it wants to do—few communities come up with a single issue—it will focus on the things that look achievable. It will say, "We know how to do that. We can go to the lottery and get a grant."

Communities that have gone into and through the registration process tend to be those with a single, iconic, stand-alone project that is an obvious thing to fix. For example, I think that the process has been gone through for two lighthouses and military bases. Those were one-off things in particular communities. There was enough value in those single sites for the community to register an interest. In general, communities have not used the process for run-of-the-mill developments such as affordable housing and allotments. Communities either try to achieve that in other ways, or they give up and say that they will do it when the opportunity arises.

10:30

The way in which the 2003 act is structured makes it difficult to register an interest in multiple sites. The community in a small town might want affordable housing and there might be 20, 30 or 40 available gap sites, but the community will have no idea which one will come up first. Should it register an interest in all of them? It would be much more sensible to have a system in which a community that wants affordable housing, allotments or whatever can say that it would like a right of pre-emption on any piece of appropriate land that comes up in its area, and it can then pick the first one that comes up. As part of that process, one of the landowners might well step forward and say, "Actually, you know what—this bit here would work," so the community would not have to go through the process at all.

That would be my way of trying to broaden the scope of the way in which communities can use the 2003 act. If they can register an interest in any bit of land that fits—obviously, someone would have to run the rule over that—that would be a much better approach than their having to specify a particular site and go through the process with each separate landowner, with a very uncertain outcome.

The Convener: We will put that question to the urban panel that comes next.

Simon Fraser: I do not have any particular expertise on part 2 of the 2003 act, but I have a general comment. I was involved professionally in the acquisition of a number of large holdings, particularly prior to 2003, I have to say. I also have to say that the 2003 act provisions would not have assisted with any one of them; in fact, those provisions probably would have acted as a major barrier to progress in every single one.

I can well understand how part 2 might be of assistance for those who want to acquire the odd surplus lighthouse or something like that but, if the

whole estate that a community lives on suddenly comes on the market, the current provisions are practically useless in relation to being able to intervene at the required level, scale and time. A community might not realise that the whole estate and people's whole personal world is going to come on the market. The community might have an aspiration to acquire something but, when the whole thing comes on the market, that is an entirely different ball game. My view is certainly that the act as it stands would be of no avail to them whatsoever.

Malcolm Combe: After that rather seismic comment from Simon Fraser, I move to matters more mundane. On who is "you" and whether "you" still have an interest, the question would be: who is "you" now? To an extent, that is answered by saying that an immortal body—a company limited by guarantee—has been set up. The office-holders might have changed, but the "you" is the company limited by guarantee. In that regard, registration focuses who the "you" is. If we moved to a situation in which there was no registration, there might be different questions as to how to identify the community if it did not have to take that pre step.

In the present scheme, there is provision for overlapping registrations, and that has happened in Assynt. Therefore, it is possible that there could be two "yous", and it would then be for the Scottish ministers to decide which one to go for. The question about who is "you" is shrewd, but it can, I hope, be answered.

To respond to the point about putting the landowner on notice, I agree that it can be a good thing to give a signal, but I am aware of some communities that have been in dialogue and which think that registering an interest might be seen as inflammatory. If they were to register an interest, that might lock the landowner into a process that might not be as good as a consensus-driven approach. Obviously, those are just two things in a dialectic—there is one thing about the registration process that could be good and one that could be bad. Some people think that registering an interest might change the dynamic of what could have been a consensual negotiation by making it a bit more legal. I am not sure that there is an answer to that; I just mention it as a counterpoint.

Sarah-Jane Laing: I have a quick and simple response to Graeme Dey's question about changing circumstances. I think that all that is necessary is for it to be asked at the point of reregistration whether there have been material changes. If the answer is yes, those involved would go down one route, and if it is no, they would go down another. I do not think that it would be a problem to have a dual process for reregistration. Graeme Dey is right—a material change such as a huge swell of opinion in the community, which could have different views and different needs, must be taken into consideration, but it would be possible to have a dual registration process.

To pick up on what Malcolm Combe and Jon Hollingdale said, I feel as if I am banging on about community planning, but a lot of this is about that. A registration is often viewed as inflammatory in circumstances in which there is no community planning process, no dialogue and no engagement, so it feels as if it is a case of, "We want that off you," but the reality is that there have never been any discussions about what "that" is, what it would be used for and whether the landowner would consider giving it to the community in the first place. The situation becomes adversarial.

In our submission, we suggested that, rather than looking at pre-emption, consideration should be given to proactivity on the part of the landowner. All of us feel that there is a need for greater proactivity on the part of landowners in engaging with communities. We also suggested that there could be a requirement for a landowner to give notice to an established community body prior to any sale, which would mean that the community got notice before land went on the market and that people would not find out only when they drove down the road and saw the "Estate for sale" signs. I feel that that would put the onus very much on engagement and having a positive relationship rather than on a right of pre-emption, which always feels adversarial.

Rory Dutton: There are quite a lot of balls in the air at the moment. I make the point that we should bear in mind at all times the fact that, in many cases, we are dealing with volunteers. Going through the process puts a huge demand on volunteers, and people get burned out and organisations lose their steam. If, for example, the assets are withdrawn from the market at the last minute, that has a devastating impact on the morale of the community. We are talking about volunteers' time and very precious human resources, which can easily be wasted.

I go back to whether the bill has addressed the main issues and whether it will result in a transformational change. The committee will discuss the urban context later in the meeting. The provisions that relate to urban areas could well make a big difference. Many proposals have been made to ease the process. The other big issue is that of abandoned or neglected land, on which the bill provides a right to buy rather than a pre-emption right. In the interests of efficient use of community volunteer time, we would like the bill to make it possible—whether through a planning route or through an absolute right to buy that was

based more on sustainable development than on abandoned or neglected land—for far more effective use to be made of what is a very scarce and precious resource in communities to make things happen and to help those communities to move forward.

The Convener: We will discuss abandoned or neglected land quite soon.

Dave Thompson will now pursue the issue of registration.

Dave Thompson: What the witnesses have said is all very interesting. It strikes me that, as I think Jon Hollingdale mentioned, a much simplified registration process, which could involve some kind of general registration for a purpose rather than the identification of a piece of land, might be desirable. The purpose for a community might be the creation of more general community land, housing land or whatever, and it could put in a general interest in any land that came up that it could use for that purpose. That might be one way forward. The community could do that at an early stage or it could do it once a piece of land came up—although, up until now, such registrations have been called late registrations.

I was also interested to hear that communities can be devastated if after they go through the process the land is withdrawn. Perhaps we should consider a provision that says that once land has gone on the market and the community has shown an interest in it, that land cannot be withdrawn. I would be interested to know whether that could be added, as it would prevent a landowner from putting land on the market and then withdrawing it again to usurp the community.

I am sorry to go on for so long, convener, but there are a lot of issues to address. For example, I note that, with regard to late registrations, the good reasons provision has been withdrawn. As I have said, I am not keen on this talk about early and late registration; I think that the registration system should allow different people to come into the process at different times.

With regard to the proposed new sections on late registration, we have heard evidence from Community Land Scotland about how the phrase

"such relevant work as Ministers consider reasonable was carried out"

might be interpreted. Given that such work has to be done sufficiently in advance, how easy would it be for a community to prove that it had undertaken it earlier? It brings us back to the question of why we need early registration. Why can we not just have registration along the lines that I have suggested?

Jon Hollingdale: Precisely that point was made in our evidence. The interpretation of "such relevant work as" the ministers decide is very unclear to us. According to the bill,

"the relevant work was carried out ... in respect of land with a view to the land being used for purposes that are the same as those proposed for the land",

which could be interpreted as meaning that the community will have defined that it wants to register land for specific purposes or that it will have identified specific purposes for which it wishes to acquire land. If that is understood as meaning that, once a bit of land that fits that specification and which is fit for those purposes comes on to the market, ministers will accept that it meets that test, we will be very happy. However, it is not clear to us that that is understood, and I am not sure whether the phrasing in the bill or in the guidance that will come behind it locks in that interpretation. There is certainly a possibility that that might happen, but it is not clear to us that that is exactly what the bill team were thinking of when they wrote those lines.

The Convener: We will reflect on that for sure.

I do not think that we need say anything more on this matter, so we will move on to Claudia Beamish and the meaning of "community".

Claudia Beamish: Jon Hollingdale has already touched on the complex issue of the meaning of "community" in relation to SCIOs, and such definitions are very much in the air. I am not going to go into the detail of section 34 of the 2003 act, with which the panel will be familiar, but I am happy to cover that if needed. I will do my best, anyway.

It is important that we consider the ways in which the definition of "community" can be widened in the bill. For example, I am interested to know how the panel—beyond Jon—view SCIOs. Last week, for example, the Development Trusts Association Scotland questioned why community benefit societies had been excluded.

Perhaps if I cover the main points, we can then have the discussion—I hope that that will be useful. Other issues that we could consider include the question whether postcode units are too restrictive; how we can define rural communities, if not through their postcode; and defining communities of interest, such as arts organisations, charities, ethnic groups and so on. In that respect, I saw something earlier in the week about sports organisations such as those with responsibility for golf courses. Moreover, last week's panel referred to communities of place.

It would be very helpful if the panel could comment on that, as they feel appropriate.

Rory Dutton: I should confirm that in our submission we asked why, if SCIOs were being brought on board, community benefit societies

were not being brought on board as well, particularly with the resurgence of interest in them and the way in which they raise finance through community share issues. In fact, lottery funding has recently been awarded to our consortium to promote that option. I understand that ministerial regulations might extend the definition beyond SCIOs and companies limited by guarantee, but we would ask why community benefit societies have not just been included from the outset.

10:45

Another point is whether the legislation has to specify particular legal structures. Why could it not just specify the criteria that any such structure must meet? That leads us on to the issue of complexity and how prescriptive we want to be about articles of association and constitutions. For example, how often would a society have to hold a general meeting if it had to change the articles to keep the Scottish Government happy? We welcome the broadening of the definition, which is long overdue, but I wonder why community benefit societies have not been included.

I absolutely agree that the postcode unit is an issue. Some postcode areas in the Highlands are very large, and it is difficult to keep to the area that you want to define because you end up straying into other areas. The proposal to allow the discretion to define areas in another way is very welcome.

However, there are still issues in that regard. As I understand it, the area that is served by a community body is the same as the area that would be balloted on a particular community asset. That would mean that if a community body served a large area, a ballot would pertain to that whole area, even if the interest in a community asset were quite local. That is another issue that brings us back to the question of what we mean by community. If a very effective community anchor organisation served a wide area, could a ballot be held in a smaller area instead of the whole membership of the wider area being balloted?

My final point is about the inclusion of communities of interest. That is a community regeneration tool, and it relates to Sarah-Jane Laing's point about planning and what is best for an area. If it fitted with the local priorities for an area that had been agreed by the local people, and if it made a difference to the area, a community of interest might be the best vehicle. Again, the actual body would carry that forward.

Malcolm Combe: With regard to the form that an organisation needs to take, which I touch on in my submission, another way of approaching the issue might be to make it clear that, whatever the organisation, the important elements are the rules by which the organisation abides and its constitution. A comparator jurisdiction in that respect is South Africa, which in the 1990s introduced a system of what are called communal property associations, which have to register their constitution. Obviously, whatever the registration process might be—and I am afraid to mention the term "registration" in this discussion—an organisation would not be able to get its constitution registered; however, it would still act as a repository to enable those community organisations to see what the rules are, and irrespective of whether an organisation was a SCIO, a bencom—community benefit society—or a company limited by guarantee, it would comply with those rules. The stipulations would be there, and an organisation would not be hamstrung by its not being a company limited by guarantee. That might be another way to do it.

The Convener: On that point, Sandra Holmes suggested last week that HIE's community land unit, or whatever it is called now, had a stock constitution. Are you suggesting that we try to adopt some particular basic off-the-shelf constitution?

Malcolm Combe: I suspect that any stock constitution would be for a company limited by guarantee, so one would want to carve out the bits of it that pertained specifically to a company limited by guarantee and leave in the things that related to the community asset. That could be the way forward, provided that the community was able to form whichever vehicle it chose as most suitable. In some cases, it might even involve a local charity with a similar interest, such as the John Muir Trust or the RSPB, coming on board.

This is an emotive issue, because at present the definition of a community is limited to a postcode unit. I am not saying that we would want to open things up in this way, but if the underlying community, in whatever form it took, was able to say, "We have these rules, we can comply with them and they are on record", that might be a more flexible approach.

Sarah-Jane Laing: I do not have anything to add to the comments that have been made about community bodies, but I want to pick up on the definition of a community as a community of geography rather than a community of interest. A community of geography should include a number of communities of interest. When we look at a community's needs, we should be able to weigh up the needs of the different communities of interest and take a holistic view.

Of course, the problem with going down the community of interest route is that each will have a different interest and will have the sole purpose of furthering the interests of its community. That is what leads to lots of tensions. To go back to the

issue of community planning, I think that if everyone, no matter whether they be sports clubs, environmentalists or those with housing needs, has a seat and an equal voice, everything will be looked at in the round. That is what a community of geography or place does, and I therefore support the retention of the community of geography as the definition of "community" with regard to the community right to buy.

Claudia Beamish: Are you arguing that a community of interest should not be part of the definition in the bill?

Sarah-Jane Laing: Yes. I do not think that a community of interest should have the same right to buy as a community of geography.

Rory Dutton: With regard to Malcolm Combe's point, the legislation needs to set out only the criteria required to safeguard the public investment or benefit. We can quickly rattle up model articles of association or constitutions for community right to buy or not community right to buy, as the case might be; like Highlands and Islands Enterprise and the Community Woodlands Association, we already have them. We also have a model SCIO constitution and no doubt we will have a model SCIO constitution for community right to buy. Given that we can quickly rattle up those model constitutions, we do not need that aspect in the legislation; instead, we need the criteria that must be built into governing documents.

The Convener: Thank you. Jon Hollingdale wants to comment.

Jon Hollingdale: I cast my vote, too, for a fundamental look at the characteristics that we want in a community body. Obviously, it will need to be incorporated, open and non-profit distributing, have appropriate wind-up or dissolution clauses and so on. Those characteristics are well understood and models are available for different forms of company. The problem is that as soon as the legislation changes, the existing model constitutions need to be amended again, and that is what would happen with the provisions in the bill as it stands.

With regard to communities of interest, it is dangerous for me to say this because I am sitting next to two eminent lawyers who might contradict me but as far as I can see, the existing legislative provisions do not exclude what I would consider local communities of interest from using them. Clearly, national bodies such as the RSPB and the Scottish mountain biking association, if there is such a thing, are ruled out. However, an organisation such as the Thurso amateur dramatic society—again, I have no idea whether that exists—would not be ruled out. It seems to me that, if it rented its local playhouse from a private landowner and it became concerned that the building was going to be sold, the organisation could register an interest. It would have to demonstrate that the use of the land fitted with its objectives, which I think it would have no trouble doing, and make the case that its taking ownership would be compatible with sustainable development.

Those of us who write such applications would be quite happy to write that the society would, say, do some theatre drama work with a local school; after all, it would be a brave person who stepped in and said that local cultural development was not compatible with sustainable development. Perhaps the biggest issue facing such a body is that if the property that it rented came on the market, it would have to ballot the whole town. There are about 8,000 people in Thurso, which means that there is an electorate of about 6,500. The society would therefore need to get a significant number of people in the town to turn out to vote for it, but I do not think that that would be insurmountable.

I believe that there is a mechanism to allow that scenario to happen, but it has not been picked up. I also suspect that things would get much more difficult if we tried to scale it up to a bigger urban setting. Again, I do not know whether there is such an organisation, but I would imagine that the membership of the Glasgow Muslim women's cultural centre, say, would be a fairly small proportion of Glasgow's population. If it were expected to ballot the whole of Glasgow, that would not work.

However, as far as the legislation sits with relatively local communities of interest, I think that their registrations of interest could go through. Indeed, some existing registrations are, to an extent, examples of what I have described. In Forres, a town of almost 10,000 people, there is a registration for the football pitch; however, the registration is not in the name of Forres Mechanics, the team that plays there, but in the name of Mosset Park Protection Company Ltd. It is fundamentally a sports interest with a community development bit stuck on.

Claudia Beamish: Would it be more appropriate to have such a definition on the face of the bill or in secondary legislation?

Malcolm Combe: My own preference would be for the definition to be in primary legislation rather than buried in regulations.

The Convener: We will move on to a point about procedures and requirements. We did not cover the question of mapping when Dave Thompson was asking about registration. Mapping was a problem in some cases under the 2003 act. Do panel members have any views about the detail of the mapping? The registration of croft

land requires virtually the same detail of mapping as for sales of house plots or whatever, but does it need to be so precise? We have seen problems with that in terms of the interpretation of part 3 of the 2003 act, on the crofting community right to buy—in the Pairc case, for example.

Malcolm Combe: I have a quick comment on one bit of litigation that happened in Kirkcaldy sheriff court—the Hazle case involving Kinghorn Community Land Association. There was an issue with the land association's application, which did not quite comply with the mapping requirements. Even though there was a grid reference in the application form, it was not written on the plan—or something like that—so it did not quite meet the requirement in the legislation. In the end, the application was bounced. Therefore, it was a case of, "Community, go away." That is one of the deleted interests in Fife. That does not seem satisfactory to me. There were other issues in that litigation; it was not solely on that point. However, that is something to think about. Fundamentally, assuming that registration is a good thing as it gets everything on notice, we need to know what bit of land it relates to. However, at a time when a community and volunteers are expending a lot of energy to comply with a lot of different things, a degree of relaxation and/or discretion over strict mapping requirements might help.

Simon Fraser: I take it that we are still talking about part 2.

The Convener: Yes.

Simon Fraser: The lesson has been learned from part 3 of the 2003 act that it is pretty much impossible to comply with the mapping requirement. In fact, for the two major applications on the island of Lewis—Pairc and Galson—they decided to map only the common grazing element, not the element with all the houses and people and everything else on, simply because that would have been utterly impossible. Even mapping the common grazing proved extremely difficult, with a requirement to map every fence, watercourse, ditch, and goodness knows what. That is certainly an issue.

I also encourage the committee to consider Malcolm Combe's point. One of the difficulties that crofting communities came up against was the sudden-death element if they made any mistakes—there was an inability to rectify mistakes. In my submission, I go into how that difficulty could be addressed. We certainly want to allow communities to be able to amend the application in the event of something inadvertently being missed out that would otherwise kill off the application.

11:00

Jon Hollingdale: I second the point about the part 3 crofting mapping being seen widely as completely over the top and impossible to deliver perfectly the first time round given the scale of these estates. On part 2, it is noticeable that if you look through the documents on the register of community interests you see that there is not a standard specification for how these maps are pulled up. They all look a bit different, different base maps are being used and they are demarcated in different ways. That is because no one has said, "This is how we want maps presented. This is how you would map an area of 1,000 hectares and this is how you would map an area of 0.01 hectares." The smallest area that someone has gone through the registration process for is probably about the size of this committee room. Not having a standard model means that people are very much in the dark and wondering, "Is this going to be good enough?" and "Is this what they need?" Even having a standard specification setting out what you need to do to satisfy the requirements would be really helpful.

The Convener: We will explore that with ministers in due course. We will move on to the subject of abandoned and neglected land.

Michael Russell: A common theme among all the submissions has been abandoned and neglected land. Certainly the submissions that I have had a chance to read so far have expressed views on that. Malcolm Combe described the term as "suboptimal". I would be interested in your reflections on what would be an optimal term to describe such land. The

"wholly or mainly abandoned or neglected"

definition is not included in the 2003 act on the crofting right to buy. What is the motivation for including it in the bill? I would welcome some reflections on the difficulty of defining such land in circumstances where it does not penalise owners, tenants or others who might have different views on how to operate their land. I am simply interested in hearing those views, to help the committee come to some mind on it.

Malcolm Combe: I did say that the term "abandoned" is sub-optimal, but there are four key words: "wholly", "mainly", "abandoned" and "neglected". My use of the word "sub-optimal" was specifically in relation to the technical meaning of the word "abandoned" in Scots law. When an owner abandons something, that means that they are surrendering any right to it. It is most easily visualised in the case of a corporeal moveable object. If I was to discard my jacket after this session in a fit of rage, I would lose title to it. Under the rules of Scots law, such abandoned property would go to the Crown.

Abandoned land is an issue at the moment. Obviously you cannot throw away land in the way that you could throw away a moveable item. There was a recent case in which the liquidators of a Scottish coal company tried to walk away from certain liabilities linked to the land. The question whether you can leave land abandoned with a non-owner or whether the Crown would step in via the Queen's and Lord Treasurer's Remembrancer is difficult. I am not going to give you a seminar on that just now. However, the very fact that "abandoned" might have a technical meaning to Scots property lawyers in that context means that using it in legislation immediately leads to a little bit of ambiguity. I would ask for careful consideration of whether you need to explain what you mean by "abandoned" or whether you need to use a different word. The terms "unused" or "underused" introduce different subjective tests, but at least they do not have the ambiguity factor. Do I have an optimal word? I was careful not to offer one in my submission.

There is then the issue of the phrase "wholly or mainly". I suspect that the "wholly" category is easier to identify than the "mainly" one. It seems to me that there is a spectrum, with "wholly" at one side and "mainly" being a little bit less than "wholly". We do not want to say that the provision is a charter for lawyers, but we can imagine people having fun arguing about it.

"Neglected" is an interesting word, too. If a landowner says that they intend to create some kind of wilderness wildlife haven and it is his or her conscious choice to let the land go back to its native state, can we say that the land is neglected?

It is difficult to propose an optimal word—it is always easier to heckle. However, I think that the term "abandoned" needs to be carefully considered and that the other words need to be talked about.

Sarah-Jane Laing: A lot of our comments were made prior to the discussions that we have now had with the Scottish Government about how "abandoned" and "neglected" might be defined. I think that the Government plans to include definitions in the primary legislation, rather than in subordinate legislation.

Like Malcolm Combe, we had concerns about "abandoned", because we thought that it referred to abandonment of ownership. My understanding is that we are talking about abandonment of the original use. For example, if someone says that they intend to create allotments, but the land is still a wildflower meadow after five years, they have abandoned the original use, although they have not neglected the land, because it has been managed as a wildflower meadow. The provision says "abandoned or neglected", not "abandoned and neglected", so a lot of confusion remains about the circumstances in which it will be used.

When we talked to community empowerment stakeholders, we talked a lot about blight sites. I think that we all agreed that there are blight sites throughout Scotland, which must be addressed. Those are sites that are derelict and which have a significant detrimental impact on the environment and community safety, so they are quite easy to identify.

I was talking to a small-scale farmer from the Borders recently, who runs a tiny wee flock of sheep on a very large field—just enough to meet his good agricultural and environmental condition requirements, if I am honest. His community has told him that it thinks that he neglects the land. The community would like the field to be ploughed up to the margins, so that people can see that the farmer is actively managing the land. He is actively managing the land; he runs pedigree Jacobs. However, people see a scrubby field and a few sheep.

We are talking about a very significant provision, and I am concerned that we have not had time to work out exactly what it means in detail. We talked about the policy memorandum. We can think that we know what we are getting with a provision but, when we start to pull it apart, it seems to indicate something entirely different.

Jon Hollingdale: We welcome proposed new part 3A on the absolute community right to buy, but I think that everyone agrees that these are provisions that will be used very sparingly. They are not there to be the run-of-the-mill approach; they are the backstop. Ideally they are strong enough and credible enough that they will facilitate negotiation and compromise, so that settlements happen in that way rather than through forced sales. For that to happen, people need to think that it is in everyone's interest to negotiate; if the provisions are not credible and appear to give too much wiggle room, no one will take them seriously.

It is fair to say that part 3, on the crofting right to buy, has not been a huge success. It sets two tests for communities, which must demonstrate that what they want to do is in the public interest and furthers sustainable development. Part 3A will add two more tests: the land must be abandoned or neglected; and the current ownership must be inconsistent with sustainable development. We struggle to see what kind of evidence would be needed on the latter test.

On the "abandoned or neglected" test, I think that "abandoned" is the one word in the bill with which everyone to whom I have spoken has a real issue. It is very difficult to see how the provision would work. I am not convinced that the test is

necessary; most issues can be dealt with under the sustainable development test.

I think that everybody agrees that non-intervention or very limited intervention in land management for nature conservation purposes is, in appropriate circumstances, completely compatible with sustainable development. If it is not, we need to have a word with Scottish Natural Heritage, because it is certainly working under that understanding.

If a landowner genuinely sets aside land, which is not managed because he wants it to be wilderness or for nature conservation purposes, we would assume that that could be assessed with a sustainable development test by reference to whether it is a designated site and whether he has any kind of agreement or even dialogue with SNH about the management or non-management of the site. It seems to me that that could happen under the test that we already have, which fits with parts 2 and 3 of the 2003 act. The issue is whether the community proposals for the land would be in the interests of sustainable development if it has already been agreed that sustainable development on the site involves non-management or very limited management because it is deep peat or a precious wildflower meadow. The community proposal would then not make any progress at all; it would stop at that point.

It strikes me that there is another big issue with the word "neglected". You are not dealing with the majority of private landowners at proposed part 3A; you are dealing with a very small minority element of landowners who are entirely refractory and will not compromise or negotiate. The community might wish to acquire 100m^2 to extend the village graveyard, because it is full. Does the community have to demonstrate that the landowner, who owns 10,000 hectares—everything around the village—is abandoning or neglecting the entirety of that estate in order to get that area, as the landowner simply refuses to sell a tiny plot of land at any price? Most of us would probably say that it is in the interests of sustainable development and certainly in the interests of the community that that happens, but it is very difficult to see how the "abandoned or neglected" approach could be made to work in any circumstances.

Rory Dutton: Jon Hollingdale has stolen most of my thunder. Basically, our question is whether the approach is really workable. We can see how, in an urban context, which you are talking about later on, the neglect may be more evident, but we are struggling to see how the approach can possibly be workable in a rural situation.

I was going to suggest what Jon Hollingdale has already suggested. If you moved the basis in rural areas away from abandoned or neglected land to land where the sale of perhaps a small area would have compelling rural development benefits relative to the impact that there would be on the owner's greater landholding, that would be a far more useful mechanism than trying to define "neglected", "abandoned" or anything like that.

Simon Fraser: I, too, find it difficult to understand how this could be applied to the rural context. In the crofting community right to buy, the test is, of course, the sustainable development test. That was tested in court, and I am sure that the committee is aware of Lord Gill's judgment. In essence, the community was able to meet the sustainable development test as applied to a very extensive area, not a very small area. On the one occasion when that has been tested in court, the case was able to be made. I cannot begin to imagine how the case could be made with the additional hurdle of abandonment or neglect.

Sarah-Jane Laing: I think that we have said before when we have talked about rural and land issues that we do not always need a one-size-fits-all approach. If we all agree that an approach works in urban areas but not in rural areas, perhaps we should look at having a different approach in urban and rural areas to deal with the specific issue.

Michael Russell: Thank you. That has been very helpful. You have raised the question, even if you do not have the answer to it, and that is a useful step forward.

On neglect and operation, one issue that concerns me most greatly is land that is held by the public—by ministers and a variety of non-departmental public bodies and local authorities. Local authorities are bound by best-value requirements. They have no obligation to maintain buildings, but they have an obligation to try and get best value from them. We have seen some celebrated cases of that, for example at Castle Toward in Argyll. It is a neglected building, and it costs a lot of money, but Argyll and Bute Council seems to have adopted a dog-in-the-manger attitude towards it.

11:15

It strikes me as important to address the concept of who owns such buildings, and the question of how they might be transferred to community or other ownership without paying a full purchase price to the public purse—allowing money to circulate within the public realm—if we are to enable more communities to take control. It is difficult to see how that fits into the current legislation, but the issue will have to be confronted. Do any of you have any thoughts about how we might confront that point? It seems to be the biggest barrier for many communities.

Rory Dutton: We do quite a lot of work with local authorities on asset transfers to communities. We try to present such transfers as being on a different scale of public ownership. As you are probably aware, there are regulations from 2010 that allow local authorities to dispose of assets for less than the full consideration, in the light of the wider value that they bring to the public or to communities. We would like that to be expanded to other owners.

That said, it is becoming increasingly hard for us to persuade local authorities that that is indeed the way forward. More and more local authorities have been seeking something more like full market consideration for the products concerned, particularly since the Scottish land fund came back on board.

Community asset transfer, according to the Scottish Government's definition, is transfer from the public sector to the community sector at less than full market value. We would not like the emphasis on that to be lost, as it is starting to be even in the wider community asset transfer scene.

The Convener: Sarah-Jane?

Sarah-Jane Laing: I have nothing to add—I was going to make the same points as Rory Dutton.

Simon Fraser: On the big difficulty with transfers from Government—public finance money—I understand that they have recently been overhauled. However, I am not aware of the details and I am not sure how far that has gone.

Mr Russell still bears the scars of west Harris and the attempt to pass across the assets there from agriculture to the local community. We could probably do with something in the primary legislation. In that instance, public ownership was inimical to sustainable development, yet the community still had to pay full value to get the assets. The hurdles in that case were the public finance manual and the ogre of state aid. If those factors can somehow be squared with the policy purpose and covered in the primary legislation, that might offer a way through.

The Convener: Malcolm Combe is next, followed by Jon Hollingdale.

Malcolm Combe: Simon Fraser has covered everything that I was planning to say. I was going to make that point about state aid.

Jon Hollingdale: In the Community Woodlands Association, we are very familiar with the operation of the national forest land scheme, which in some ways mirrors, but also goes beyond, what is available under the community right to buy, with communities attempting to acquire from the Forestry Commission. As that scheme is voluntary, it has been possible to shape and change it over the eight years of its operation to make it more fit for purpose, rather than having to worry about primary legislation not allowing people to do things.

However, the scheme has always run up against money issues in the end. The Forestry Commission's expectation was that full market value would be paid. That has become increasingly difficult as forestry land has appreciated in value, which is partly as a consequence of the economic difficulties in 2008. That is a huge issue.

I know that this comment takes us into the parts of the bill that this committee is not considering, but the asset transfer provisions are pretty silent. One of the Forestry Commission's issues with those parts of the bill is that they do not really explain how land will be valued, whether it will be at full market value and whether its value will take cognisance of what the community intends to do. In other words, we have to ask whether there is a credit for the additional public benefit that all communities have to demonstrate that they will deliver when they are going through community right to buy and whether that can somehow be factored into the price. There are some big issues there.

The other point that I wanted to make about the Land Reform (Scotland) Act 2003 is that, to date, the majority of the acquisitions that have happened using community right to buy provisions have been from public bodies. I think that the figure is nine out of 16, and a number of the registrations that are still sitting waiting to be activated are also on public bodies, such as Argyll and Bute Council, Moray Council, Scottish Water and the Northern Lighthouse Board. I am not sure how many of those registrations will be covered by the asset transfer part of the bill. Schedule 3 of the bill gives a list of some public bodies that will now be subject to the asset transfer provisions, but I imagine that some of them, particularly United Kingdom bodies, will stay within community right to buy.

We need to tease out how the bill will operate with respect to public bodies, who goes where and whether the part 3A rules will also apply to public bodies, because that is not clear. A community can start by attempting an asset transfer process under part 5 of the bill, and if they are rebuffed by a local authority that says, "No, we aren't neglecting the land," it is not clear whether there is a mechanism or transfer process that means that they can then use part 3A.

Dave Thompson: It is not only the various criteria that have already been mentioned that will

give difficulty. I would like the panel's opinion on proposed new section 97H(d), which states that the applications must also show

"that the owner of the land is accurately identified in the application".

Do you see any difficulties there? Trusts can be set up and there may well be other methods of hiding who the owner is, so does that need to be changed or looked at again?

Jon Hollingdale: As the 2003 act stands, the current community right to buy provides for communities to be able to put a registration on land without knowing who the owner is, although they have to demonstrate, and the minister has to accept, that they have taken reasonable steps to find out who the owner is. If it is not possible to find out, a registration can still stand.

At the very least, there ought to be a similar mechanism in the Community Empowerment (Scotland) Bill. It strikes against the whole abandonment issue. If the land is abandoned, that suggests that we would not know who the owner was because they had run away.

That is one thing that reveals a procedural problem in the way that the bill was constructed, as most of the provisions in part 3A seem to have been borrowed wholesale from part 3 of the 2003 act. In crofting communities, I assume that it is taken for granted that people know who the landowner is. That may not be the case, but it seems to me that part 3 of the act has been taken and transferred across to the new bill. There should be an answer in part 2, which is that the community needs to demonstrate to the minister's satisfaction that reasonable steps have been taken to discover who the landowner is.

Malcolm Combe: I have a few points to make in response to what John Hollingdale has just said.

If I were an advocate running an argument about whether or not the land was abandoned and I did not know who the landowner was and could not find that person, that would be a useful aid to my argument, whether the word used was "abandoned" or something else.

The point about finding out who the landowner is also has to be set in the context of the current land registration reforms that are going through at the same time. On 8 December, the new rules for the land register will become operational, and there is a 10-year target for the transparency of the land register, which we hope will assist in working out exactly who owns what.

I also note in the programme for government the idea that an owner has to be a European Union entity. That is something that the land reform review group proposed, so maybe the concern could be mitigated in future years, dependent on completion of the land register.

Sarah-Jane Laing: To echo what Malcolm Combe said, a lot of steps are being taken to improve identification of landowners across Scotland. Similar to the point on mapping, it is not fair to a community for its application to be thrown out because it listed the owner as Mr J Smith, when in fact it is Mrs S Smith. It must be taken into consideration that there should be some ability to rectify a situation in which the wrong member of the family has been identified, but the community knows that the land belongs to that particular family.

My understanding, after having spoken to Registers of Scotland about the issue, is that that will be more of a problem in urban areas than in rural ones. There are issues in rural areas about identifying owners, as we are all aware, but many of the inquiries that Registers of Scotland receive relate to what it calls fag ends of land in urban areas, where companies have either been wound up or subsumed into a bigger company, and no one is sure who currently owns the piece of land. Those cases will be very problematic.

Rory Dutton: A lot of the communities do not employ staff; they just have volunteers. I can think of an example that was about access to a block of forestry land where we ended up going transnationally to Asia to try to find out who on earth owned the land. The community group was established in 2009 to undertake that asset transfer, but it is only happening this year.

Where there are multiple owners, or owners who live abroad, it can be very challenging to find out exactly who they are. I am not familiar enough with the detail of the forthcoming legislation to know whether the problem of identifying owners will all be addressed, but it can be a major issue.

Simon Fraser: To give a brief example, I had an experience of successfully acquiring land from a Panamanian trust. That is the kind of thing we are up against. If a company chooses not to respond to inquiries, there is nothing to be done—it would be hard to prove that the company had even been contacted.

There could be a longstop provision, to enable some form of edict or citation to be made, or some notice posted on the land if all else fails. That is the kind of thing that is used in other circumstances.

Sarah-Jane Laing: There are lots of precedents set in other legislation, which comes under "all reasonable steps". I see no reason why a similar provision cannot be inserted into the bill.

The Convener: Okay. We move on to our final set of questions, which is about the interpretation of sustainable development.

The double approach of using public interest and furthering the achievement of sustainable development is being built into the plans. The inclusion of that double requirement for community bodies requires careful handling. Ministers have to be satisfied that some activities might take place if ownership were to remain in the same hands, but that could make it difficult for community bodies to further the achievement of sustainable development in relation to the land. Do you think that there is jeopardy in the way in which the bill is currently framed? Community bodies could find themselves caught up in a situation in which an owner says that they are about to make some sustainable development.

Malcolm Combe: It is an interesting question. I refer back to Holmehill briefly—in that case, I understand that planning permission had been granted and the landowner was able to say that his plans were in the public interest because they had received planning permission. Of course there is a difference between an individual planning application and the wide offsetting within the land but, yes, the idea that a counter development might be sustainable could be an issue.

It is a situation that can never be shut down, because someone else might have a valid sustainable development plan, and that would be fine—we should not be discouraging someone else from putting that up as a counter argument. In fact, it would be great if we encouraged people sufficiently that they were putting sustainable development up as a counter argument. In part it could be a problem but, at the other extreme, if it were to encourage people to engage with things on their land in a way that heretofore they had not been doing, it could be a good thing.

11:30

Sarah-Jane Laing: I suppose that the question is what the driver is. If the driver is sustainable development in the public interest, the question of who does it is secondary. If the driver is sustainable development by a community, that is entirely different.

The provisions, as drafted at the moment, give the owner a chance to agree that they have not done enough for the land and that they will bring it back into use for allotments. I think that that is positive, because it gives private owners the chance to consider improving the productive use of their land.

Where there will be a real impact is in the area of what we have called meanwhile use. Someone might have a 10-year development plan, but what are they going to do with that land meanwhile? In relation to such sites, landowners might be quite keen to work with communities for sustainable development in the public interest. However, there would certainly be no reason for the transfer of ownership to happen.

The Convener: But we are talking about communities having an idea that they perhaps need housing, whereas the landowner might think that sustainable development means building holiday homes to bring in value to the estate. Surely the question about what sustainable development is would be difficult for ministers to interpret and might be used as an excuse for not making land available to the community.

Sarah-Jane Laing: In that regard, we go back to discussions that we had on the planning application. If the planning department of the local authority decided that there was a need for tourism accommodation and business use on that site and had granted the planning application on that basis, the landowner would then be delivering the public interest. If the planning department had carried out a housing land audit and identified a need for housing, and the landowner was not delivering housing on that site, that would be a different matter.

If you are going to weigh up the need between tourism, business and housing on the same site, you are talking about competing sustainable development uses, rather than sustainable development versus the non-development of a site.

The Convener: It is a matter of interpretation, I guess.

Rory Dutton: Community and development trusts are there to make things happen for their communities. Local businesses and lairds are part of that community, too. If a laird is prepared to do something that will push forward sustainable development in that area, that is great, as it means that the community does not have to do it.

The issue goes back to the question of whether the agenda is one of the regeneration of an area or one of land reform. We take the view that it should be a regeneration agenda. If the landowner is not regenerating the area and the community can do it, that is the way it should go. However, if existing players can do it effectively, that should be welcomed.

Jon Hollingdale: The context of what we are talking about is part 3A, so we are talking about a minority of recalcitrant and refractory landowners, not the majority of landowners.

As the bill is drafted, communities would be expected to demonstrate that current land ownership is incompatible with sustainable

development, which is an impossible test to pass. Even in terms of the landowners' plans, you have to be aware that landowners will see part 3A applications coming a long way off, because the process involves the community previously having attempted to buy the land. The bill does not detail what that means, but we assume that it does not mean simply phoning the landowner and saying, "We'll give you a tenner for it"; it would have to be a properly valued process.

Following that, the community would have had to go through a ballot. All of that means that the landowner will have quite a window of time in which they will be aware that something is happening. Clearly, given that we are talking about a minority of recalcitrant landowners, they have an opportunity to invent a scheme out of thin air. It is therefore important that ministers have the ability to assess the credibility of the landowners' plans.

It might be that, as has been said, a landowner has serious and sensible plans that they are either getting on with or awaiting finance for. Those are good reasons for a community's request to be refused. However, it is important to ensure that it does not simply give a recalcitrant landowner the ability to frustrate the community's objectives by pulling something off the shelf or having a plan that is not all that credible.

The Convener: Indeed. Thank you for exploring the complexities of this matter with us. That has been helpful, because we are going to be considering the urban context and ECHR issues. After we reflect on matters, we might come back to you for some clarification of some of the points that you have made.

We will suspend to allow a comfort break of about five minutes.

11:34

Meeting suspended.

11:40

On resuming—

The Convener: We will continue with agenda item 6, which is evidence on the Community Empowerment (Scotland) Bill.

Our second panel will focus on the urban context and the European convention on human rights. I welcome Wendy Reid, who is the development manager with the Development Trusts Association Scotland; John Mundell, who is the chief executive of Inverclyde Council; Dr Colleen Rowan, who is membership and policy officer for the Glasgow and West of Scotland Forum of Housing Associations; David Cruickshank, who is executive director of the Lambhill Stables Development Trust; Susan Carr of the Community Alliance Trust; and Professor Alan Miller, who is the chair of the Scottish Human Rights Commission.

We have a range of questions to put to you. The microphones are handled centrally, so you do not need to switch them on and off. We will kick off on aspects of the structure of the bill.

Graeme Dey: Good morning—I think that it still is morning. Are the panel satisfied with the extent of the dialogue and consultation that have taken place on the community right to buy? Do you believe that the extension of the community right to buy to urban areas sits appropriately in the context of the bill?

Wendy Reid (Development Trusts Association Scotland): DTA Scotland is happy with the level of consultation. There have been numerous opportunities to contribute, and not just for the organisation but for our members. We found the process to be very accessible.

On whether the bill is the right place for the extension of the right to buy to urban areas, as colleagues on the earlier panel mentioned, when the bill was suggested, there was no obvious other opportunity to address the issue. In that context, it seemed to fit well to allow, through the bill, communities in urban areas the same rights as communities in rural areas have had for numerous years. The bill will empower urban communities to the extent that rural communities are already empowered.

The Convener: No one else wishes to comment on that, so we move on to the policy memorandum.

Alex Fergusson: This is a scene-setting question that I also put to the previous panel. Last June, the convener of the Parliament's Local Government and Regeneration Committee wrote to the Minister for Local Government and Planning seeking clarification on the policy memorandum. In a way, he was fairly critical, as he described the policy memorandum as

"little more than a superficial overview."

There was then a bit of correspondence and a bit more detail was provided.

My question is very simple. Given that the policy memorandum devotes fewer than three pages to the whole of part 4 and at one point summarises 20 sections in, I think, seven bullet points, does it contain enough content and detail to explain satisfactorily the policy choices and the purpose and aims of the bill? I was particularly taken by a comment from a previous panellist, who said that someone might think that they understand the policy memorandum, but when they pick at it and try to drill down into it, they suddenly discover that

it has a different meaning. Does anybody have any comment on that?

11:45

Professor Alan Miller (Scottish Human Rights Commission): The Scottish Human Rights Commission has had limited and modest engagement with this whole area—I sat in on the previous session to educate myself. I have no doubt that others have much more experience of, and insight into, a lot of the issues.

On the broader policy setting and the landscape, having listened to the previous panel I am struck by how narrowly framed the debate has been. I am a little embarrassed that the way in which human rights has been interpreted is contributing to there being quite narrow parameters around debate about land reform and community empowerment. I will just make a couple of points about the perception of human rights and its relevance to the committee's consideration of the bill, because I am sure that others have more value to add.

The language that is being used—I heard the term "absolute right to buy" being used again this morning—is very unhelpful, although I understand why people are using it. The European convention on human rights is not understood as providing a framework in which the legitimate rights of landowners and the public interest are reconciled and a balance is struck, with compensation being paid to the landowner if necessary. The right to buy is a qualified right: there has to be a competing public interest to override the right to peaceful enjoyment by the person who owns the land. Therefore, language such as "right to buy" or "absolute right" polarises the debate in an unhelpful way and does not reflect a clear understanding of what the ECHR contributes to the debate.

The bigger frustration that I have with the policy framework is this: human rights does not begin and end at the European Court of Human Rights in Strasbourg; there is a much broader framework of international human rights that are relevant to the Government and the Parliament, but which are largely invisible.

The Scotland Act 1998 calls on the Scottish ministers to observe and implement international obligations, of which one—but only one—is the International Covenant on Economic, Social and Cultural Rights, which places a duty on the Scottish ministers to use the maximum available resources to ensure progressive realisation of the right to housing, employment, food and so on—that is, it sees land as a national asset, which is to be used for the progressive realisation of what we might call sustainable development.

Therefore, what human rights provides is a broader impetus for land reform, rather than an inhibition, as is suggested in the way that the issue is currently couched—that is, in questions about whether a landowner has a red card that can be used with reference to the ECHR to stifle discussion about different use of the land. That is what is missing from the policy framework.

Another thing that I find striking is that next year—this will become real for Scotland the year after—we will have sustainable development goals at United Nations level, and all member states will be required to develop national plans. That will come to Scotland in due course. If we look at the bigger picture, having a proactive plan for using the national asset and resource of land to achieve sustainable development is where things will be in two or three years.

We are not currently benefiting from that broader framework, and as a result the debate is suffering from being quite confined and narrow. It might be that the forthcoming legislation on land reform will begin to address the issue. I certainly hope so. Currently, the way in which human rights has been perceived has narrowed the parameters of the debate and somewhat robbed us of the benefits of the wider framework.

If human rights is seen in the wider context that I have set out, there will be a realisation that it drives us not towards courts and lawyers but towards having an environment in which there is more constructive dialogue between landowners and communities, because landowners will know that there is a legal framework to which communities will have recourse as a last resort, if that is in the public interest.

It will also lead to more responsible use of land, whether by existing landowners or by the public and communities, if they take ownership of the land. I think that we are being deprived of the full benefits of an informed human rights framework by the somewhat narrowly framed bill and debate.

Michael Russell: That is exceptionally interesting, but if we are going to move from what is a somewhat archaic and old-fashioned view of the individual rights of land ownership to a much more informed and illuminated view of the interrelationship between land, the rights of those who live there and the responsibilities of positive use, how do we construct a dialogue that allows us to do that?

Legislation can sometimes get in the way of having the types of debate that we are having, but there is a commitment—I think correctly—to a series of legislative actions that will take us from here to a better place. What can we do that will allow the process to be more productive and more helpful to everybody involved, and to have an

outcome in which there is a possibility of reconciling the different points of view, for positive change in development? That seems to me to be the human rights challenge. You have experience of that type of dialogue elsewhere. How do we establish it?

Professor Miller: Where we start from is important. The bill and, to go back to Alex Fergusson's question, the policy memorandum have made it difficult at this stage to embrace that broader view of the positive benefit of seeing how human rights plays out in these dimensions. In so far as it does play into this somewhat narrow field, I think that it is in the public interest. Human rights is in the provisions on sustainable development and how that is interpreted, applied and implemented, but it is being shoehorned in.

It may be that further legislation that looks at a broader canvas will be more appropriate. I hope the starting point of that legislation would be broader than what we have just now. It is like the person in Ireland asking for directions and being told, "Well, I wouldn't start from where you are now, sir."

Michael Russell: A famous book about Irish politics has the title "Phrases Make History Here", which was a remark of Maffey, the UK ambassador to Ireland during the second world war. Are you going to be actively involved in the consultation on the land reform legislation, which was published yesterday, and will you make those points to the Scottish Government? It seems to me that they should be made.

Professor Miller: We will repeat the points on the bill that we have made to the Scottish Government; at the outset, we said to the Scottish Government that it is far too narrowly framed. If we are talking about community empowerment, we really have to understand what the community's rights are, and we should not let the debate be polarised by the notion of an absolute right to buy, which does not exist. Communities cannot be given that. There has to be a public interest, so it is a qualified right and not an absolute right to buy.

However, we were not successful in persuading the Government to take a broader perspective. I do not know whether we will be more successful next time, but there are some quite positive indications that we might get a better reception.

The Convener: I think that it is correct to say that the land reform review group report in May made a big difference to how the Government is looking at the matter. I hope that you agree.

Professor Miller: I think that that is true. We have moved on significantly over the past year or two, and not just because of that report. Other bodies seem now to be more interested in the broader canvas than they were before, so I am quite optimistic that we are going somewhere.

The Convener: Okay. Nobody else wants to pick up on the points that Alex Fergusson asked about.

Alex Fergusson: Yes, they do.

The Convener: Oh. Wendy Reid does.

Wendy Reid: I just want to feed in our thoughts on the policy memorandum. Barring the things that have just been said, we are quite comfortable with it; it sets out quite well the policy context in relation to community empowerment, what is meant by that and the purposes of the bill. We think that it is quite ambitious.

I suppose that our question is about whether the bill enables those policy aspirations to be delivered. I guess that the statutory guidance and the detail that comes with it will determine whether we achieve what the policy memorandum claims.

We were also disappointed that the word "renewal" was dropped from the bill title, because we thought that that contextualised the bill as being about renewal and regeneration, as well as community empowerment. Community empowerment must be for a purpose: that purpose is renewal and regeneration. Although dropping "renewal" from the title did not necessarily weaken the bill, neither did it necessarily provide a useful context on community empowerment. It left people asking, "What's that all about?"

Dr Colleen Rowan (Glasgow and West of Scotland Forum of Housing Associations): I echo that, and our response to the bill consultation made the same point. The bill is a missed opportunity. As far as our members are concerned and in their experience in communities, community empowerment and regeneration go hand in hand, so to separate them is to miss an opportunity.

John Mundell (Inverclyde Council): Any attempt to explain or contextualise the issues is a good thing. The brevity of the policy memorandum probably does not help, bearing in mind the complexity of the issues that are addressed in the bill.

One matter that has struck a chord through all the discussions—I have been at committee to discuss the bill two or three times—is that we are being asked to consult and liaise with community bodies. Obviously, they represent only a restricted number of the population. How are we to communicate or consult the wider population? Have we cracked that nut yet? Have we done enough to make people understand the bill?

I work in the community environment and try to make sure that we liaise and serve our communities in the right way. The bill is very

complex. I am not sure that we have managed to simplify the issues enough so that normal members of the public who are not, as we are, immersed in the issues can understand what the Government is trying to achieve.

The Convener: We will ask specific questions about that soon.

Jim Hume: Good morning, everyone. The financial memorandum states that the part 4 provisions would not

"impose any significant additional costs on the Scottish Government."

However, it is uncertain on the costs for urban communities and landowners. What costs might urban communities and landowners incur?

David Cruickshank (Lambhill Stables Development Trust): That is a deep question. I can answer it only with a broad-brush response, without going into of the technical details in the bill.

The simple fact is that, in urban communities, there is not only significant deprivation but significant lack of resource. There is no point in floating the possibility of ownership without resourcing that with capital and on-going revenue. There is no magic wand that will allow deprived communities suddenly to have the confidence and experience to own and manage resources; there must be resources coming in that would make that feasible.

That can be evidenced in several different ways. First, landowners in deprived communities are not necessarily willing to hand over what they perceive as a potential asset—even though it is, in reality, probably a liability—without achieving full market value, as they perceive it. For example, Glasgow City Council has mortgaged all its redundant land to Barclays at a given market rate and will not release the land unless it achieves that value. It says that that is because it must honour its bond with Barclays. Similarly, Scottish Water holds on to land on the basis that it is an important part of its responsibility to deliver water to the whole of Glasgow, despite the fact that the properties where the former water board workers used to live are increasingly becoming derelict and Scottish Water has no intention of addressing the ownership issue.

The final point that I would like to make on finances is that the sources of finance that are available to community groups that manage to get as far as establishing themselves as credible units tend to require either outright ownership or a minimum 20-year lease before making investment available. I am thinking of lottery funding specifically, but that is also the case for Government resources and other avenues of funding that are opening up, such as the people and communities and strengthening communities programmes. We cannot address the issue of ownership without there being some resource in the background.

12:00

John Mundell: There are other issues. David Cruikshank gave the example of Glasgow City Council. There is other legislation with which councils have to comply in terms of land disposal, the primary one being our duty to ensure best value. If we are disposing of assets, we are always required to obtain best value, and that normally means market value, whether we use the district valuer or another mechanism to value assets. That is a key issue, but it is not one that the bill addresses.

Title restrictions and common good—which are included in the bill—must also be dealt with by councils. Common good is a highly complex area; I think that we have missed a trick in terms of clarification of common good and what should happen, relative to current legislation.

The Convener: Perhaps we will leave that to Kevin Stewart's Local Government and Regeneration Committee, and the Rural Affairs, Climate Change and Environment Committee will stick to part 4 of the bill.

Michael Russell: I will go back to the Glasgow situation, which is a bit of a revelation to me. I know that I am a new boy on the committee, but I find it very strange. Are you telling us that Glasgow City Council has a deal with Barclays that means that, if there is redundant land, it is on bond or promise to Barclays and cannot be accessed by communities unless they pay the full market value?

David Cruickshank: The position is not quite as cut and dried as that. There are several steps along the way, including the fact that the land is handed from Glasgow City Council to an arm's-length external organisation called City Property, which in turn engages a private maintenance management team called Ryden, so we are dealing with a string of different pressures.

I stress that, as a representative of a community development trust, it is not a good idea for me to alienate my potential partners, so I am not going to—

Michael Russell: Fortunately, I have no such qualms. Is that a common arrangement across local authorities?

John Mundell: Not that I am aware of. Such an arrangement would, dare I say it, cause some discomfort—at least the thought of it. I would have to understand it in greater detail.

Michael Russell: The arrangement might be considered an inhibition to some of the bill's ambitions were it to be replicated in any other places. I have had enough difficulties with Argyll and Bute Council's attitude, which I shall discuss later. The arrangement seems odd.

John Mundell: I cannot comment because I do not know the details. It would be unfair of me to comment on the situation elsewhere. We are being charged with the responsibility of being innovative in how we deal with assets and the services that we provide, and that arrangement sounds innovative to me, although I am not so sure whether it works appropriately for the bill.

Michael Russell: Is that a non-positive definition of "innovative"?

John Mundell: As I said, it would not be appropriate for me to comment on my colleagues' ideas without more detail.

Wendy Reid: I cannot say that I know all the details, but our understanding of the arrangement is that, a number of years ago, Glasgow City Council identified several unused land assets and entered into an agreement. The council set up an ALEO and identified the land and property as being of potential use in the market. It went into a partnership agreement with a company and took out a mortgage against the value of that land and property.

The idea was that the council would get a lump sum up front and, as the company with which the ALEO went into partnership—Ryden—is a specialist land agent, the benefit from selling the assets would be maximised. In that way, the ALEO could achieve a greater value for the assets than the value that the council got from Barclays in the first place, so there would be profits on both sides.

What that means for communities is that any building or land that was identified and transferred into City Property is unavailable for communities to acquire, unless they can pay what is perceived as the market value for the land, because the council has to get that money back in order to repay the mortgage or loan that it took out against the suite of assets.

There will be nuances that we have not really understood, but that is my understanding of the principle of what happened. Some assets were identified a number of years ago; I do not know whether new assets are still being put into the portfolio. I have heard that the arrangement is being reviewed, so we cannot say where the current situation sits entirely.

The arrangement has made things extraordinarily difficult for communities in areas in which there were unused buildings such as schools that communities had an interest in acquiring. Those communities were told categorically that those buildings would not be available for asset transfer purposes because they sat within City Property.

The Convener: Maybe the news will leak out from the committee that there is considerable interest in that.

Graeme Dey: I will develop that with Wendy Reid. I understand that John Mundell is in a difficult position and does not want to comment on other local authorities, but is it Ms Reid's experience that other local authorities in Scotland have entered into similar arrangements?

Wendy Reid: We have not come across that, to be honest. There might have been different arrangements, but there has been nothing like that and nothing that has so explicitly said that assets are outwith the council's control.

Glasgow City Council basically said that it could not take any decisions on the future of the assets because it was no longer in full control of them. Technically, the council still owned them, as we found out, but it was extraordinarily difficult to get to the bottom of the situation, because a number of organisations and companies were involved in the arrangement. That meant that communities could not access any of the assets, which was not obvious to begin with.

It was difficult for a community to find out whether an asset that it was interested in was under the management of City Property or of Glasgow City Council. There did not appear to be an obvious place to go to for that information; registers of assets, as proposed in the bill, would have been useful in showing exactly where ownership of assets sat. Although the council technically still owned the assets, it was not in control of their disposal.

Susan Carr (Community Alliance Trust): I agree with what David Cruickshank said about development trusts trying to get on to the first rung. That is incredibly difficult without funding. I work in Craigmillar, which is five minutes along the road from here. We have a similar arrangement about who controls the land. Craigmillar has been identified as a regeneration area and the City of Edinburgh Council has set up an arm's-length company for that regeneration. The original business plan was profit led and was meant to generate income for building new houses.

PARC Craigmillar, the regeneration company, has first call on an area, defined in the Craigmillar urban design framework by a red line that goes around most of the area, in which the buildings have been demolished or lying empty for a while. PARC has first call on the land, which precludes us from accessing it. PARC does not own it—it is

still owned by the City of Edinburgh Council—but any development there goes to PARC.

However, the original business plan did not work. When the property development sector crashed, so did the business plan. We have a development trust now because Alex Neil, when he was the communities minister, said that that might be one of the only ways in which we could influence any future decisions for Craigmillar.

We have recently taken over the lease of the White House, which used to be a notorious pub but is now a delightful art deco building that serves lovely food as a social enterprise. The point is that we want to find ways of developing and generating our ability to fund things. However, the journey that we had to make to take over that lease was unbelievable. For a small area such as Craigmillar, which has such great need, the journey was really difficult. We had to go through all the tendering and legals that an ordinary developer with loads of money would have to go through.

I would like to see whether there is an alternative to communities having the right to buy. Buying is such a far-off dream—we will never have that ability, unless funding is made available. We might have the aspiration, but we will never have the ability to buy. However, there are loads of opportunities for us to have the right to occupy buildings that are lying empty, such as buildings that contribute to an area in Craigmillar that will supposedly be our new town centre. At the moment, that is mostly derelict land, with some shopfronts that are lying empty.

A part of the shopfront—quite a sizeable building—is owned by the city council, which hopes to let it at an affordable price for developers. It is not affordable, however. For a community group, a price of £90,000 for a property that needs a lot of work is unattainable. I suspect that most people will not want to look at the building anyway. It is lying there and is contributing to the decay and the current situation in Craigmillar. People walk through it or pass it, but they do not look at it, and it is never open. It looks a disgrace. We could find a use for the premises, but we could not find £90,000 to fund it.

The Convener: The discussion about local government taxation and the way in which gap sites and neglected sites are taxed might well force some changes. However, that is up to another body, not this one.

Professor Miller: I am interested in the Glasgow City Council arrangement, which could be instructive. We would all need to know more information to understand the significance of the matter. I certainly understand John Mundell's inhibition from being critical of fellow local authorities.

I am in a different position, but I have a lot of sympathy for local authorities. The issue that we have discussed resonates with other examples where authorities find themselves between a rock and a hard place. If it is local authorities' view that the determinant decision-making criterion is best value, that makes it difficult for them to make decisions that serve a broader public purpose of sustainable development or whatever. That is not dissimilar to the procurement regime, where local authorities feel quite inhibited. If they are putting out to tender services that impact on the quality of lives of individuals and communities, and if best value is perceived as the primary way in which they are accountable, that often frustrates what they would otherwise like to do. We come back to this body—the Parliament—and to the Government to ensure that local authorities do not feel that they have to enter into agreements that do not serve the public interest.

Wendy Reid: Before I return to the initial question about financial implications, I will talk about best value. Our understanding is that best value is not necessarily about achieving best financial value. Other aspects make up best value and other considerations can be taken into account.

Achieving best value does not always mean getting the highest financial return on the disposal of an asset. We have always understood that to be the case, but whether that is taken into account in a lot of cases is another matter, given that local authorities are increasingly experiencing financial difficulty. We can see why best value is often seen as meaning the best financial return.

It is—partly—hard to tell what the bill's other financial implications will be. They will all be demand driven, as I am sure the committee has heard before. One question from an urban context is to do with the fact that, at the moment, rural communities can access the land fund to get help with acquiring assets. Will that land fund be expanded to cover urban areas as well as rural areas? I know that the land fund's value is going up, but will the criteria under which communities are eligible change?

12:15

Another point is that there is a difference between the financial implications of providing enough support and advice to organisations and those of enabling them to acquire the resources to purchase assets. Some things that are in place should not change. For instance, the Government is supporting the community ownership support service, which supports any community organisation that is looking to acquire an asset, whether in an urban or a rural context.

Some things are in place, but it is difficult to know how much extra business there will be from the changes as a result of the bill and to know what the financial implications will be. Evidence suggests that the bill will not necessarily lead immediately to a massive increase in the number of assets that go into community ownership. Within the first few years, the bill is more likely to lay down a marker than to lead to significant increases in property transfers.

Michael Russell: I will tease out the issue of best value, because it also relates to the topic of abandoned and derelict land, which we will come on to. Undoubtedly, councils will have bought some land and property for a development or whatever, and nobody would expect them to dispose of such assets at a loss. However, councils own substantial assets that they did not have to pay for because they were inherited for a variety of reasons from a variety of people. There needs to be a definition of types of land—it will be interesting to see whether we can arrive at such a definition—and the costs to local authorities. There is a legislative opportunity for local authorities to dispense with assets not for best value if there is another definition, and community interest is such a definition.

Have councils the will to do that? I am not asking John Mundell to speak for every council in Scotland, but do local authorities have the will to encourage the transfer of assets to communities? How can that be done with the wasting assets that Susan Carr referred to? It costs a local authority money to maintain and guard such property, to ensure that it does not deteriorate, but local authorities are generally not doing that, so the assets are deteriorating.

I do not want to disagree with Alan Miller—I rarely do so—but the issue is much more complicated than just saying that a council must look after such assets. There are council properties that have not been purchased and which are often not well looked after. There is a great opportunity for communities to make more of such property and benefit from it, which would also benefit the local authority area. Do local authorities have the stomach for that or is it too complex or difficult for them?

The Convener: David Cruickshank and Colleen Rowan can respond first.

David Cruickshank: As the question was to local authorities, it would perhaps be fair to let John Mundell respond. My point is about the resource that is available to achieve overall sustainable development and about moving away from the strict definition of value being price. I will hold back and let John Mundell respond to Mr Russell.

The Convener: Okay—maybe we should do it that way round. Does Colleen Rowan feel the same?

Dr Rowan: Yes.

The Convener: Right—I call John Mundell.

John Mundell: Thank you. I am glad that the point has been well made that best value is about more than just money. However, to my mind the issue is balance. For example, if we have an asset that is worth £1 million and has been acquired by whatever means—common good, inheritance or whatever—members will appreciate that elements of the community would challenge a council if it was to release that property for, say, £50,000 in order to have a significant community benefit. That decision would have to go through the political decision-making process and there would have to be a robust argument for it.

On whether councils have the stomach to transfer assets to communities, I can speak for my council—that is why I am here, as far as I am concerned—in saying that we absolutely do have the stomach for that. We are heavily involved in working with community groups and so on to help them to build capacity and have the required skills. We do the hand holding to help them to acquire assets.

Mr Russell made an important point when he referred to wasting assets or assets that have failed. As chief executive of Inverclyde Council, I am concerned that quite often in these austere times we look to transfer assets that perhaps have failed. Why are they failing? Because the community does not see the asset as a huge benefit. Perhaps the community has neither the capacity nor the interest to deal with the asset.

We had an asset in Port Glasgow that worked very well for quite a long time and was a valuable asset in the community. However, the people involved in running it moved on or chose not to continue. The funder of last resort, which is the council, was then asked what it would do about the asset. That asset had, in essence, been transferred, but the facility that had been operating has now been shut. What are we to do in such scenarios?

David Cruickshank made an important point about development trusts, which play a key role in communities. Inverclyde Community Development Trust is an important partner in Inverclyde and has a big part to play. I have sympathy with development trusts that are trying to access cash, and we have to take on board the point that David Cruickshank made about the capital cost, the on-going revenues and the whole-life costs of a property. What is important is not just the property as a physical asset but supporting the services that are provided in a facility. In the current

climate, it is difficult to achieve that balancing act, as cash is getting tighter and tighter.

Without appropriate funds being made available, councils do not have the money at the moment. We have heard about bureaucracy and about the legal processes that we have to go through for procurement and best value, but those are just a couple of examples. There is a huge amount to consider. I have to employ a team of lawyers to ensure that I go through the process and that I reduce the risk for our council and, more important, for our community. I do that to ensure that our council is run appropriately, as my peers do up and down the country. There is a lot to take into account and it is very complicated.

Graeme Dey: I have an observation. We are focusing on local authorities, which was inevitable after David Cruickshanks's comment, but I suspect that we could also be talking about the national health service, as we see a move away from old, traditional hospital buildings and towards centralisation or building new facilities. Perhaps Police Scotland will also find itself in the same situation as it closes small or old police stations. It is not just local authorities that we are dealing with.

John Mundell: My council's headquarters are in a building that was built in the mid-1800s. I always find it amusing when we are told to bring all our services together, because that building was the police headquarters and is now the Strathclyde Fire and Rescue Service museum, as well as having been the council headquarters and the court for places as far afield as Eaglesham and Govan. We moved away from that—we unpicked it, but now we are trying to bring it all back together again. Obviously, things go in cycles.

We integrated health and social care back in 2010, before the latest initiative, but there is still more to do to implement the changes that are due under the impending legislation. We are already looking at jointly procuring general practitioner practices and trying to get rid of bed blocking in local hospitals, and we are much more joined up now, which is a positive thing: we can reduce the property portfolios of each of the agencies involved and make our operations much more efficient through cohabitation within facilities. There is a long way to go yet, but that might release some of the cash that we need to help communities.

The Convener: I see that David Cruickshank, Colleen Rowan and Wendy Reid all want to comment. We have quite a lot of the detail in part 4 to deal with, so please keep your remarks as brief as possible.

David Cruickshank: I agree with the observation that there is more to community empowerment than local authorities. The NHS, Scottish Water and a whole range of public agencies are in the same boat. I do not know what questions are yet to come, but I would like to make a point that I hope will be explored in further questions. There are other ways of deploying existing resources that will make it possible for communities to become empowered economically, environmentally and socially. Sustainable development—the triple bottom line, if you like—is the key to the resolution of some of those issues. I shall leave it at that for the time being.

The Convener: We will indeed deal with some of those issues.

Dr Rowan: I return to the Glasgow context. From our members' perspective, the picture is mixed. Some of our members work well with Glasgow City Council and have taken over properties in their communities. We also work a lot with other third sector organisations in the city, and again the picture is mixed.

To return to Susan Carr's point about the right to occupy, sometimes the ALEOs work well with local organisations and sometimes they do not. We hear stories all the time about organisations being asked to take on prohibitive leases that they cannot afford and to take over on-going repairs and general maintenance. Those are obstacles and barriers. We work closely with community development trusts, which John Mundell talked about, but the general community anchors are the key mechanism that connects a lot of the activity around what the council is doing and what communities want. We made that point in our submission.

Wendy Reid: I have a very brief comment about other public sector assets. There is a reason why there has been less movement of other public sector assets into community ownership. According to the Scottish public finance manual, those other public sector bodies have to get the best financial return from assets, whereas local authorities have a bit of dispensation, in that they can dispose of assets at less than market value under the Disposal of Land by Local Authorities (Scotland) Regulations 2010. Communities are very interested in other assets, but up until now, it has been easier to negotiate transfers of local authority assets, because of that flexibility for local authorities to dispose of land at less than best consideration. It would be interesting to see whether the Scottish public finance manual will be reviewed to allow other public sector bodies the same flexibility.

Jim Hume: This is more of a comment than a question. We have opened up a can of worms, to put it mildly. We have heard that there is a mixed picture of how different public bodies interpret best value. I am sure that we will want to explore

further whether that is just a Glasgow situation or whether the picture is similar across other local authorities in relation to how they and other public bodies interpret best value and whether it is interpreted purely as best value in financial accounting terms or as best value for the community.

I think we can move on now, convener.

The Convener: We can indeed.

Angus MacDonald: Just before we move on, I want to pick up Colleen Rowan's point. I agree that not all ALEOs benefit the local communities that they are supposed to represent.

I will stick with the financial memorandum temporarily. If demand on the Scottish land fund grows following the extension of the community right to buy to urban Scotland, which public bodies are likely to be most affected? Do those public bodies have the expertise and support to advise urban communities? What costs do you envisage those bodies having to bear?

David Cruickshank: I refer you to the Development Trusts Association Scotland, of which we are a member—I am also a board member—which was set up specifically to deal with such issues. I will leave Wendy Reid to specify more exactly the role that development trusts can play.

On the ability to resource and sustain community initiatives—presumably we are talking about community empowerment and renewal in the context of land reform—one opportunity that is opening up will open up another can of worms, particularly in deprived communities where people are dependent on benefits that are currently administered through the Department for Work and Pensions. Presumably, that resource could be redeployed in a way that could serve as a foundation for employment opportunities for people in those communities, which could be built on in such a way that people were not afraid of losing their basic human rights in terms of housing, money for food and so on. There is an opportunity in cultivating communities, which is about renewal, regeneration and using that resource far more positively than it is used currently.

The Convener: That is an interesting point.

Wendy Reid: The question about which public sector bodies are likely to be affected is a hard one. Looking at the experience so far of rural communities acquiring assets by utilising the right to buy—or even acquiring assets but not using the right to buy—you can see that the main difference between the support that rural communities and urban communities can access is that rural communities in the Highlands and Islands area can access support and extra resource from HIE, whereas urban communities outside that area struggle to find a similar avenue of support.

12:30

There are various bits and pieces of support available to communities all over Scotland—people will say, "You could get this or you could get that." However, on the additional finances that are required to support urban communities, we need something akin to the level and detail of support that rural communities are able to acquire through HIE, particularly for aspects such as business planning, and the additional finances that HIE can give asset acquisition projects. Urban communities in particular are not able to access that support at the minute.

Angus MacDonald: As we have heard from a number of contributors today, finance is an issue. Are you aware of any funding schemes that are available to urban communities? What additional support is likely to be required to meet the anticipated increase in applications?

Wendy Reid: We could never put a figure on that. However, all communities are able to access Big Lottery Fund money if they are looking to acquire an asset. Although that funding is available now, the programmes are up for review and we do not know whether there will still be a growing community assets fund this time next year. We would all be surprised if on-going lottery funds did not contain some strand of funding that enabled communities to acquire, develop and manage assets, but no one knows what that will look like and what sums will be available.

Urban communities are not able to access LEADER funding, which is for rural communities, and they have less opportunity to acquire money specifically for asset acquisition than rural communities have. If the Scottish land fund is to be broadened to enable urban communities to utilise it, that will answer part of the question. I am not sure whether that will happen; there may have been a statement about it that I am unaware of. Sometimes local authorities have bits of money that communities can acquire, but there is nothing specifically for urban communities that rural communities cannot access, whereas the opposite is true at the moment.

The Convener: The reintroduction of rates—or the removal of the non-domestic rates exemption—for shooting estates is being discussed. We are looking to top up the land fund from that.

Wendy Reid: The question is whether urban communities will be able to apply to the land fund. Up until now, the fund has been, by definition,

something for rural communities, not urban communities.

The Convener: We will check that out.

Susan Carr: To apply for Big Lottery funding, a community has to have in place a lease of at least 25 years, and to negotiate the lease the community needs funding to get the support of lawyers. It is a chicken-and-egg problem.

Our community, Craigmillar, is a deprived community. For years and years, people have made decisions for us—they still do. People need to be supported to make decisions for themselves. Frankly, the idea of taking on a 25-year lease and finding the funding to do that is a bit overwhelming for some communities, which do not know where to start. Until they are given a first step up the ladder, it will be very difficult for people in deprived areas to accept that they have the ability to do that.

I hear about capacity building all the time, but quite frankly this is not about building capacity; it is about releasing it. That is what really needs to happen. The capacity is there; it is just not released. There are too many barriers for people to get past.

The Convener: Thank you.

We move on to the nature of land.

Cara Hilton: Good afternoon, panel. I am keen to hear more about how the community right to buy will empower and make a real difference to communities in urban areas. How will that help community confidence, cohesion and sustainability?

Susan Carr and Wendy Reid have already talked about the funding challenges that urban communities face, but are there any other issues that particularly affect urban communities? Do you foresee any practical problems? How likely are community bodies in urban areas to use the new right to register interest in land that is already subject to a development proposal as a way of blocking development? Do you agree that one of the unintended consequences of the bill could be an increase in inequalities between communities?

I am sorry that that was rather long.

The Convener: That is all right.

John Mundell: There are significant inequalities in our communities already. There are impoverished areas, and I see it as a primary part of my job to ensure that we try to balance the scales for people who are the most disadvantaged.

There are positives in the bill, but there are technical changes that need to be made to help us address inequalities—I have included them in my written submission. Such things need to be taken on board.

Up in Kilmalcolm, which is one of the most well-heeled areas in Scotland and lies within the Inverclyde Council area, capacity was released—I take on board the point that has been made about that—and the skills in the community were there already, so the level of intervention that the council had to make was limited. Yes, we went through a whole process and, yes, there were power struggles in the community group, but things have settled down and the project has been highly successful. It involved an asset that the council had not managed to continue, but an investment has been made through a cocktail of funding and a bid process, and it has been highly successful.

However, in other areas, where people are more disadvantaged—I recognise that there is a lot of enthusiasm and pride in such communities—more support is needed, because the skills do not necessarily exist in the local area and a greater level of intervention by councils is required.

Anything in the bill that helps us to tackle such issues is positive. However, as I have said, there are various technical issues that need to be addressed. I have pointed those out in my written submission and I would like to see them dealt with.

Susan Carr: I want to go back to sustainability. One of the problems in deprived areas is that we are often subject to someone's great idea of what will solve our problems—those ideas very rarely come from people within the community. We have a long history in Craigmillar of someone having a brilliant idea, coming along and setting up a project that has a certain lifespan and then the funding is removed, so we start all over again.

Community engagement is crucial. In an area such as Craigmillar, people have been consulted to death. They could tell the Parliament about consultation. However, very little of what is said during a consultation is put into realising people's aspirations. It nearly always gets twisted. It is like the funding that we can apply for: we have to apply for the funding that people are prepared to give us for the activities that they want us to do. I would argue that if we empowered people to come up with their own ideas for solutions, we would have a much better, sustainable future for the community.

In Craigmillar, more than half the houses have been demolished but because the prices have dropped for house building, no developer is prepared to go in there. Where we once had a community of almost 25,000 people, we now have a community of about 7,000 or 8,000—at one point it went down to 5,000. The problem is that the opportunity for people to have a say is being reduced because the community is now dismissed

as being too small to be able to reflect what the area needs. However, people will be there long after the regeneration process is completed.

There is a need to consider how we can empower people to have a say in what is needed in their own area. The committee may be surprised to find that that often concurs with what the local authority wants; it is just a different way of doing it. People want new housing, good facilities and equality in life. It is not rocket science. Nobody wants dog fouling and litter, but they are consequences, perhaps of bad design and the fact that during the consultation process no one listened to people telling the local authority about what would work in their area.

There is an issue around allowing people in deprived areas the funding and the time that it takes to take on issues themselves.

Dr Rowan: I feel that I need to come in here to say that our members' model of community-based housing associations is predicated on local people leading and making decisions at the micro, neighbourhood level about what is needed in their own communities. I am certainly not suggesting that community-controlled housing associations are a universal panacea or a silver bullet that will solve all the problems. In fact, most of our members operate in deprived communities, and the inequalities—the health and socioeconomic inequalities—between those neighbourhoods and the rest of Scotland have grown. However, by releasing or tapping into what is already on the ground, our model works.

Most of our members are celebrating their 40th year this year—some on the peripheral estates have been around for 25 years—and it amazes us that their work is not lauded and put out there as an example of the resource that is already in communities and which could be tapped into. We have just put out a new publication, "Community Controlled Housing Associations—Still Transforming Local Communities". We are willing to talk to councils and health boards about health and social care integration, because that offers our members and local people opportunities to be involved in those big decisions and processes as we go forward.

Claudia Beamish: To move the discussion forward, I would like to delve as deeply and as broadly as we can into the meaning of "community", which is complex and difficult and which relates to place and interest. I will not go back to section 34 of the 2003 act, because what the committee would value is the panel's perceptions, experience and knowledge of where they think the Community Empowerment (Scotland) Bill should be going. I would like to address the comments that have already been made about SCIOs in the context of the bill, as well as comments about bencoms and the issues with the complexities of geographical definitions and postcodes in an urban context, and also methods of defining communities of interest such as arts organisations, charities, ethnic groups and communities more broadly—the list is as never-ending as one's imagination, but there are also challenging issues around finding land to grow things on, as allotment societies and community councils know.

I am putting all that on the table and asking whether our panel can give any thoughts about whether definitions have to relate to specific legal entities or whether there might be other ways of defining community that would be helpful in taking forward the regeneration issues that we have been discussing.

The Convener: Who wants to start?

John Mundell: That is a very challenging question. In the simplest terms, the meaning of community is about people who live together and the relationships that exist between people in that community—how they interact and live in the area and how they make their environment habitable and pleasant for all who are there.

I cannot remember all the parts of your question, but I would like to comment on SCIOs. The bill says that a SCIO must not have "fewer than 20 members". That is particularly restrictive. We have a couple of SCIOs that are working very well, one of which has eight members and the other has 10. Are we now saying that, even though we know what the SCIO wants to achieve and we are doing everything that we can to support it, because someone in an ivory tower has said that the SCIO must have 20 members, it cannot continue? It does not have 20 members, but it is an active and progressive community and wants to make things happen, but it cannot, because it is barred. That issue needs to be addressed. Does the bill have to be prescriptive about having a minimum of 20 members on a SCIO?

12:45

Claudia Beamish: That is in the 2003 act, as I understand it. Looking forward, we are listening to your comments.

John Mundell: Well, this is an opportunity to change it.

Wendy Reid: There are many aspects to your question.

We have always looked at community in the same way that John Mundell does. We come at this from a community-led regeneration perspective and we are interested in people who live in a place being proactive together to make

positive change to that place. Our definition has always come from a geographical perspective. It is about community of place, rather than community of interest. I am not really able to comment on the community of interest side, because that is not something that we have ever got involved with.

If we are talking about community ownership, the whole thing about having a broad membership is that, whatever structure you put in place for a community-led organisation, the democratic control of that organisation is important in terms of being able to say that that organisation is accountable to the wider community through its membership. That is why we have always advocated that community anchor organisations, whether they are development trusts or not—not all anchor organisations are—should have as broad a membership as possible, because it is that membership that reflects the views of the wider community to the organisation, which then acts on their behalf.

There are a number of ways to do that: through a company limited by guarantee; through a SCIO structure; and through a community benefits society. In all those structures, the values of democratic accountability, membership and voting are represented. The other thing about being community led, from our point of view, is that the members should be able to get elected on to the governing body of the organisation, so that there is true ownership of the organisation from within the community. As I say, that can be achieved through a number of different structures.

We have always argued that decisions should not be made in legislation about one structure being better than another, because there are several factors that will influence which structure a community thinks is most appropriate for the things that it wants to achieve. For example, the reason that people may choose a community benefit society is that they may want to go down the route of raising finance through a community share issue. The only way that can be done is if the organisation is set up as a community benefit society. However, the membership of a community benefit society can be as broad as the membership of a company limited by guarantee or a SCIO.

As long as the values are built into the structure, which can be done, we do not think that the structure should be the limiting factor. It must be the structure that works best for the things that the community wants to achieve.

The Convener: It was suggested last week that new structures are being invented all the time and therefore there should be a broader definition of what the structure should embrace. Do you agree?

Wendy Reid: I think so. We can set out the values that we want the structure to adhere to and the principles to which it should operate and then see how that translates into several different structures. People often ask us what a development trust is and we say that it is not a physical thing but a way of working and a concept that demonstrates a certain set of values and approaches to how you are going to achieve the end result.

Communities are often ahead of the curve. The things that they want to do, and the aspirations that they have and the creative ways that they are thinking about how they can achieve their aims and objectives, are often limited by the legal structures that are available to them.

Having a degree of flexibility is really helpful, although my understanding is that that is there in the bill, because it says that any other structure that may come along could be added at a later stage. We would not like anything that currently exists to be excluded, but we would also want flexibility to add new structures in the future.

The Convener: John Mundell has to leave us at 1 o'clock and I wanted to bring him in on another matter.

Claudia Beamish: I do not need to come back to the panel, I am just interested in hearing their views.

The Convener: Let us hear from Susan Carr and then David Cruickshank. I want to put a question to John Mundell after that.

Susan Carr: Claudia Beamish's question was very complex. My experience has been that communities define themselves and they evolve. They become almost redundant. Our community development trust came from an umbrella organisation that we set up for neighbourhood associations across the greater Craigmillar area. We first set up neighbourhood associations instead of tenants and residents groups because we believed that people identify themselves by where they live, not by who owns their house. We decided that we needed to bring those together, so we set up an umbrella organisation, called the community regeneration forum, which became much more strategic in its approach. We then discovered, when we met Alex Neil, that we really needed a community development trust. All that evolved over time.

It takes time for people to buy into these things. When we first spoke about a community development trust people just did not get it, because it was a new concept. You can get people to buy into these things only if they succeed. We had to get a few things under our belt before we got to the point at which people wanted to join. We started off with maybe 100

people wanting to join, but now our memorandum and articles of association say that every person who lives in our defined area is a member, so every person has the opportunity to have a say on how we are governed. It is something that evolves.

David Cruickshank: I will give a practical answer to the question of how you define a community. The Big Lottery Fund wants you to define yourself when you apply for growing community assets funding, and the only solution that we found was to use the community planning partnership definition: in our case, we used Maryhill, Kelvin and Canal community planning partnership. The community was so nebulous and there were so many different communities in that interest group that it was difficult to define. It is very difficult to define a community scientifically, but you have to come up with some answer.

That leads to the whole issue of community planning partnerships, which we are not going to go into now—convener, I can see you saying, "Help!" In theory—although not in working practice—that is a significant area, and it needs a thorough overhaul and fresh input.

The other point to make is that there can be an inherent assumption that community is always a positive thing. It is not necessarily. You get communities of drug culture and communities of fear of asylum seekers. You get communities of all kind of territorial negativity at gang level, in which young men from one side of the street are prepared to kill people from the other side of the street, because they see that they have a territorial imperative to make their name by standing up for their side of the street.

There are communities that need intervention, but that raises a whole other issue. That is my tuppenceworth at this stage.

The Convener: Before we ask a couple of questions on procedures and requirements, I want to touch on definitions of "abandoned" and "neglected" land before John Mundell has to leave us in a few minutes, because the issue is particularly interesting from a local government perspective.

Dave Thompson: Good afternoon, panel. I would appreciate your views on the definition—or lack of one—of "abandoned or neglected land" and the fact that, unlike the crofting legislation, under which crofters who want to purchase land just have to show that the purchase would be in the public interest and would be for the good of sustainable development, the bill has an additional "abandoned or neglected" test.

There is another test on top of that. It has to be shown 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".

Do you agree with me that those tests, taken together—we have heard evidence on this before—would make it almost impossible for a community in an urban setting to purchase the land that it wished to sustainably develop?

Susan Carr: Craigmillar is a very deprived area and we have always been quite frightened by the fact that there is a lot of derelict land because there was so much demolition. The owner of the land is the local authority and, because we are based in Edinburgh, it would be nigh on impossible for us to come up with funding that would meet the local authority's requirements for best value, so we are going right back to a situation where it comes down to funding.

I do not know about other local authorities but, in Edinburgh, land has such a high value—even if it is not as high as it might be at the moment—that people will not release it. We have been strong in our desire to make sure that none of the land is bought and land banked. In some respects, the fact that we have a regeneration company that has that red line has probably prevented land banking from happening, which is quite important.

How you would define the land very much depends on where it is. However, we can certainly identify buildings and so on that are just going to lie there until somebody thinks that there is enough value in the price to change things. I do not think that in bigger authorities such as Edinburgh we are ever going to be able to aspire to purchasing that land.

John Mundell: This is a very difficult issue. We have been spending tens of millions of pounds on regenerating our area, as most councils do anyway, and we have been transforming our area. I will give you an example of the difficulties involved. There is one site that is owned by an absent owner who is, I think, from the south of England. In fact, my most recent understanding is that he may well have passed on—I might be wrong on that.

Under the circumstances, there are all sorts of issues associated with that site. Strategically, from a planning perspective and from a regeneration perspective, it is a fantastic location. It is a site that the council and our community planning partners believe would be a benefit for the area. However, even with all the power and expertise that we and our partners have at our disposal, it is nigh on impossible to move that site on, so the site is blocked. That is the situation for us as a council.

I use that as an example and, in my mind's eye, I try to put myself in the shoes of a community

group that wants to access a particular site—we are talking about abandoned or derelict land. Obviously, Inverclyde, south of the Clyde, was a major shipbuilding area in the past. We have developed a lot of the riverside already and we still have a way to go. However, some of that land might look great but is heavily contaminated with heavy metals and all sorts of chemicals and pollution, and it costs millions of pounds to decontaminate sites and make them developable. There are all those abnormal costs for those sites—it is a high-risk issue.

I doubt very much that that issue exists in Susan Carr's area to the same degree. Obviously, the sites in Craigmillar were predominantly housing and there is a lot of open space now where the sites have been cleared. However, there will still be an element of contamination. Bearing in mind when they were built, those houses could have had asbestos in them and all the rest of it. That is what can make the cost of developing those sites so prohibitive.

We have to be very careful about what we do. It comes back to the money again. It is about proper assessment of the sites, options appraisals, and coming up with the sources of funds. Who is going to pay? From our point of view, there is the land that is owned by us and the land that is owned by Peel Holdings or Clydeport, where we are in partnership with them through our urban regeneration company. From a professional point of view, the money involved for some of those derelict areas is mind blowing.

That said, trying to develop brownfield sites in urban areas is absolutely the right thing to do, because they are a blight. There is no doubt about that. They have to be brought into effective use for the community and for the urban areas in which they exist.

13:00

The Convener: Mike Russell has a supplementary. Perhaps it is for John Mundell.

Michael Russell: It is. It is always possible to find reasons not to do things. I understand the contamination question and such things, but let us take other examples of buildings. Local authorities will hold and own a substantial number of buildings, many of which they will attempt to sell but face difficulty in so doing because of the state of the market or the nature of the building. The authority will be spending substantial sums on making those buildings wind and watertight, which is often not possible to do properly, and secure.

Where does the balance lie in ensuring that buildings that the council does not want and which it cannot sell over a period of time can be utilised by communities for their own purposes? What active work is done on that? Sometimes it seems to me—certainly from my own local experience—that the council's attitude is that the only difference between it and a property developer with a land bank is that it is just not very good at it. The council leaves stuff in a bad state that constantly gets worse, and the building is eventually bulldozed.

John Mundell: In Inverclyde, we have replaced every secondary school, and I know that other councils are doing the same kind of thing. We have completely rationalised our schools estate over the past seven or eight years. We still have a way to go but, nonetheless, that leaves a number of rationalised properties or properties that are no longer in current use.

The funding model for our schools is quite complex. Inverclyde has done the majority of that itself through reducing the number of schools and getting better numbers in schools, for example. Part of the funding model is the capital receipts that we were due to get when we first set up our schools estate management plan away back prior to the recession. We have factored in the values that were available at that time for the sale of those assets, which are no longer available. We took a conscious decision as a council—at least, the members took the decision, obviously—to say, "Right, we're going to stop selling those assets at the moment until the market gets back up to an appropriate level, but we need that cash to service our funding model." That was all part of the business plan for the schools estate.

Michael Russell: What if you never get the cash? That regularly happens.

John Mundell: I will come on to the issues.

I absolutely agree that there are appropriate types of assets that we could transfer. I say that the assets should be "appropriate" because, if they are a burden to the council in keeping them wind and watertight, they will be a burden to a community group. Who will provide the funding?

That goes back to what I said. It is the old drum that we all beat. There is not enough money. I know that there is more that goes beyond that but, nonetheless, if there is a wasting asset that is in poor condition and we believe that we must come up with a reduced footprint over our whole estate to provide services—in other words, we must bring its size in and operate from fewer buildings in a more efficient way—the most inefficient part is left.

If I am genuinely trying to help communities and community groups, I will not be comfortable transferring assets that are a burden. I would rather come up with a way of helping a community group or community groups to come up with a new asset. Perhaps we can raze the building to the ground and use the land that is available—if the

building is an old primary school, it will be right in the heart of a community anyway. If the group is going to exist for 40 or 50 years or longer than that, it is appropriate that it, too, should have modern and efficient assets to operate from.

Michael Russell: There are many circumstances in which communities will want to have those assets. They will believe that they have viable plans for them, and they may be assisted by bodies from which you cannot get assistance. For example, in the Highlands and Islands, HIE may assist communities to develop and take forward assets that the council could not get money for. In those circumstances, might the council facilitate communities developing their strength and ability to regenerate themselves, rather than simply judging them with the criteria that it uses and saying, "We don't think you're up to this, so we'll just demolish the building"?

John Mundell: You have perhaps misunderstood what I said earlier. We are proactively involved with community groups now. I mentioned a couple of SCIOs, for example. We are working very closely with them. Officers go to regular meetings in the evenings to try to develop plans and, indeed, to help people to come up with appropriate funding plans. We are well advanced in building a new facility in Inverkip; it is going through the planning stage and there are one or two issues with it at the moment. We do that anyway; it is not new. If we can get another organisation involved—or if Highlands and Islands Enterprise can cast its net wider and it is called by a different name—that is fair enough.

However, it comes down to the funding, predominantly, and the will—the political will and the will of people like me to make sure that we understand that we are here to serve the people out there and to help them to get the right answer.

Graeme Dey: Before John Mundell has to go, I have a brief supplementary to help us to get a feel for the issue.

In the evidence that we have taken previously, we have looked at the issue of not being able to identify who the landowner is. Perhaps you can help us to understand that issue in an urban context, given your experience as chief executive of a council. If we consider blight sites in your area, to what extent would there be an issue in identifying who owns them?

John Mundell: There are other areas that we are being consulted on in terms of the land register and so on. The philosophy behind completing the land register is absolutely bang on the button, but the aspiration to get it done within a five-year timeframe is overly optimistic; I think that it will take about 10 years. It is not a priority for us at the moment, given everything else that we are wrestling with, but it is absolutely the right thing to do. If we complete the register so that we know who owns all the bits of land across the whole of Scotland, that will make life an awful lot easier.

I include common good in that as well. There are areas in which there are shades of grey and it takes time to wrestle with the legal issues, including the transferring of assets to community groups, which is what we are here to talk about. That makes it quite difficult. The completion of the land register is a great thing to do—my professional association, the Society of Local Authority Chief Executives and Senior Managers, certainly believes that it is a great thing to do—but the timing is not on our side and the resources to deal with it are not available at the moment.

Graeme Dey: To be clear, if the provisions in the bill were introduced right now, do you anticipate that there would be substantial issues in identifying the ownership of some of the sites that people might want to take over?

John Mundell: Yes. The issue of ownership comes up in the redevelopment work that we do now. A recent example involved Peel Holdings. I think that all the land right down along the waterfront—all the shipbuilding area—was transferred for £1 many years ago; at least, that is what some of the members tell me. We are paying millions of pounds through partnership to get such sites developed. At one site, we had a boundary fence around one of my operational depots, and we were challenged by Peel Holdings, which said that that was not where the boundary was. It cost a lot of money just to sort out one boundary fence—we are talking about a couple of metres' difference on a site in an industrialised area that was heavily contaminated. It was a lot of cash, and that is a simple example.

Anything that can help us to simplify the process—or, indeed, clear the boards and make sure that we can start afresh with a full, detailed register that shows who owns what—has to be a good thing.

The Convener: You may notice in the *Official Report* other points that are made after you have left. Thank you very much for your evidence.

John Mundell: I apologise for having to leave.

The Convener: Dave Thompson has questions on detailed procedures and requirements.

Dave Thompson: I will ask about the registration process and what the panel feels about communities having to register. In some instances, it might be very clear that there is a bit of land that the community wants, and an early registration would be something that it could anticipate and deal with. Often, however, pieces of land will come on the market suddenly. Last week,

Holmehill Community Buyout gave us an example in which an area that everybody thought was a public park suddenly had a "For Sale" sign put up on it. There are places in relation to which people would never have thought about registering an interest in a community purchase.

At the moment, many applications are late registrations—they are almost becoming the norm. I would like to get the panel's views on whether we need any kind of early registration or whether communities should just be able to register an interest once a building or land comes on the market.

Also, should communities be able to register a general interest for a purpose, rather than in relation to a particular piece of land or building? That would mean that, if a community wanted to develop some housing or a park area or whatever, it could form a group to register an interest in that purpose rather than in specific pieces of land that may never come on the market.

David Cruickshank: I will backtrack briefly and give a case example that bridges to the registering proposal. In our community, we have a piece of land of 9.25 acres that was previously allotment land. It deteriorated in the late 1960s and was used for the kennelling of greyhound dogs for the local greyhound track. The area further deteriorated into a serious antisocial and criminal base where dogs were kept for dog fighting and guarding class A drugs. That situation perpetuated for 20 years until it was finally addressed through pressure from the local community council to get agencies such as the police, the council and the Scottish Society for the Prevention of Cruelty to Animals on board to support the move to take back the land.

The legal reality of the situation is that the land is owned by a trust. All the trustees are dead but their legal representatives are still negotiating, allegedly on behalf of a benefactor of the trustees of Possil estate. It is a complete nightmare to try to get to the bottom of the situation. There is no recognition of the damage that allowing that land to be a base for antisocial and criminal behaviour has done in the past 20 years. The idea that people should be responsible—publicly responsible—for the land that they own is a completely necessary prerequisite.

I simply say yes to Dave Thompson's idea about registering. If a community says that it wants something, there should be a way in which it can make that known and then be supported to achieve that in the face of all the other players who have their agendas and who are usually much more powerful and better resourced than the local community group.

Wendy Reid: Dave Thompson raises a number of issues. The process of registration is quite onerous for community organisations. In rural areas, the 2003 act has opened communities' eyes to the fact that they potentially have an ability to acquire land. Although not much has been acquired through the act itself—because it is actually fairly difficult to go through that process—the act laid down a marker for communities that acquiring land is a reasonable aspiration for them to have, that they have a right to own land and say that they are interested in it, and that they should be offered the opportunity to acquire it.

As the committee knows, for a community to register an interest, a body has to be set up in a certain way and there must be a certain level of support from the wider community in the registration of interest. In a small rural community, it might not be that difficult to gather that level of interest, but it might be harder in urban communities because, depending on how a community decides to define itself, there could be thousands of people in the area and they will often not be particularly engaged in democratic processes. For us, there is an issue about how a community organisation can get over that first hurdle that is put in the way, which is that 10 per cent of the community need to demonstrate support.

Secondly, once the registration is approved, the body will have to reregister the interest five years later and go through the whole process again. That puts people off. However, having to do it makes communities assess what assets they have and why they might want to register an interest in land. That encourages communities to start being proactive about the type of community that they want to live in and the things that they would like to be able to achieve as a result of owning assets.

The issue with late registration is a timing issue. If something comes up unexpectedly and a community has not thought about it in advance, it is difficult for the community to go through the process of gathering interest to support the first stage of registration and so on.

13:15

I am in two minds about the registration process. The need to register is a prompt for communities to think about how they would like their communities to develop and what opportunities they would like to have to influence how things develop. However, the process is onerous, as is the reregistration process. There is something to be said for having an easier process for registering interest if a piece of land comes up for sale that the community had never anticipated would come up for sale, because things happen that no one could have predicted. As the bill

stands, it will be extraordinarily difficult for communities to do anything about such situations, which might involve the loss of a service or whatever.

I am not sure about getting rid of registration altogether, although I can see that that would have advantages. What is useful about having to register is that it gets community organisations to think about why they might want assets and what they might want to do with them. We might not want to lose that prompt if we were to go down the route of not having early registration of interest.

Dave Thompson: You think that the process should be greatly simplified.

Wendy Reid: I absolutely do.

Susan Carr: I agree with Wendy Reid. I can give the committee two examples of something that happened in our area, just down the road. When the library moved, we expressed an interest in renting the building—we knew that we could not buy it, because there is a red line, in that the area is designated a development area. We had to go through the whole process, but we lost out for the sake of £150 a year because no consideration was given to why we wanted the library—we wanted it for a youth zone. Another bidder bid £150 more than we bid. We could have afforded to pay £150 more, but there was no acknowledgement that what we were proposing was advantageous for the whole area.

We lost out in the same way with another council-owned building a bit further along the road. I would like communities to be able to register their aspirations for the use of buildings. The two buildings that I am talking about have been taken over by private tenants and are closed for six out of the seven days of the week. Their being taken over has done little to enhance the quality of life in our area and we have missed two opportunities because we were not able to register the use to which we wanted to put the buildings.

The Convener: We will move on to the hoops that communities have to jump through. You have given one example, in the context of trying to rent a property.

There is a double requirement in the bill, in that community bodies must show that they are

"furthering the achievement of sustainable development",

and ministers must be satisfied that continuation of the current ownership

"would be inconsistent with furthering the achievement of sustainable development in relation to the land".

Are those two tests fair? Do you foresee difficulties for communities in meeting the public interest and sustainable development tests?

Susan Carr: An awful lot of that will come down to interpretation. As a community worker who has worked in the voluntary sector for 25 years, I can say that what we hear from the Parliament and the Government is often quite exciting, and we think, "Yahoo! They have listened; it is going to happen," but, unfortunately, when the local authority interprets provisions, it somehow fits things into a little box whose sides cannot be moved. I do not want to sound too critical of the local authority, because it pays my wages, but there is no flexibility.

It will depend on how the local authority officers interpret the provision and how much that matches our interpretation. There are certain difficulties and I suspect that those are different for each local authority.

Wendy Reid: I would have thought that it will be easier for communities to demonstrate that their proposals pass the first test, because community organisations are mostly concerned with improving the areas where they live. It is very rare for a community organisation to try to acquire an asset to do something that people do not think is a good idea or that is not about improving general quality of life. The second test is more difficult, because how can a community prove that somebody else is not also trying to achieve the same thing? The second test would be much harder to meet than the first.

The Convener: It has been described as a "killer clause". Do you think that that is the case?

Wendy Reid: Yes.

The Convener: The issue of duplicate applications arises where the Government or whichever body is responsible must consider different proposals. One application could be positive and the other could appear to be positive but could in fact be designed to stymie the first proposal. Have you had any experience of that in an urban context? Will that be a complication in the development of proposals?

Wendy Reid: I am looking to my colleagues who operate in urban areas to see whether they have any examples of that.

Susan Carr: Some communities are very active in their own right. We have tried hard—by and large we have succeeded—to get cohesion in what we do, so that the process is open and local people are involved in decisions and the direction that we take. However, some people do not like change and sometimes it is difficult for people to buy into the process.

In our community, people have had years and years of others telling them, "Now you do this and then you do that. This is the money you'll get and this is how we'll do it." Then things change in the

next funding round and they are told, "Oh no, we've changed our minds; we're doing it this way instead." It is difficult for people not to be drawn to what gives the easiest access to funds, but the easiest funding option does not always mean doing what the community wants.

I have been working in a voluntary sector organisation for 25 years, and I have done everything from community engagement to employment and health—I am now working under a health grant. That is because we have to fit into what people are prepared to fund, rather than what we want to do. That is the difficulty. Also, we are often driven by targets that have been defined by someone else. We end up having to contort ourselves into the shape that will access the funds and benefit the community. In my case, we are funded to do A, B and C, but we also do X, Y and Z, because that is what the community wants. We have to do the first bit in order to do the second bit.

It is very difficult for communities to direct the funding. It is usually the other way round, with the tail wagging the dog.

The Convener: Should there be specific mechanisms for dealing with different approaches? Say that there are two applications, there needs to be some means to weigh one up against the other.

Wendy Reid: As always, we cannot avoid competition and we cannot legislate for that. There must be a mechanism for judging two applications against the same criteria and working out which will be more in the public interest. People will always come back and dispute such a decision. That happens all the time and is not something that we can avoid. However, we should not use that as an excuse not to do things.

Some communities have not previously had the opportunity to register interest and put in an application to acquire assets or land. The process will allow them to express their aspirations. Our experience has been that the fact that people are able to do it means that things are often worked out at community level first. There have not been many cases in which there were disputes over the same thing, although that might happen more in urban areas than it has in rural areas. When it comes down to it, if we are talking about achieving sustainable development, we need to consider what that means and who sets the definitions. The test can then be how competing applications contribute to achieving that definition of sustainable development in a particular place.

The Convener: Does Alan Miller think that everyone should be given a copy of the United Nations International Covenant on Economic, Social and Cultural Rights, and classes on how to interpret it? It sounds to me as though empowering people at a local level, under that broader definition in relation to sanitation, food and housing, would be very valuable indeed.

Professor Miller: What I have learned from this evidence session and the previous one is that communities do not need much encouragement to empower themselves. It is the decision makers in authority who need to be more aware of their duties under those obligations. That greater awareness at the Government and parliamentary level would be much more helpful. Some of the experiences are about not so much capacity building as capacity releasing, and for me that says it all. Too often, decision makers make decisions with the best of intentions on behalf of those for whom they are making decisions. That has to be turned on its head, and we do not need international obligations or treaties to do that. It is just common sense, or it should be.

The Convener: We shall hear a couple of final comments from Colleen Rowan and David Cruickshank.

Dr Rowan: I refer back to community planning partnerships, which are relevant in that there are three levels at which policies and strategies operate—on the ground with local people leading, at the local authority level and at the Scottish Government level, where policies are formulated. For our members and other third-sector organisations, where the system falls down is in the community planning partnership structure, because it bears little relation to what people define as their communities. There is a mismatch between the geographic interpretation of what the community is and the community's view, and our members often do things despite what is happening in the community planning partnerships. In other cases, we work alongside CPPs. For example, in Glasgow, in relation to the single outcome agreement, we are working on the vulnerable people group and the homelessness and housing need group, and some good outcomes have been achieved.

That is a well-rehearsed discourse, and I know that those points have been made many times, but that part of the system really does not work. That is where it falls down a lot of the time.

The Convener: We are happy enough to take those ideas forward.

David Cruickshank: Convener, you asked whether there had been any examples of competing interest for a given site. Funnily enough, the one example that I could come up with from our community was a case where a housing association wanted to build residential homes—that is what housing associations do—and the community wanted facilities for young

people. There was no doubt about who the winner was, because the housing associations are equipped to move and deliver. I am not criticising housing associations, by the way, but you asked for an example and that is one.

The Convener: Indeed—thank you.

We have covered a wide range of issues today. It is fascinating for us to get as many practical examples as possible. I thank the members of the panel for all their input. If you feel that you have any further points to make, you are at liberty to write to us afterwards. Thank you for answering a wide range of questions.

At our next meeting, on 10 December, the committee will take evidence from the cabinet secretary on the Community Empowerment (Scotland) Bill and will consider petition PE1519, on saving Scotland's seals, as well as the committee's report to the Finance Committee on the draft budget, the latter part of that item being taken in private.

We have a wide and varied interest in community empowerment, and our interest in urban development has extended the scope of the committee considerably, but today's session has been most useful.

Meeting closed at 13:29.

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e-format first available
ISBN 978-1-78534-446-6

Revised e-format available
ISBN 978-1-78534-462-6

Printed in Scotland by APS Group Scotland