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Official Report

RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE

Wednesday 18 February 2015

Session 4

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RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE
7th Meeting 2015, Session 4

CONVENER

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

DEPUTY CONVENER

*Graeme Dey (Angus South) (SNP)

COMMITTEE MEMBERS

*Claudia Beamish (South Scotland) (Lab)
*Sarah Boyack (Lothian) (Lab)
*Alex Fergusson (Galloway and West Dumfries) (Con)
*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:

Duncan Burd (Law Society of Scotland)
Gordon Cumming (North Harris Trust)
Derek Flyn (Scottish Crofting Federation)
Michelle Francis (Wild Fisheries Review Panel)
Jane Hope (Wild Fisheries Review Panel)
Sandy Murray (NFU Scotland)
Peter Peacock (Community Land Scotland)
Andrew Thin (Wild Fisheries Review Panel)
Susan Walker (Crofting Commission)

CLERK TO THE COMMITTEE

Lynn Tullis

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament

Rural Affairs, Climate Change and Environment Committee

Wednesday 18 February 2015

[The Convener opened the meeting at 09:34]

Decision on Taking Business in Private

The Convener (Rob Gibson): Good morning, everyone, and welcome to the seventh meeting in 2015 of the Rural Affairs, Climate Change and Environment Committee. I remind everyone present to switch off mobile phones, although I point out that committee members might well use tablets to access their meeting papers in digital format.

Agenda item 1 is a decision on taking business in private. Do we agree to take in private at this meeting and at subsequent meetings agenda item 5, which is consideration of a draft letter to the Scottish Government on the disposal of local authority assets?

Members *indicated agreement.*

Subordinate Legislation

Plant Health (Scotland) Amendment Order 2015 (SSI 2015/10)

Tweed Regulations Amendment Order 2015 (SSI 2015/11)

09:35

The Convener: Agenda item 2 is consideration of two pieces of subordinate legislation. The Tweed Regulations Amendment Order 2015 has been drawn to Parliament's attention because, by coming into force on 31 January, it failed to comply with the 28-day rule. The Delegated Powers and Law Reform Committee found the breach to be unsatisfactory as the order creates one new criminal offence and modifies the application of another. I refer members to the accompanying paper.

If members have no comments, does the committee agree that it wishes to make no further recommendation on either instrument?

Members *indicated agreement.*

Scottish Government Wild Fisheries Review

09:36

The Convener: Agenda item 3 is a review of the evidence that the wild fisheries review has gathered in its final report. We are joined by Andrew Thin, who is the chair of the wild fisheries review panel, and by Jane Hope and Michelle Francis, who are members of the panel.

Good morning, all. We will try to keep our questions close to the spirit of your wide-ranging report, which makes 50 or more recommendations and could well modernise our whole approach to wild fisheries. First of all, what led to the recommendation that a new national unit within Government be established, and who would head up such a unit to lead the process?

Andrew Thin (Wild Fisheries Review Panel): Accountability is a very strong theme in the report. Scotland's wild fisheries are a public resource of considerable potential and importance but, as things stand, the management system is not fully accountable to the Scottish people—it is not democratically accountable. That particular point is reflected in our proposal for the creation of a national unit. The question of who should head it is, of course, a matter for ministers, not for us.

However—and I want to underline this point—an associated and very strong theme in the report is decentralisation, local empowerment and harnessing the power of voluntarism and everything that goes with that. I think it important that we take those two themes together.

The Convener: Just before I bring in Alex Fergusson and Mike Russell, I want to bring in the local aspect, so that we can see both sides of the coin. If there is to be a national overview, what powers would the fisheries management organisations that are proposed in the review have? Did you consider any alternative approaches to fisheries management organisations and the national aspect?

Andrew Thin: We looked at a number of alternatives, which might be summarised briefly as two extremes. At one extreme, we could have what would, in effect, be statutory bodies, with ministers appointing boards and all that sort of thing. At the other, we could have third sector bodies—and ultimately private companies—contracting with Government to deliver services. We felt that putting things too much on a statutory footing would be cumbersome and would probably undermine the whole principle of empowerment and voluntarism. It is difficult to harness that kind of enthusiasm if we use an overly statutory route for the local bodies. However, if we go the other way and say that they are just private companies, we start to lose accountability. That is why the model sits in the middle.

Alex Fergusson (Galloway and West Dumfries) (Con): Good morning, panel. I will continue the exploration of that theme if I may. Your first recommendation in the report states:

> "The new wild fisheries management system should be firmly based on a decentralised and locally empowered model."

Nobody will argue with that, but we are discussing a centralised and empowered overarching authority. I have difficulty in seeing how those two join up. Will there not be something of a power struggle between the local management organisation, which as far as I can see will vary from covering one catchment to taking in several rivers—we will probably come to that later—and the centralised body that will deliver the national policy? I would really like further explanation of how you envisage that working.

Andrew Thin: Okay. Do you want to try, Jane?

Alex Fergusson: You are passing the buck.

Andrew Thin: I am happy to try to answer but it is important for the committee to hear from the others.

Jane Hope (Wild Fisheries Review Panel): I am sure that it will take more than one of us to answer the question completely.

There is always a balance to achieve between local interests and national interests or, we could say, the public interest and the private interest. That is what we are talking about.

The management of wild fisheries stocks will always be done locally by the people with local knowledge. That is right and it is what our arrangements try to maintain. On the other hand, the fisheries are, in essence, a valuable public resource on which ministers have international commitments. Therefore, it is important that, although efforts be directed locally, they be co-ordinated in a way that gives us the best national outcomes because the fisheries are a national resource. That is the balance that we have tried to strike.

Andrew Thin: I will pick up Alex Fergusson's point about tension in the relationship. It is clear that there must be a tension. There are many other equivalent public service delivery models in which some sort of national or, sometimes, local authority-driven mechanism provides the overall strategic framework and the third sector delivers the service. The care service is an obvious example, as are many aspects of health. Locally empowered third sector contractors harness the

power of local initiative and voluntarism to deliver those services.

The model has been made to work before; it is not a novel idea. We considered different models. As Jane Hope says, the central issue is accountability in the management of a public resource. One option might have been to transfer all the responsibility to local government, where there is an existing accountability mechanism. However, that creates a difficulty in that, as Jane Hope says, this is a national resource on which we have international treaty obligations and it is difficult to manage that entirely through local government.

The model that we suggest is not some sort of big, all-encompassing central monolith. We have emphasised that point again and again and I emphasise it to the committee. Implementation will be everything. We need national strategic direction and national accountability for the system for all the reasons that we have given, but there must be a high level of decentralisation and local empowerment in the delivery.

There will be a tension in that relationship. At times, it might be destructive and, at times, it might be constructive but the fact that there is a tension is not necessarily a reason not to introduce the model. The two alternatives, which are to decentralise the whole system and lose accountability or centralise it and lose local empowerment, are undesirable.

09:45

Alex Fergusson: Can I ask one last question?

The Convener: Yes, but then I will let Mike Russell come in.

Alex Fergusson: Do you have evidence to suggest that we are not adhering to our international responsibilities at this point?

Andrew Thin: There is a risk of that, yes. Whether we are not adhering right now, I am not sure that I can say, but there is certainly a risk that we might not adhere to our international responsibilities in relation to salmon. At the moment, ministers do not have all the tools in the toolbox to deal with that, because the system is too decentralised and unaccountable.

Michael Russell (Argyll and Bute) (SNP): I think that the report is very good, but I want to strengthen this part of it. There is another purpose for having this national unit and an individual involved, which is, in essence, to create the institutional memory of how salmon are managed. I am old enough to remember—and Sarah Boyack, who was environment minister, probably is too—the estimable David Dunkley, who was Her Majesty's inspector of salmon and freshwater fisheries for Scotland and then the salmon expert in the civil service. He was able to bring many years of specialised knowledge, which has been lost in a civil service in which there is substantial churn in every department. Having people who remember what has taken place, who know international and national policy and who can rely on resources such as the freshwater lab at Loch Faskally, which has done tremendous work on these matters, is important.

I presume that you would not object if that purpose was injected into this idea, so that local decision making could be informed by some national thinking that was based on experience and expertise.

Andrew Thin: Absolutely not. We pursued a very open, participative and collaborative process, which led to the report. Through that process, one thing that came out was the idea that whoever leads the national unit needs that kind of longevity, expertise, credibility and institutional memory. We bandied around terms such as "wild fisheries commissioner" and all the rest of it, but eventually we concluded in the report that we should not go there, as that was a matter for Government. However, the principles that you articulate are well supported across the sector and by us.

Graeme Dey (Angus South) (SNP): Tensions already exist between boards and netsmen. Government decisions in this area have been subject to criticism and, if memory serves, even legal challenge. Do you think that your proposals will improve the situation? I presume that you do.

Andrew Thin: I might let Michelle Francis have a go at that question, but I will start. Conflict is not only a matter of structures; it is also about individuals, culture and all that sort of stuff. Undoubtedly there is a job to do in relation to the sector better managing those conflicts. Government can only do so much. There is a strong theme in the report about the need for better leadership across the sector. It is too fragmented, and so on and so forth, and those matters are mainly for stakeholders, not Government. I make that important point by way of a preamble.

However, yes, there are things that Government can do. The fundamental theme in the report that is relevant to your question is the issue of decisions being made on the basis of objective, sound science and evidence. We are very fortunate to have a salmon population in Scotland that generates a sustainable surplus every year, which can be harvested and which generates employment, economic welfare, recreation and all the rest of it. We are very lucky. If we let that population fall to a point at which there is no sustainable surplus, we will be doing our children a huge disservice. We recommend very strongly in

the report that while there is still a sustainable surplus, we put in place a system that ensures that that sustainable surplus is harvested in a rationed way, on the basis of good, solid science.

That system is not novel; it is nothing new. Many other developed countries in the world that harvest species sustainably adopt the same rationing system, whereby scientists decide what the surplus is each year, and that surplus is then rationed out on the basis of a licensing system, usually with a charge. Often the charge is part of the licensing system—it is about how much you can afford to pay. You can use a market mechanism to ration but we are not recommending that; we are recommending that the Government fixes a charge on a cost recovery basis.

I accept what you say and people will continue to argue—that is human nature and the sector needs to address that—but they will be arguing against a scientifically robust, objective system, and at the moment they are not.

Michelle Francis (Wild Fisheries Review Panel): How that rationing is done places users on a level playing field. The discussion is within the same parameters and how a decision has been made is transparent.

The Convener: Let us move on to resourcing wild fisheries management.

Jim Hume (South Scotland) (LD): Good morning everybody. It is nice to see you.

The report suggests that levies would mostly be spent within the FMO areas where they are raised but that there should be flexibility to move funds between different areas. That is quite interesting. Can the witnesses give us some examples of circumstances in which levy funding should be moved from one FMO area to another?

Andrew Thin: We encountered quite a lot of evidence that suggests that, in certain parts of the country and in certain rivers, relatively short-term investment would allow the populations in those rivers to come back up.

Under the current system, income generation is very segmented. In some ways, it is almost counterintuitive that the successful rivers are the ones that generate the most income and therefore the ones that have the most money spent on them, while the ones that have declined the most have the least money spent on them. We could make a complete counter-argument that the ones in which the population is down need more investment to bring them back up and the ones that are doing well possibly need less. As a matter of principle, flexibility is important to allow the country to invest in places that give the best return on that investment.

The danger of not having such a system is that we get into a spiral in which the river goes down and so its income goes down, and when the income goes down, the river goes down, and on it goes. That means that we will end up with some rivers—there probably are some like this on the list—that are close to having no sustainable surplus because there is no money to invest.

Jim Hume: Do fish owners have a legal right to challenge that? I can see that, if someone on the Nith, Cree or Tweed saw the money going up to the Tay and the Spey, for example, they would be concerned about that. Is there any scope for a legal challenge? Who decides on where the funds go? Is there any kind of appeal mechanism? What criteria are there for such decisions, or would they just be general decisions?

Andrew Thin: First, I think that the money is more likely to go the other way on those rivers. Secondly, like any system of raising rates or taxation, if the legislation is framed correctly, I see no grounds for a legal challenge.

Michelle Francis: We had lots of sessions with stakeholders on this topic, and I heard a general acceptance of the principle, provided that the more affluent rivers are not providing a massive proportion of the money. The stakeholders understood the logic of the principle.

Jim Hume: So what are the criteria for the decision? Is it about moving funds from one area to the other? Michelle Francis is talking about a massive proportion of funds—is that 51 per cent, 10 per cent or 99 per cent?

Michelle Francis: I said that it would not be a massive proportion.

Andrew Thin: The principle must be that the money is spent where we get the best return for public investment—that has to be the principle. It is quite difficult at this time to predict that exactly, because it will change according to environmental factors and all the rest of it.

If it is the case that investing £100,000 in the River Cree will deliver an additional 1,000 fish a year, and investing £100,000 in the Tay will deliver five extra fish a year, clearly the public interest is best served by investing that money in the Cree.

Graeme Dey: I have a short supplementary. What about a situation where at the mouth of a river there was a netting operation that was operating on mixed stock, and the actions were impacting on a series of other rivers. Can you envisage a transferral of levy income in such a situation?

Andrew Thin: I do not think that there would be any difference. The levy would still be charged on that business—in effect, the levy would be a business rate on it—and it would then be for

ministers to decide how the money is deployed. The basis of that decision would be where we would get the best return for a public investment, which has to be the fundamental consideration. I do not think that the situation would be any different for mixed stock.

Claudia Beamish (South Scotland) (Lab): Good morning. I will turn our focus to sporting and business rates. You will be aware that the Scottish Government's consultation on land reform proposes the reintroduction of sporting rates for stalking and shooting businesses. The consultation also said that the business rate exemptions for fisheries would be considered separately by ministers in response to the recommendations of the wild fisheries review, which you have been leading. Could you comment on whether you think that fisheries should continue to be exempt from sporting and business rates, and, if so, why?

Andrew Thin: Our recommendation is that business rates are reintroduced for fisheries; that is the effect of the recommendation. What we have called the core levy would in effect be a business rate on fisheries. That is very close to what the land reform review group recommended.

We have also said that there will be circumstances at a local level in which local stakeholders believe that additional investment is required in their specific system or region. It should be open, as it is now, for those stakeholders to propose to ministers an additional local rate that is explicitly hypothecated for local investment.

Jane Hope: I do not want to labour the point—I do not know how much time we have—but to build on what Andrew has said, the logic is that the levy is split into two. One element is equivalent to the business rate, in a sense, and that is the element that we are looking to to cover delivery of things in the public interest. The other part of the levy, which is more at local discretion, is to deliver local requirements. That is the logic of the split.

The Convener: Thank you for that explanation. Mike Russell has questions on angling.

Michael Russell: I would like you to explain a little about the concept of angling for all and its relationship to rod licences. The rod licence issue is controversial; Andrew Thin knows that, as I have written to him on behalf of some of my constituents on the matter. A number of people see the rod licence as the thin end of a wedge, and they are concerned that it would restrict their ability to undertake something that they have undertaken for a very long time.

I would like to know whether angling for all would assist in that issue. Also, as I see that the report is very cautious about rod licences, I would like to know whether that caution can be expressed even more strongly by you.

10:00

Andrew Thin: The report makes it clear that we are not recommending a rod licence as such, but we are exploring the potential for it. We received lots of submissions on the subject, some very supportive, some very hostile and some in between. It is clearly a divisive and difficult issue and a very difficult political issue.

What we are saying is that this sport—this recreation—has significant underdeveloped economic and social potential in Scotland. A lot more people could be getting out and doing it in the canals and the rivers in the middle of towns, such as the Clyde. It is not all about people in tweeds up in the Highlands, for heaven's sake. If we are going to make this activity much more widespread, inclusive and diverse and of much more public value, we will have to invest—it will not happen automatically. In an age of austerity we cannot expect Government to come up with large chunks of new money.

If we are going to do that, first we have to get together all the sectoral bodies—of which there are a surprising number—and develop a really serious development programme, probably running over a decade, that changes the face of the sport in Scotland. If that could be designed and put together and if it was well supported across the sector, our impression is that a rod licence to fund it would be politically supported. However, just ramming in a rod licence is not sensible.

Michael Russell: A rod licence is a form of hypothecated taxation to develop the sport, if I may put it that way.

Andrew Thin: Yes. That is how we would see it.

Michael Russell: Ministers will be very nervous of that, given that it would be new taxation. What level would a rod licence have to be to make sufficient investment, given the nature of those who are taking part at the moment?

Andrew Thin: We thought quite hard about that, and of course the answer depends on what "sufficient" means. To some extent, it is one of those "How long is a piece of string?" questions. We looked at it from the other end of the telescope and asked what happens south of the border and in other countries, how much a licence is there and what sort of sums it could raise here. Our conclusion was that, if the rate charge was broadly similar to that in other countries, it would give us a very significant amount—Jane Hope did some of the sums at the time. There are questions about

take-up rates, obedience and so on, but it would raise significant sums of money.

Michael Russell: You are edging closer to the awful truth of the figure. Can we edge a little bit closer? Jane, you are always the master of detail. How much would it have to be?

Jane Hope: I happen to have the page in front of me.

Michael Russell: Good.

Jane Hope: It is a very difficult thing to come up with precise figures on, but, for illustration purposes, I can tell you that a study at Glasgow Caledonian University indicated 260,000 participants, although it did not say how those people are participating and the figure includes a number of visitors as well as residents. The figure of 260,000 participants is one number to keep in your head.

Across the border, rod licences have been used for a long time. Just to digress, it is interesting that, when they were introduced in 1992, numbers apparently declined for quite a long while and then suddenly picked up again in 2007 and 2008. I never got to the bottom of why that happened, but I suspect that there must have been something about publicity, making it easier and all the rest of it. That is a side issue but an interesting one.

The average licence cost is £16.80, which is a mix of all types of licence. Even if you charged £10 a person on average, you would be raising £2.6 million. That is what I was leading up to. I am always very wary of bandying figures about, but you can see that it is doable for a relatively modest sum.

Michael Russell: Can I ask for information on two aspects of that? Do people buy licences or do they attempt to evade them? What are the penalties for evasion? If you introduce a rod licence, you have to enforce it.

If you were to have £2.6 million or £3 million, what would you invest it in? What benefit would those people who currently fish see from that, apart from possibly more people fishing on waters that they would like to have to themselves?

Andrew Thin: A significant amount of the investment would be about bringing in new people. What is striking about the sector is that the bulk of the people who spoke to us are very concerned about the fact that not enough young people are coming in behind them. I am not sure that everyone is entirely self-interested; I still retain enthusiasm for the notion that society is more than that. I sense that a licence that is sold on the basis that it is an individual's contribution to helping future generations participate is one that would receive significant support.

On top of that, as we say in the report, another issue is undoubtedly to improve access to information about where and how to fish. Although when we delved into the matter we found that there are no real obstacles to fishing in Scotland, the reality is that the vast majority of punters find it incredibly difficult to get information. The big plus for existing fishers would be the introduction of a really good system of information about how, where, when and all the rest of it. A very strong part of the licensing system is to say to the sector, "If you are serious about the future of the sport that you love, you need to help us invest in it."

Michael Russell: Will there be a penalty if someone does not pay for a licence? Is that not what happens elsewhere?

Andrew Thin: We could use the same system as down south, where there is some system of fines, although I do not know the ins and outs of it. The bailiff system already exists in Scotland and it could be used to police the licence process. I accept that we do not want to spend a great deal of money policing the system, as that would be silly.

The impression that we gained from evidence that we received is that the system could be made to work and that it could be policed through the existing bailiff system. We would have to live with an evasion rate. A very strong theme in our recommendations is that if we introduce a licensing scheme that is just taking money off people—a tax—it will not be popular and people will evade it. That is not a good thing to do, and we do not need to do it, so we should not do it. However, if we introduced a scheme that is about the current generation of fishers helping to develop their sport and bring in young folk, we would create a completely different dynamic.

The Convener: I have to cut across that slightly by suggesting that, if a rod licence is introduced and we are encouraging people to fish, we need to find more water for them to fish on. In other words, people need to have access to water, which may currently be extremely restricted by the approach of the riparian owners in the river catchment areas. Would some of the money raised from a rod licence be used for that?

Andrew Thin: We found a lot of evidence of serious underfishing, particularly in trout waters. Ironically, that has led to there being too many fish that are too small, so fishing would help the fishery. There is plenty capacity in Scotland—the issues are access and information.

We have made a number of recommendations about the protection order system, which in our view is not working. It needs to work, and it needs to be about good access. We did not encounter any suggestion that if there were increasing

demand and good, centralised and almost certainly internet-based systems to provide information—about trout waters in particular—owners would not want people to fish on their waters. The main thing is that there is no information, which is a common problem in Scotland. You may recall from the debate about access legislation that lots of visitors come to Scotland and find the Scottish countryside inaccessible. The issue is information rather than restriction.

The Convener: The second point is that riparian owners have guests and clients. Would those guests and clients be subject to rod licensing, too? Whichever country or whichever part of the country they came from, would they pay a rod licence to fish in a particular part of the river system?

Andrew Thin: Yes.

The Convener: Alex Fergusson wants to pick up the point about sustainability.

Alex Fergusson: The whole subject of sustainability is central to the review's thinking and that is obviously a good thing. I will start by exploring the recommendation that

"Ministers should introduce a ban on the killing of wild salmon in Scotland except under license".

That is already out for consultation.

The report reads to me as suggesting that that approach is considered to be a good thing for netting operations, so we should have it on the rivers as well. I will explore how it would apply in the river system. I am not clear who would apply for the licence or how the quota would work. As I see it, the proposal would introduce a quota under another name, because people would have to apply for the number of fish that they wanted to take. I have no idea how that could be done in advance of a season, because we cannot know what the runs and catches in a season will be on any given river.

I am not clear how the quota would be distributed across any river on the different beats and whether it would be shared out month by month. Once a person had reached their quota, would there be catch and release only?

There is no killing of salmon in the spring run anyway. Killing a 3 pound grilse is surely very different from killing a 14 pound, egg-bearing female. I do not understand how the practicalities can work on a river system. Will you expand on your thinking on that?

You are right to say that everything should be soundly based on science. Where is the evidence that rod fishing contributes to the decline in salmon stocks? I would really like to know. I am not convinced that that evidence exists, and your report suggests that it does not.

Andrew Thin: On the last point, in most years, rods kill more fish than nets do. It is important to be clear about that. A significant number of fish are killed on rivers by rods.

The system is based on one that is now widely used internationally to ration the sustainable surplus of a quarry animal, whether that animal is salmon or bighorn sheep. It is pretty much impossible to introduce that system for one user of the species but not another, because it is predicated on the assumption that someone must have a licence to kill a fish and keep it. We cannot police that system if some people have to have a licence but others do not—it is not possible. Everyone needs to be treated the same.

The system is perfectly functional on a river. The desirable outcome is that the trend towards greater catch and release for rod fishing continues. For example, the Dee is more or less 100 per cent catch and release. We need to continue that trend, because the sustainable surplus is only modest and we need to discourage the killing of the species across the piece. It is important to be clear that we would expect and hope that more and more owners of rod beats would move to 100 per cent catch and release, which is already happening.

It is accepted that some people would wish to continue to kill fish. It is entirely reasonable to ask people to decide now how many fish they want to kill next year. They can fish for as many as they like, but it is reasonable to ask how many they want to kill. I do not see a problem with asking them in advance. Everyone would have to apply for what they wanted by 31 December.

Alex Fergusson: Who is "everyone"? Is it the riparian owner? Would they apply individually?

Andrew Thin: The report is very clear that it is the riparian owners who would apply by the end of the year for what they wanted. There would be a problem only if the total number of applications exceeded the sustainable surplus. The rationing would kick in only if that happened. On many rivers, that is unlikely to happen, because the bulk of people will not want to bother with the system and will go to catch and release. The trend towards catch and release will continue and that is what one hopes for.

When the number of applications exceeds the sustainable surplus, there has to be rationing, which has to be done on the basis of sound science. It also has to be done on a sensible basis that is in proportion to the application or in proportion to the number of miles of bank the applicant owns. That is a matter for the owner to decide, but that is not a difficult thing to do.

10:15

Alex Fergusson: What evidence do you have to suggest that rod catching is partly responsible for the decline in salmon stocks?

Andrew Thin: In dry years, the situation is different but, in most years, simple statistics show that significantly more fish are killed by rods than by nets. That suggests that rods are a significant factor.

Graeme Dey: Will a fit-and-proper-person test be applied both to the initial application for a licence and when the conduct of licensees is reflected on as the licence renewal comes up every year?

Andrew Thin: We did not consider that, because a fit-and-proper-person test is not attached to the ownership of salmon fishing rights, which is really what would be required. Under land reform, there is consideration of whether a test should be applied, but that is a wider issue than the one that we looked at.

Graeme Dey: Do you accept that there ought to be a fit-and-proper-person test, given what you are trying to achieve with the proposed measures?

Andrew Thin: That does not seem unreasonable.

Graeme Dey: But that is not being proposed.

Andrew Thin: As I said, this is a wider issue that involves the ownership of rights, so it is really a land reform matter.

Alex Fergusson: I assume that you have not considered a fit-and-proper-person test for the person exercising the right to fish, either.

Andrew Thin: No.

Alex Fergusson: That might be another subject. I still have reservations about the practical implications of the proposal, but we can come to that later.

I will move on. The creation of an offence of reckless and irresponsible management of fishing rights is proposed. How do you see that being applied, what conduct would amount to that offence and how and by whom would the law be enforced?

Andrew Thin: We thought long and hard about whether to include that proposal, so I entirely accept the implication of your question. The issue is difficult, but we received evidence—I stress that it was anecdotal—that, in some circumstances, the ownership of fishing rights has set out deliberately and extensively to remove certain species in an unsustainable way. We therefore think that there are circumstances in which such a measure would be desirable and effective. It is one of those things where policing is difficult, so the main reason for having an offence is to create a disincentive in the first place.

Alex Fergusson: Who would be the overseer or guardian of proper management?

Andrew Thin: In this matter as in others, the first line of defence would be the bailiffing system. In effect, a new wildlife crime would be created.

Alex Fergusson: You have talked about taking a precautionary approach to mixed-stock fisheries, and you recommend phasing in a reduction in catches in some instances. Will you expand on that and give an example of where that might be appropriate and how it would be beneficial?

Andrew Thin: It is worth saying that, by and large, we did not encounter evidence to suggest that there is significant overfishing, so let us be clear about that. However, our approach needs to be science based and evidence based, and we should not harvest more than the sustainable surplus from a population. In mixed-stock fisheries, it is particularly difficult to work out what the sustainable surplus is, so we are developing the science further. Marine Scotland is doing a lot of good work to improve the science, but it needs money, investment, fish counters, radio trackers and so on.

While that work is going on, it makes sense to take a relatively precautionary approach, because we simply do not know exactly what the sustainable surplus in a mixed-stock fishery is. It may be—we say “may” because we simply do not know—that the scientists conclude that one or two mixed-stock fisheries are being fished at an unsustainable level that needs to be stepped down. We are simply saying that, if that happens, let us deal with that in a stepped manner. The change is not so urgent that it has to be done overnight; it could be done over three to five years. Social and economic consequences will follow from stepping down a netting catch, so the Government needs to do that responsibly.

Angus MacDonald (Falkirk East) (SNP): You just mentioned the scientific evidence base to support wild fisheries management, and you have identified a number of gaps in the knowledge base. You point to the reliance on self-reporting of catch data as a weakness in the system. Your report recommends that research is needed in the short to medium term in a number of areas and you make a fairly extensive list of recommendations on that. You also recommend that the national unit should develop standards for fisheries management, including data collection standards, and that it should develop training and continuing professional development for FMOs. Given that you recommend that a number of pieces of research should be completed in the

short to medium term, is work already being done in any of those areas?

Andrew Thin: Yes. There is already an extensive programme, which Marine Scotland is leading, and the local fisheries boards and local fisheries trusts fund significant amounts of research through third sector funding, so a lot is going on.

There are two themes. One is to make the research more co-ordinated at the national level, as it is too fragmented. The second is to ensure that the work is genuinely prioritised and strategically driven so that, whether we are spending third sector money or public money, we get the maximum possible impact for that investment.

Angus MacDonald: Have you assessed the resource implications if all those pieces of research were to be funded? Have you considered what work should be prioritised?

Andrew Thin: Given the funding arrangements and the available resources that are likely to come through them, we think that there is enough to do the research. We could always spend more money on research if we wanted to, but the existing funding levels are sufficient to do a reasonable job. We are not saying that the Government needs to spend more money. If it wanted to spend more, it could do things faster, but it does not need to.

Our report sets out where we think the priorities are. They mainly concern ensuring that we can meet international obligations on salmon, which is the top priority.

Angus MacDonald: So your opinion is that extra resources are not required to improve the data situation.

Andrew Thin: Yes. There is a balance. The more money we spend on research, the more certain we can be of what the sustainable surplus is. The less certain we are, the more we have to take a precautionary approach. If we do not want to be precautionary, we can spend more money to get more certainty, but precaution allows us to work within the available resources. Everyone knows that resources are tight and that the economy simply cannot stand spending vast amounts of money on salmon research at the moment.

Jane Hope: I will add one codicil. There are 40-something salmon boards and 20-something fisheries trusts. One point that has been made over the years is that there are too many such bodies. I do not have a view on whether there are too many, but it falls out of the recommendations that we will probably end up with fewer fisheries management organisations in total. Therein will lie some of the efficiencies that we expect to fall out of the rearrangement.

Some of those organisations are very small and cannot really do some of the work that needs doing. If we end up with organisations that have a greater critical mass individually, each of them will be much better placed to do the required work. That is about using the funding better rather than increasing the funding.

Alex Fergusson: To follow up on that exact point, only 10 per cent of the spend of my local fisheries trust—the Galloway Fisheries Trust—is raised from local levies. The rest is raised from voluntary fundraising, grants and so on. The trust largely supports most of the proposals, but it has a concern—I suspect that other trusts have the same concern—that the centralisation of funding before it is redistributed might well have an impact on the local feeling of ownership of the trust, if I can put it in that way. Have you taken that into consideration? Mr Thin, you are nodding, so you obviously have, but how do you counter the concern?

Andrew Thin: We spent a lot of time in your area, where there are particularly difficult and challenging issues. In the report, we refer to the possibility of a federated structure for FMOs in areas such as yours, which recognises exactly the sense of ownership issue. However, I make it clear that, in such a case, the money that is raised through the third sector—the 90 per cent—would still be raised through that sector and the Government would have nothing to do with that.

We are saying only that the public money needs to be brought under democratic control. That seems intuitively right and is also more efficient, because the Government can then ensure that it gets best value for the public spend. There are still some misunderstandings out there about what we are saying. A trust that raises 90 per cent of its money from the third sector will continue to raise 90 per cent of its money from that sector. The Government will not touch that money.

Alex Fergusson: That is helpful—thank you.

The Convener: We move on to regulation and compliance.

Graeme Dey: Is there a need to extend the annual close time for salmon fisheries? I ask that in light of the situation to the north of the area that I represent, where the local trust, which covers rivers in Angus and Aberdeenshire, has written to ask anglers not to kill fish before June, I think, or possibly July. The trust feels that such a move is necessary. I accept that there are different circumstances in different rivers but, in a general sense, is there an argument for extending the close time?

Andrew Thin: As part of the process of issuing licences to kill salmon, we recommend that that issue is considered thoroughly. The system of close seasons and close days is quite anachronistic. If the scientific evidence says that killing salmon before June is not sustainable, that should be stopped. That might well be a national issue and not just an issue for your constituents.

Graeme Dey: Would you expect the decisions to be made locally and to be specific to individual rivers, or would you expect a national move?

Andrew Thin: I would see the decision as being primarily national because, if killing spring salmon is unsustainable, that is probably a national picture. However, the Government needs to have the flexibility to say, "We can kill salmon in the west but we can't kill them in the east," if there is a scientific reason why that is the case. That flexibility is needed in the system.

Graeme Dey: Your report finds that

"the principles behind the protection order system are fundamentally sound"

but that the system needs

"a thorough overhaul".

Will you expand on that for us?

Jane Hope: When we met stakeholders, we had feedback on the governance for issuing protection orders—on whether a majority of everybody in the area is needed to set them up or whether the number of people could be slightly smaller. Stakeholders also raised the issue of whether there is a reasonable appeal system when people feel that they are not getting what they expected out of the system or that they have not been fairly represented.

A few such issues were raised. The way in which the system is governed and the need to make it more transparent and more open to appeal were the main points.

10:30

Andrew Thin: The purpose of the protection order system should be to ensure that fish are sustainably managed, not to enable landowners to prevent people from fishing, and some evidence was presented that suggested that the system is being used for a purpose that it was not intended for. That is the essential problem that we need to address.

The Convener: There seems to be a long history of that in the River Tay. Would you like to expand on that?

Andrew Thin: The issue does not affect just the River Tay. There was pretty persuasive evidence from a number of locations that the protection order system is not being used for its intended purpose. In particular, there was confusion about private and public interests.

Our recommendations are about bringing everything back to the question of what the system is for, focusing on that and, on top of that, ensuring that there is robust on-going scrutiny, including a proper complaints system. There should be a good reason for putting a protection order in place and a good reason for continuing to operate it.

The Convener: That is helpful.

Michael Russell: I note that the report comments on the issue of water bailiffs, which have already been referred to with regard to rod licences. Police Scotland has indicated that it thinks that water bailiffs' powers are not being substantially used in the way that they used to be; indeed, according to evidence that the committee has received, Police Scotland feels that it is involved much more in enforcement. Are there grounds for restricting and clarifying the role of water bailiffs? Although many water bailiffs do a good job, some have been involved in spectacular bad practice, using powers that many people felt that they should not have had.

Andrew Thin: We spent quite a lot of time on this issue. It is bizarre that we have a separate police force for fish, and I am not entirely sure that, if we were designing such a system now, we would start from here.

However, we did not encounter any really persuasive evidence to suggest that the system should be scrapped. It is potentially—I repeat, potentially—fit for purpose. Our view, which I hope comes through in the recommendations, is that the issue is one of accountability and supervision rather than whether there should be a separate system. The Government and Police Scotland could have an interesting debate about having a separate system, but the fact is that any such system must be accountable and properly supervised with proper scrutiny and complaints systems.

At the moment, the warranting of bailiffs happens at local level by an unaccountable body, and that situation needs to be brought under democratic control. Moreover, the complaints system does not appear to work, partly because it, too, is not particularly accountable. We need a proper complaints system and, associated with that, proper appraisal, proper continuing professional development and all the rest of it. If all those things are put in place, the system will work—and, in our view, will work fine.

As for the question whether there should be a separate system, we did not really go there.

Michael Russell: The report provides an opportunity to rethink how things are done, which is always welcome. The swearing-in of rangers as special constables by the Loch Lomond and the Trossachs national park, which is something that Jane Hope will know about—

Jane Hope: It was a long time ago.

Michael Russell: Or if she does not know about it, I should say that it was not that distant from her own national park. That is one possible model in which people are given powers that are understood. There might also be an opportunity to strengthen the system of wildlife crime officers.

The third thing that we should be mindful of—I would be interested in your views on this issue, given that Andrew Thin and Jane Hope have known this in the past—is that some organisations associated with the environment tend to see themselves as enforcing the law, even though they do not necessarily have any such warrant. That has caused considerable tension, particularly in the area of wildlife crime. As I have said, I would be interested in hearing your reflections on that matter, because I would have thought that there would be a good opportunity to align all this with the police force.

Jane Hope: I am afraid to say that I am not an expert on this, but what you have said seems to make perfect sense. Nevertheless, I return to Andrew Thin's point that you have to make the current system accountable, ensure that it is trusted and respected and put alongside it well-structured training and CPD arrangements. The stronger you make those arrangements and the more people trust them, the less of a hold the other sort of policing that you have referred to will have.

Andrew Thin: Given our remit, we focused on asking, "Is this thing working and what needs to improve in relation to fisheries?" It is not for me to tell Mr Russell what to think about, but if I were sitting in his seat I would want to consider whether it is wise for Scotland to have the current system. Perhaps we should take the approach of thinking about what we would do if we had a blank sheet of paper. However, doing that would have taken us well beyond our remit.

Dave Thompson (Skye, Lochaber and Badenoch) (SNP): I will follow on from the point that Mike Russell raised and from the discussion that we had with Police Scotland when it appeared before the committee some weeks ago. Your report suggests that little more than modest reform is required in the water bailiff system. I take your point about powers, accountability, scrutiny, complaints systems and so on.

My first two years in Lewis were spent in Stornoway jail; I hasten to add that that was because the council gave me an office there when I first went to Lewis to work. One of the things that I witnessed there was the police burning salmon nets that they had lifted from the shore and confiscated.

There are two sides to all these things. For example, evidence has been given to me of water bailiffs up in Caithness cutting the leader ropes of nets that were left in the water. The netsmen would claim that the nets were left in the water because it was too dangerous for them to go in and lift them. However, the water bailiffs went in and cut the ropes, which let the nets drift. Should they not have lifted those nets? There could have been fish in the nets already and the nets could catch other fish, but in any case they will kill fish. The nets could also get caught in the propellers of boats, which could lead to dangerous situations. If it was safe enough for the nets to be lifted, why did the bailiffs not lift them, take them ashore and dispose of them rather than just cut the leader ropes?

That was an example of bailiffs using current powers. Police Scotland told us that most of the time bailiffs do not use their current powers. If that is right—and I have no reason to doubt it—why leave bailiffs with powers that allow them to do things such as I described? It is tantamount to allowing police officers to stop someone while they are driving, find their car unroadworthy, take the wheels off the car and leave it at the edge of the road. That would be similar to what the bailiffs did in my example, which I believe that they did quite legally.

There is an issue around that, which we need to look at. We need to tighten up on accountability, scrutiny and complaints systems, but we also need to look at the specific powers that are given to bailiffs. Do the witnesses have any comments on what I have said?

Andrew Thin: I am aware of the case to which you referred. The fundamental question in that case is whether there is a robust, accountable complaints mechanism to assess all that and make proper recommendations. We received very little evidence to suggest that the powers themselves were the problem. The evidence that we received suggested that the main problem is the exercise of the powers, rather than the powers themselves. It is therefore about complaints scrutiny, appraisal and development.

You are suggesting that the powers are the problem, but that is different from the evidence that we received. However, if that is the case, undoubtedly it should be part of what is reviewed. As I said, we did not get that view from many people.

The Convener: No doubt we will explore that point with the minister and the panel next week.

We move on to ideas about access to fishing and employment—the developmental part of your report—which Sarah Boyack will lead on.

Sarah Boyack (Lothian) (Lab): I will follow up some of the points that have been made about the angling for all programme and how it would be led.

You talked about the age profile of angling but you did not mention gender. That was interesting. I was thinking about how we promote angling. The review that was done in 2008 identified a lack of access to sufficient information online. Do you envisage that the national unit would be responsible for promotion, fed into by the local fishing expertise?

I return to the point about the conflict between promoting access to the sport and ensuring that we have the right resources. That conflict has been commented on in relation to salmon stocks in particular and how we might promote more trout or pike fishing.

Michelle Francis: We considered the gender profile as well and, as I am sure you are aware, it is almost all male. Angling is not something that a lot of women get involved in at the moment. We identified that as an issue as well as the age profile.

Rather than thinking that the national unit would be responsible for all the information, we focused on the notion of a number of bodies getting together to develop an angling for all programme, which would include improving information. We would not necessarily make that a responsibility of the national unit but would try to get the bodies that already promote angling to do that more holistically by joining together more comprehensively.

Andrew Thin: We need to be slightly careful on that. We came across some examples, particularly in west central Scotland, of very good volunteer-led initiatives to bring young people into the sport, make it more socially inclusive and provide all the self-confidence and self-esteem benefits. The third sector is doing some extremely good work with a bit of Government support, but the work is not Government led. We concluded that it is a classic case of the third sector probably being the best way of driving the initiative. The Government should catalyse, facilitate and support, but should not lead; the third sector should lead.

At the moment, the sport is fragmented—there is the coarse fishing body, and quite a lot of other bodies; I cannot remember how many—so we made some strong recommendations about the need for a lead national body in sportscotland to get everyone together and co-ordinate the programme. It is not the only sport in which there is a problem in that regard.

The carrot is the rod licence issue. If we can get everyone together, really wanting to do something and really supporting it, the Government can facilitate by providing significant amounts of money, as Jane Hope indicated. It would take significant amounts of money, which, in the current environment, will not come out of departmental expenditure limits because it will just not be available.

There is huge potential to do something really important for Scotland, particularly for the urban disadvantaged. That will require people to come together and we have suggested that the central role of the Government is the catalytic role. Perhaps the Government should bring together the programme under an independent chair, but it should get people together, put them round a table and try to get something to happen.

Sarah Boyack: So we need a strategy to move forward and the resources to deliver on it once we have pulled it together.

There is an issue about local access, and you have just picked up an issue about knowledge and encouraging young people to get involved. On the tourism opportunities, you talked about what is normal in other countries in terms of paying for access. If we were to have a proper strategy and were to resource it and explore it, what opportunities would there be for local job creation?

Andrew Thin: The central issue is information. There is no shortage of fisheries potential. An essential part of any integrated programme—angling for all, or whatever we want to call it—must be a national web-based portal to which people can go to find out what they have to do when they are on holiday and want to go fishing. That is essential but it does not exist at the moment.

We have not attempted to quantify and are not really qualified to quantify the economic potential. However, we know that there is huge underused capacity, particularly in relation to trout, where the underused potential is massive, but also in relation to species that historically have not been of great economic value. Pike is one of the most obvious ones. It is becoming highly sought after throughout Europe but, although it is being exploited in Scotland, that is not happening in an economically productive or efficient manner. In one area, we were told that the pike fishery, if it were properly developed, would be worth more than the salmon fishery.

I cannot quantify the economic potential for you, but I am satisfied that there is a big economic, as well as social, prize here.

Michelle Francis: We saw that diversification as very important for the industry, particularly in the light of climate change and its potential impact on other popular species in Scotland. That diversification of different quarry species could also be powerful for Scotland's use of fish as a tourist attraction and Scotland as a place of recreation.

The Convener: We have had a good round of discussion on the subject. The report has given us plenty to think about. It looks as though it is a way forward through which, when it is honed into an organised fashion, we will be able to see a real future for wild fisheries in this country. It is very optimistic and we have got a clear picture of what the industry and the recreation sector are like at the moment, which was well overdue.

I thank the witnesses for their attendance and efforts. No doubt we will be in touch if we have any questions for you.

We will have a short suspension in order to change over to the next panel.

10:46

Meeting suspended.

10:55

On resuming—

Community Empowerment (Scotland) Bill: Stage 2

The Convener: Agenda item 4 is stage 2 of the Community Empowerment (Scotland) Bill. We will take evidence on the Government's amendments on the crofting community right to buy. We are joined by a variety of stakeholders. I ask everyone to introduce themselves.

Derek Flyn (Scottish Crofting Federation): I am a retired crofting lawyer. Recently, I have been the co-administrator of what we call the crofting law sump, collecting the problems of crofting law and trying to find solutions through the crofting law group.

Gordon Cumming (North Harris Trust): I am the land manager for the North Harris Trust.

Claudia Beamish: I am an MSP for South Scotland and shadow minister for environment and climate change.

Duncan Burd (Law Society of Scotland): I am a solicitor in private practice on the Isle of Skye. I am here to represent the Law of Society of Scotland, and I sit on its rural affairs committee.

Dave Thompson: I am the MSP for Skye, Lochaber and Badenoch.

Michael Russell: I am the MSP for Argyll and Bute.

Alex Fergusson: I am the MSP for Galloway and West Dumfries, and crofting law is a complete mystery to me.

Peter Peacock (Community Land Scotland): I do policy work for Community Land Scotland.

Jim Hume: I am an MSP for South Scotland.

Sandy Murray (NFU Scotland): I am a crofter from Sutherland and the chairman of the Highlands and Islands committee of NFU Scotland.

Angus MacDonald: I am the MSP for Falkirk East, which is well known for its lack of crofts.

The Convener: For the time being.

Susan Walker (Crofting Commission): I am the convener of the Crofting Commission, which is the regulator of crofting.

Graeme Dey: I am the MSP for Angus South.

The Convener: I am convener of the committee and the MSP for Caithness, Sutherland and Ross, where there is a lot of crofting of various intensities and kinds.

Thank you for coming to this morning's meeting. We have many questions, but we do not need everyone to answer every question in order to allow us to reach the core of the matters under debate.

Have stakeholders been consulted enough about what is proposed? Are you satisfied that the consultation has been sufficient in terms of the amendments?

Peter Peacock: We are very satisfied. We take the view that the matter goes back to a predecessor committee to the Rural Affairs, Climate Change and Environment Committee that commissioned independent research on the Land Reform (Scotland) Act 2003. Out of that came the issues around the need for change that are now being consulted on.

It would have been better if the amendments to part 3 of the 2003 act had been part of the original Community Empowerment (Scotland) Bill; that is not the case, but we are encouraged that the Government is trying to make the changes. I encourage the committee to be generally quite relaxed about the changes, because they are heading in the right direction.

Our members have been consulted by the Scottish Government through a written consultation and a series of meetings to which they were invited and at which they had the opportunity to have their say. In that sense, we are happy with what has happened.

Derek Flyn: I was involved in the post-legislative report, looking specifically at crofting matters. The matters that were raised are being dealt with.

11:00

The Convener: We have started with general approval for the level of consultation. Graeme Dey will ask about the amendments.

Graeme Dey: Just to tease this out a little bit, I want to be clear that the witnesses feel that the amendments fully and appropriately address the concerns that were raised during the consultation process. To what extent will the proposed changes allow more crofting communities to exercise their right to buy? Are further amendments needed—perhaps to create a mediation service, which has been mentioned?

The Convener: What about the experience in North Harris? You got the right to buy and have applied it.

Gordon Cumming: The North Harris Trust has been with the community since 2003. The purchase did not go through as a community right to buy; it was a voluntary effort.

We are, on the whole, happy with the amendments. We feel that they are fair and that the consultation has gone very well.

Peter Peacock: On the second point about mediation services, Community Land Scotland has been arguing for some time that it would be helpful to put it beyond doubt that Scottish ministers have the power to facilitate mediation between potential purchasers and owners. That is born of bitter experience of what has happened with a number of purchases. From conversations with some of the agencies that support community groups, we are aware that they feel that although they would like mediation to be facilitated, they do not have the legal power to do so. It is not clear to me whether Scottish ministers have that legal power, either. I hoped that the provisions would contain some simple power to enable ministers to facilitate mediation when it is requested by either party and both parties agree. That would be helpful because it would clarify the law.

We are anxious about the matter because we do not want communities to have to resort on every occasion to complex law. It would be much more satisfactory if there could be negotiated settlements around an aspiration to buy land. There is quite a lot of evidence supporting that approach, particularly in the Western Isles. We need a framework for that to happen. For a good number of months, our chairman has been involved in trying to resolve the Pairc situation by bringing the parties together at their request. Frankly, although that has been helpful in taking the process forward, we are not skilled in mediation techniques and it is too haphazard to leave it to chance that one individual will be acceptable to both parties. It would be far better to have some kind of clear power. That would help the whole situation.

On Graeme Dey's first point about the scope of the amendments and whether there is anything else we want, I guess that there is always something else, but we are happy with what we have because it identifies the core issues. That said, once we get into the detail, the amendments contain quite a lot of implications that might be worth teasing out today. There is nothing specific that we are looking for at this stage, but there are fine details that we need to thrash out.

Sandy Murray: I support what Peter Peacock said on mediation. We need somebody who is able to mediate because in the long run it will save us from a lot of arguments.

I also agree that quite a few details in the amendments need to be teased out.

The Convener: Should the remit of the Scottish mediation service be looked at with regard to

agricultural matters, or would that be too formalised a process?

Peter Peacock: I am not familiar with that service. However, as it happens, on Friday I met somebody in Edinburgh who is involved with what appears to be a kind of marketplace for mediation services. There are people who are highly skilled in that sort of thing.

If ministers had the power to facilitate mediation, they could bring in whatever services were appropriate. If bringing mediation skills to bear on a situation requires changing the terms or remit of an existing statutory mediation system, so be it.

Graeme Dey: You have made a good point. It is clear that mediation skills exist, but does the knowledge base to mediate in the crofting sphere exist?

Peter Peacock: It is said that only three people understand crofting law—one is mad, one is dead and nobody can remember who the third one is. Actually, to be fair, that was said of local government finance.

I am not sure about crofting mediation skills, but in any situation where there is a dispute between two parties, mediators can bring to bear their skills irrespective of the technical detail that is associated with the subject. No doubt, however, technical expertise could be brought in. I know that in the Pairc case there is a huge amount of technical detail and people have had to bring in lawyers and others to help with that. However, the key thing is actually to get the parties together and talking in order to resolve difficulties and create a satisfactory outcome.

Claudia Beamish: The witnesses will know this, but for the record I point out that at present a crofting community body must be a company limited by guarantee. The amendment to section 71 of the Land Reform (Scotland) Act 2003 will broaden the base of legal organisations to include Scottish charitable incorporated organisations and community benefit companies, or bencoms, and any other body "as may be prescribed", subject to certain requirements.

The explanatory note on the amendments states that part 3 of the 2003 act will be brought

"into alignment with proposed amendments to Part 2 (community right-to-buy)"

and with proposed new part 3A, which is on the right to buy abandoned or neglected land without a willing seller. We are certainly getting into the detail here, but it is important to do so.

Do the amendments to the crofting community bodies section in the 2003 act—section 71—provide enough protection against personal liability for the trustees of such bodies? Will they provide reassurance for those who enter contracts with those bodies? More broadly, will the amendments provide flexibility for the situations that a crofting community body might experience?

Susan Walker: I have experience of being a member of a community trust that went through a registration of interest under part 2 of the 2003 act. The added flexibility will be useful. Different kinds of bodies are being created, such as community interest companies. It can take quite a long time to set up an SCIO, and a body cannot officially become one until the Office of the Scottish Charity Regulator has approved and registered it . Therefore, it is good to have that flexibility. Any director who takes on a position with a community trust must understand their responsibilities, but there is a good support system through, for example, Highlands and Islands Enterprise's land unit, which advises people on their responsibilities. I think that the proposals look robust and have flexibility.

Sandy Murray: I agree that the proposals look fairly robust. We must ensure that, whatever type of bodies are set up, we maintain a majority of crofters' representatives on the boards of those organisations.

The Convener: There are no further points on that, I hope. If there are, the witnesses should speak up now.

Peter Peacock: Are we on the specifics of SCIOs and bencoms? There is a point of detail that arises, so perhaps I could come on to that.

The Convener: Please do.

Peter Peacock: There is an issue in the amendments about which crofters will count in all this related to whether they are on the crofting register.

Alex Fergusson: We will come on to that.

Peter Peacock: Fine. I will leave that for now.

Jim Hume: Proposed new section 71(3)(c) of the 2003 act, which will be inserted by one of the stage 2 amendments, will repeal the requirement for crofting community bodies to audit their accounts formally, but the explanatory note on the amendment says that they will still be required to

"make proper arrangements for ... financial management".

Do the witnesses welcome the removal of the requirement for accounts to be audited?

Witnesses *indicated agreement.*

The Convener: I see Peter Peacock, Susan Walker and Gordon Cumming nodding, Jim, so we should take that as read.

Jim Hume: That is absolutely fine. As I have said, the explanatory note also makes it clear that bodies will be required to

"make proper arrangements for ... financial management".

I would be interested to find out how the witnesses think that transparency can be developed to ensure that any investment is being made properly and that there are adequate safeguards in that respect.

Susan Walker: Again, from the point of view of a body that was set up to be compliant with part 2 of the 2003 act, I point out that that act requires us to have our accounts independently scrutinised. Moreover, all registered charities must produce annual accounts. It seems, therefore, that it would be inconsistent to treat part 3 bodies differently from part 2 bodies; whatever is required for part 2 bodies should also be required for part 3 bodies. In that respect, I think that the amendment to which Jim Hume referred will equalise things.

Jim Hume: Okay.

The Convener: Thank you very much for that. Alex Fergusson has some questions about amending the definition of "crofting community".

Alex Fergusson: I must apologise for interrupting Peter Peacock in full flow earlier, but I have spent two days trying to get my head round this question and I did not want my moment of glory to be taken away from me.

The Convener: We will find out now how well you have managed to get your head round it.

Alex Fergusson: You would have thought that to a mere lowlander like me the definition of a crofting community would be quite a simple matter. Clearly, however, it is not. My understanding—I think that this was the point that Peter Peacock was referring to—is that proposed new section 71(7) of the 2003 act will amend the definition to capture more crofters who are excluded from the existing legislation, and that it is recognised that the existing definition of "crofting community" might not include all those who consider themselves to be part of that community. I therefore understand the desire to amend the definition to bring in more people.

However, as Peter Peacock pointed out—and, again, as I understand it—some owner-occupier crofters are registered on Registers of Scotland's crofting register and the amendment will not cover those on the Crofting Commission's register of crofts. I do not want to get into the question of why on earth there are two registers, but various people have in evidence to the committee highlighted the difficulties that might be created in trying to bring the registers together or simplifying the terminology. My question for anyone who wishes to comment is whether you foresee problems arising from the sole use of Registers of Scotland's crofting register and, if so, how they might be remedied.

The Convener: Derek Flyn?

Derek Flyn: Thank you. [*Laughter*.]

The term "crofting community" poses a number of problems. For a start, real conflict has emerged from its being defined differently in two pieces of legislation. We must look to resolve that situation, but I do not think that such a resolution will be found either in this bill or in the Crofters (Scotland) Act 1993.

The point that owner-occupier crofters are covered only if they have been entered in the crofting register but not in the register of crofts is, I think, false. Those who are on the register of crofts should also be covered, because in order to become an owner-occupier crofter one must intimate one's position to the Crofting Commission. Having done so, a person would, in fact, be entered in the commission's register of crofts as an owner-occupier crofter. The problem, however, is that the legislation does not actually say that.

Under the Crofters (Scotland) Act 1993, to become an owner-occupier crofter the person has to tell the Crofting Commission, which holds that information, and the one place that it would hold the information is in the register of crofts, so the bill should make reference not only to the crofting register but to the register of crofts.

11:15

Alex Fergusson: So you believe that a combination of registers is the right way to approach the issue, rather than the sole use of one register?

Derek Flyn: Yes, because putting something into the crofting register is still an unnecessary hurdle, and it would produce an unnecessary distinction between one set of owner-occupier crofters and another.

The Convener: Can I clarify something? Presumably, because we are moving to a map-based register, the Crofting Commission register as it is at the moment, which is just a list, will eventually become redundant.

Derek Flyn: I look forward to that. [*Laughter*.]

The Convener: Just for clarity.

Peter Peacock: We would strongly support the general point that Derek Flyn made. It does not seem clear at all why owner-occupiers who are in the register of crofts should not be counted for that purpose. There is probably some deep technicality here, because the implication in the explanatory

notes is that ministers are taking a regulatory power and might change things in due course. Perhaps they can explain that. The outcome ought to be that both registers, for both tenants and owner-occupiers, ought to be in play.

Susan Walker: The Crofters (Scotland) Act 1993 says that the commission has a duty to keep a register of crofts, but it states that we have only to list tenants. No duty to keep a register of owner-occupier crofters has been added. As Derek Flyn said, those crofters have a duty to tell us, and we certainly do register them in the register of crofts. There are something like 800 crofters listed on the crofting register, but we have over 13,000 crofters, so if you used only the crofting register, you would be severely limiting the number of owner-occupier crofters who would ever be registered as crofters.

Peter Peacock: My recollection is that, when those matters were dealt with in the last crofting act, it was estimated that it could take up to 80 years for the crofting register to be complete. That is why you need the register of crofts as well.

The Convener: Hence Derek Flyn's helpful remark. Alex Fergusson may continue.

Alex Fergusson: That is me. I am exhausted.

The Convener: All right. We move on to the lovely subject of croft land mapping.

Susan Walker: Before we move on, I have another point on the definition of the crofting community. The proposals appear to have removed the residency requirement and I wonder why that is the case and whether there could be situations in which absentee crofters influence the outcomes for their community, despite the fact that they do not live there. I do not understand well enough how the ballot works. Is there a ballot of all crofters, or do all crofters have to comply with the residency requirement that is general upon the whole community? If there is a ballot of all crofters, absentee crofters could influence the outcome for a community.

The Convener: Indeed. In the Crofting Commission's submission to the consultation, you raised the question of the 32km rule. Are there particular words that you think should be amended in the Community Empowerment (Scotland) Bill to clarify that point about absentees?

Susan Walker: The 2003 act referred to a distance of more than 16km, but that was changed by the 2010 act. I wondered why that had been removed. As I say, I do not understand enough about the ballot arrangements, but if the arrangement is that all crofters are balloted, it is important that that element be reintroduced.

Derek Flyn: The point is that absentees should not control what is happening on the land and we should bring the land reform measurement of 16km into line with the previous act's limit of 32km.

The Convener: We can ask the minister about that and clarify the point.

We move on to the proposed amendments to section 73 of the 2003 act, on croft land mapping. Do you agree that the suggested removal of the detailed mapping requirements will make mapping simpler? There is a problem in balancing the mapping requirements with facilitating the crofting community right to buy. It is proposed to repeal the requirement to map dykes, ditches and that sort of thing.

The way I look at it is that, at the point at which someone is trying to buy something, we are talking about a cadastral map and not about the detailed map that is required for gaining ownership. Can we find a way to explain why only a simplified form of mapping is required in the first instance?

Derek Flyn: The transfer of ownership of a Highland crofting estate is a massive problem because it tends to be a jigsaw puzzle with lots of pieces removed. Under the sasine system, it was merely a transfer of a bundle of writs, but now it is all to be mapped. No Highland estate would transfer to another landlord showing every pipe, every dyke and so on, so it is quite improper that a community should be asked to map those things.

The requirement should be at the level required by Registers of Scotland to change ownership from one person to another. At that stage, it has to check that the sasines title is good enough to go on to the land register. If we can get a plan to that quality, it seems that that would be sufficient for a crofting community buyout.

Sandy Murray: I support what Derek Flyn said. To have an overcomplicated map and to have to work out in the first instance where all the dykes, watercourses and things were would be cumbersome for the community.

Peter Peacock: This is the single biggest prize of the proposed changes. We know from experience that the process is tortuous. It is virtually impossible to meet, and it leaves open all sorts of opportunities for challenge on fine technical detail, such as that someone did not get a dyke or a sewer exactly right, or whatever. The removal of the requirement is important and it is welcome. It will help to simplify matters.

However, other matters are proposed to be introduced to section 73, and you might want to move on to discuss those. There are other, equally onerous requirements in the form that has to be filled in.

The Convener: The submission from Scottish Land & Estates suggests that it is not unduly onerous to detail things such as pipes. I say for

the record that, unfortunately, Scottish Land & Estates could not be with us on the panel today, but it believes that the provision should remain the same. It seems to me that the evidence from people here is that, at the stage of applying—

Peter Peacock: I do not know this, but I suspect that, originally, this was picked up from the set of arrangements for compulsory purchase that would apply to urban areas. If we are talking about a site that is the size of this room, it would be possible to identify sewers, drains and so on, but if we are talking about a 40,000 acre crofting estate where there is dispute that goes back for generations about where boundaries between crofts are and the topography has changed around dykes and so on, the requirements become virtually impossible to meet.

If we want to make progress, it is essential that we remove the requirements, and I am glad that that is what the Government is proposing.

The Convener: We need requirements to be set out in regulations in a way that ensures that a fair balance is struck between the rights of landowners and the rights of the crofting communities. On that basis, do you want to develop the other point that you made? I will then bring in Mike Russell.

Peter Peacock: I was referring to evidence that was submitted by John Randall from the Pairc Trust, who is the only human being who has been through all of this, so he understands it. He pointed to the requirement about sewers, pipes, drains and so on, which we have just discussed, but he also pointed out that the applicant has to fill in a prescribed form.

That form requires other things, such as the inclusion of a list of all postcodes within Ordnance Survey 1km grid squares and a full list of all those eligible to vote in the ballot, including distance from relevant townships and so on. That is contained in the regulation. I know that that is not strictly speaking a subject for your committee's consideration, but if we are going to simplify this, we need to address those things in the regulation.

The Convener: We mentioned that issue in our stage 1 report. That is one thing that we have picked up already.

Michael Russell: I want to echo a point that Derek Flyn made, because it is something that we need to reflect on and use more widely across the consideration of the bill. There is a danger in the bill of constantly reinventing the wheel—of creating another way of doing things. If it is suitable for the registers to have the definition and mapping of the croft in such a way that the title can be transferred, we should not invent another way of doing it, because the two will be incompatible. It may produce great work for lawyers at various stages, but it will be incompatible with the ease with which we allow land to be transferred, which is what the bill is about. It is extremely important that we have a single standard, and if a standard exists then that is the standard by which we should continue to operate, unless there is a problem with it.

I have been involved in this issue over a long period and I remember a dispute in Benbecula, which is probably still going on, which originated from the fact that a line on the map was drawn with a pen that was too thick. Derek Flyn remembers the case, I can see; there are probably others. It is really important that we have simplicity in this.

The Convener: We have no other comments at the moment. Peter Peacock, do go on.

Peter Peacock: New requirements are being added, as well as deletions being made. Proposed section 73(5ZA) of the 2003 act will require the identification of

"the owner of the land ... any creditor in a standard security over the land ... the tenant of any tenancy of land over which the tenant has an interest"

and

"the person entitled to any sporting interests".

That is a very onerous requirement and there is a real danger that although the bill will remove onerous requirements on mapping it will introduce others of a different kind. It is not clear to me why that requirement is needed. I do not think that it would be required in a private sale, so it is not clear to me why it should be required in a sale to a crofting community body. I want to flag that up to the committee.

This morning I received a couple of emails from members of Community Land Scotland who are in crofting communities and they reckon that the requirement would be very difficult to meet. I will pass those on to the committee so that you have that concern in writing. In several respects, we think that the requirement is very onerous and I wanted to alert the committee to that. We would rather not see that requirement; it is not clear why it is required now when it was not before.

The Convener: Obviously, we need to explore ministerial discretion or the exact reason why that requirement is there.

Michael Russell: Can I pursue that issue with other witnesses, to get further clarity on it? Peter Peacock's point is very important: if it is not possible for those attempting a buy-out to identify a creditor in a standard security over the land, which I suspect could be difficult, or everybody who has sporting interests in the land, then the burden falls on those attempting the buy-out, as opposed to those who are selling. What are

witnesses' views on that? It seems to be a major obstacle and one that could derail potential purchases.

Derek Flyn: This is knowledge that should be in the hands of the owner of the land. Identifying the owner of the land is one of the requirements, but in a normal system would you expect a purchaser to find out all about creditors and tenants? You would expect that information to be provided. At worst, you should leave the purchaser to find out only what is available on public registers.

Michael Russell: Could the burden not be put on the owner of the land to provide that information? That seems perfectly feasible.

Derek Flyn: That seems perfectly normal.

11:30

Peter Peacock: One of our members has this morning given me an example of a situation in which it was not possible to identify the owner to try to get that information. In the example that I have been given, four owners were listed but three of them were fictitious. It turned out that it was a front for a company laundering money, or something to that effect—they were unsavoury characters, if I can put it that way. You would fall at the first hurdle, because you could not identify the owner, let alone meet the other criteria.

We should not underestimate how difficult it is to meet the requirement. It could be made clear that, if the requirement were to remain that a community use their best endeavours to try to identify them, it should not prevent an application from proceeding if it could not find them. It is important to tease this out.

Michael Russell: So the provision requires amendment, either to put the burden on the owner and/or to create circumstances in which the best endeavour of the purchaser would be required, but there is acknowledgement that there might be circumstances in which it would not be possible to find the information. Is that what we are saying?

Peter Peacock: I think so.

Duncan Burd: You do not want to go with "best endeavours"; you want only "reasonable endeavours". You may want to further refine the provision so that after

"the owner of the land ... any creditor in a standard security over the land"

it continues "as may be disclosed in either the register of sasines or the land register of Scotland", in order to lock down who should be within the public knowledge and avoid the fraudsters.

Michael Russell: I am always delighted to get free legal advice. That is splendid; thank you very much.

The Convener: That point has been well made.

Susan Walker: I have an additional point. I agree with everything that has been said, and our submission says that the provision should be "reasonable endeavours" and that it should cover only those things already on the public record. It is important not to underestimate the extent to which the requirement could create a loophole for a landlord, as they could set up a private arrangement with a relative and it could then be said that, as the community had failed to list that person in their application, their application should fail.

Derek Flyn: I will make one strong point. Crofting is different and crofting law is different. It is an area in which landlords do not have to do anything. Putting the duty on the landlord to produce information would mean that we would make no progress at all. We have to consider that the landlord might be a company registered in Andorra that never replies to any correspondence. If there is to be a duty to provide information, it can be only that which can be reasonably acquired and it must be from public registers. Those who have rights that are listed should have them registered somewhere. Otherwise, they cannot be identified.

The Convener: So, what Duncan Burd said about "reasonable endeavours" applies to what is on the public register. I think that that point is clear.

Angus MacDonald has questions on public notice of application, which is an interesting issue on the ground.

Angus MacDonald: I will briefly explore section 73 of the 2003 act on the public notice of application. The proposed new section 73(4) replaces the requirement to advertise an application in the *Edinburgh Gazette* and a local newspaper in the area. The explanatory note states that the

"amendment provides greater flexibility and allows more appropriate forms of advertisement to be used according to the individual circumstances of the case."

I presume that the provision is welcome, given the burden that—as we have already heard—exists on crofters with regard to various public notices. Is everyone content with the amendment? I see that you are all nodding.

The Convener: Let us move on to the identification of owner, tenants and certain creditors. Mike Russell has a question.

Michael Russell: Sorry. I have just asked my question.

The Convener: I think that we have probably covered the issue.

Michael Russell: Yes—I think that we have covered it.

Peter Peacock: It is the same point.

The Convener: If we are happy that there are no other aspects that we should ask about, we will move on to the ballot procedure. Sarah Boyack has some questions.

Sarah Boyack: I will explore the issues around section 75. The section lets ministers make regulations in relation to the conduct of the ballot, which it is anticipated will be undertaken by the crofting community body. The explanatory note sets out how that might work and includes the suggestion that

"the crofting community body ... is liable for the cost of the ballot, and that ... in certain circumstances"

it might

"seek reimbursement of the cost of conducting the ballot"

from ministers, who will be given quite a degree of flexibility in the procedures. I have looked at responses to what is proposed and found a number of different views about the requirement to have a ballot: some are quite happy about it, but others are not. Is it strictly necessary to require a ballot? Malcolm Combe suggested in his evidence that it is not, given the "property" provision of the European convention on human rights. He suggests that that point was confirmed by Lord President Gill in the recent Pairc case. So, there is a question about the requirement to have a ballot. Malcolm Combe believes that the requirement for a ballot would make the act more bureaucratic and therefore make it harder for a community to benefit from the act's provisions and he suggests that we should consider that point "very carefully". I am keen to get the witnesses' views on that.

Further, should the ballot provisions be different for other community groups that want to buy land? Is there a reason why the provisions need to be different and we need to have different legislation? I am really keen to get witnesses' views on that, because we have had quite a range of views on the issue.

Peter Peacock: I will take first the question whether the ballot is necessary. We think that ballots are an important part of the process because they confirm that there is community assent to a proposition. Perhaps Malcolm Combe's point is on whether a ballot is required legally. Pragmatically, it would be very difficult for a community not to have a ballot. How could they otherwise prove that there was assent to the proposition to purchase land? We think that the ballot is a necessary and important part of establishing that there is such assent.

Requiring a ballot means that there will have to be dialogue within a community to persuade people that the arguments for purchase are strong, the business case is strong and so on. We think that the ballot is an important aspect that we would not wish to see removed. That said, it is not clear to us why what is proposed in part 2, whereby the Scottish Government would now take responsibility for organising the ballot and paying for it, does not exist in part 3. It is not clear why there should be that distinction.

I accept that what the Scottish Government is proposing by way of allowing a crofting community to apply to have its costs met is a helpful flexibility compared with where we are at present, so to that extent I welcome what is proposed. However, that does not overtake the rather fundamental question why crofting communities should be different from others in that respect.

When we are getting into a part 3 purchase, we are talking about the potential of expropriating land against the wishes of the seller. It seems to me that in those circumstances it must be very clear that the conduct of any ballot that might help precipitate that action is seen to be above board. It therefore seems to me that the Government taking responsibility for organising that instead of the community would help to remove any potential dispute around the ballot not being conducted properly. I think that it is a question of conduct and propriety, and assuring people that the conduct is appropriate. However, there is also the question why part 2 would have a different set of arrangements from part 3—that does not seem right to me.

Sandy Murray: I fully support what Peter Peacock says. We, too, suggest that the ballot provision is brought into line with that for the community right to buy. A ballot shows that support is there for a buy-out when there is not a willing seller.

f**The Convener:** Are there any further points?

Sarah Boyack: I want to tease things out a bit more. I accept that holding a ballot is a good, clear principle to demonstrate that there is genuine community support. However, I wonder why crofting communities would have to pay to conduct a ballot. The proposed amendment specifies that the crofting community group might seek reimbursement in some circumstances, and I am trying to think what those circumstances would be. It would be much clearer just to have the provision that a ballot should be properly conducted so that everyone would know that a standard and a good

principle were being applied—I can see the point about propriety.

If the ministers do not want to change the amendment, I would like to tease out what the circumstances would be that would allow the ballot to be paid for for some groups but not for others. A new set of tests seems to be being introduced, and I cannot see why that would be done.

Peter Peacock: I agree with all that. It is not clear to me why people would be treated differently. When we are coming to some sort of democratic expression, it is important that the rules are applied consistently. Given that the Government is accepting responsibility for the ballots under part 2, I think that it should apply that responsibility equally to part 3. That would seem to me to have everything to commend it.

The Convener: That will be one of our questions for the minister next week, without a doubt.

We move on to the right to buy by only one crofting community body. Has there been conflict in crofting communities between more than one body so far?

Peter Peacock: Not in our experience.

Susan Walker: There has been in our experience.

The Convener: If there has been, has conflict been widespread?

Susan Walker: I believe that it was in Melness, or somewhere around that area; one body applied to buy and then another body came in with an overlapping application.

The Convener: It has happened, so perhaps somebody in the Government is alert to the potential that it could happen elsewhere.

Dave Thompson has a question on reference to the Land Court.

Dave Thompson: It is a small point concerning what the Law Society's submission said about the list of persons who have a right to refer a question to the Land Court. The suggested amendments cover three of those persons: the owner entitled to sporting interests, the tenant and any other person entitled to sporting interests. The Law Society suggested that a

"creditor in a standard security"

in relation to the land should also have the right of reference.

When we took evidence from Malcolm Combe, he suggested that that might not always be a good thing. I am not sure when the Law Society made its submission, so I seek a bit of clarity from Duncan Burd on whether the society still feels strongly that creditors should have the right of reference. Everyone else seems to agree with the amendments, so I would appreciate hearing that point of view.

Duncan Burd: The Law Society is of the view that giving creditors the right of reference keeps the bill in accordance with other legislation in which the creditor in a standard security is notified of litigation and has the ability to enter appearance.

You may be familiar with the situation in which a couple are divorcing and there is an argument over the house. The heritable creditor must be told about the action. From a practical point of view, the creditor will never enter appearance, but the legislation states that they should be told about it because they have a perceived financial interest in the outcome of the case.

On a more technical basis, the suggestion ties in with proposed section 73(5ZA), which lists the same four categories that the society identified. Again, it brings continuity to the legislation.

The Convener: Sarah Boyack has a question about valuation.

Sarah Boyack: It is about the extension from six weeks to eight weeks. Scottish Land & Estates expressed concern in evidence that the process is already difficult, and that just adding another couple of weeks is not likely to help matters. Indeed, it could make the process more problematic when landlords are reluctant to sell and may be deliberately delaying.

11:45

Peter Peacock: We are generally in favour of extending such things to give that little bit more time. Whether two weeks would make a material difference is arguable—make it 12 weeks, if you wish. The general point is that it is moving in the right direction; rather than making the process more restrictive, it is making it more flexible. Ministers can further extend that time if it is required or shown to be necessary. We do not have a problem with the proposal.

Gordon Cumming: We felt that there was no problem with the extension. Again, if we are creating a system in which people can keep extending the period, that could create problems but, at the end of the day, if that administrative time is required, it is sensible for it to be available.

The Convener: Scottish Land & Estates took the opposite view, but I shall not make a judgment on that. The longer the delay, the greater the detriment in terms of finance and the relationship between the owner and the crofting community body. However, the balance of opinion seems to favour the opposite view.

Duncan Burd: I will go off piste here. As you know, I act in the Pairc case. The difficulty that the landlord had was in ensuring that information that he released to the valuer would be kept confidential if the buy-out did not go ahead. That has been a fundamental difficulty for valuers; they approach landlords who are not willing to release information. The Law Society would prefer 12 weeks, but from a personal perspective, it is clear to me that the valuers need that time. When you have been dealing with the Pairc case for 12 years, what is 12 weeks?

The Convener: That point is well made.

Graeme Dey has a question on compensation.

Graeme Dey: Scottish Land & Estates and NFUS have questioned whether it is appropriate for ministers to assess compensation levels, and SLE suggested that advice from experienced valuers should come into the process. Do the panel members have any concerns about the objectivity of ministers and their ability to determine appropriate levels of compensation in such cases?

The Convener: Be careful how you answer that question—it refers to any minister.

Peter Peacock: Ministers are estimable people of the highest quality and therefore their judgment should be trusted absolutely. [*Laughter*.]

Seriously, at the end of the day someone has to make a decision and, in a democracy, ministers have to take that responsibility. They will be given good advice by their officials and there is a valuation process behind it all, so I do not think that there is an issue.

The Convener: In that case, we move on to the appeal to the Land Court.

Angus MacDonald: Section 92 of the 2003 act allows the Land Court four weeks from the hearing date to give its reasons in respect of a valuation appeal. The proposed amendment will extend that period to eight weeks. Should that extended timescale not be sufficient, the Land Court is to notify all parties of the date on which it will provide a written decision. The explanatory note states that

"this will provide assurance to all parties of when the decision will be received."

Initially, the call for evidence suggested repealing the provision requiring the Land Court to provide its reasons in writing, and the majority of respondents focused on this amendment.

Is the panel content with the amendment as it stands? Does the Land Court have the flexibility to take a number of weeks before it rules on an appeal?

Derek Flyn: After 30 years of appearing before the Land Court, I would hesitate to fix time limits at all. It seems to me that it is for the court to decide on such limits and perhaps they should be contained in the rules of court. What sanction is available to parties if the Land Court does not do as instructed in the legislation? No sanction is included. If there is no result within the eight-week period and no information about when the written statement will be produced, should my friend the new chairman of the Land Court, Lord Minginish, be hung, drawn and quartered?

It seems highly inappropriate that the crofting community right to buy should be a preferred use of the Land Court. That is my personal opinion after 30 years as a practitioner appearing before the court. The court is always in control of what it does. Being told to do something in 28 days requires a punishment if it is not done within that time, so what is the sanction if the court does not abide by the eight-week limit?

The Convener: You put that on the table for us. Does anyone else want to comment?

Peter Peacock: I suppose that we would generally rather have a tighter timescale because we are trying to focus minds but, to be honest, whether it is four or eight weeks is not of the greatest importance, so we are happy to live with the amendment even though we think that it is headed in the wrong direction. As Derek Flyn says, the court is free not to meet the eight-week deadline, so the question is whether the time limit really matters.

Duncan Burd: The appeal relates to valuation, which is a fairly important part of the overall process, so it keeps certainty for the parties. If the Land Court overruns its eight-week limit and has not put its hand up for an extension, does that mean that the status quo applies and the entire procedure collapses? That might be a question for Lord Gill in the first appeal.

Derek Flyn: By adding a time limit, we put something in the law that is perhaps not required.

We have had recent experience of time difficulties. The Land Court issued a judgment just before Christmas on a Crofting Commission case and the commission had 28 days to appeal but there was no time over the Christmas period for it to do much about that. Its first meeting was after the 28-day period.

If the chairman of the Land Court and two members are off on a hearing in South Uist for four weeks, who will respond to an appeal? Should one of the clerks in the office get back and say that it will be done later? It is really strange to me to include a time limit in a bill requiring the court to do something.

Sandy Murray: We are generally of the view that there should be some time limit in the bill, but there should be an ability to apply for an extension to it. The important point is that the parties be kept aware of when the decision will be made.

The Convener: So, in a sense, it is an advisory limit that makes the point that a reasonable time needs to be taken. Can we have a section in the bill that sets a time limit without the additions that have been mentioned?

Derek Flyn: That problem appears in the crofters act where the Crofting Commission is told that it has to do certain things whereas there is a policy plan that has to be approved. That is where such matters should be laid. Likewise, how the Land Court goes about its business should be in its rules and regulations. If it is in the bill, nothing will be able to be done about it if it goes wrong. It will just cause a legal problem that will go into the courts and stay there.

The Convener: Sandy Murray suggests that, to put it in other words, the limit is to try to focus minds. We would assume that the Land Court would try to focus but, if it is in South Uist, how will it focus on a valuation appeal?

Derek Flyn: It will not focus.

The Convener: We will have to ask the minister about that as well.

I have two points about process and outcomes. We have had a short timescale in which to deal with the amendments but, because there has been a general consensus that they move in the right direction, we have been able to cope with that, although we wish that they had been consulted on at the beginning of the process.

I thank the witnesses for the efforts that they have made and the clarity that has been brought to the matters, which will enable us to pin down the minister on one or two points with the general recognition that, for once, "simplification" and "crofting" are two words that can be spoken in the same sentence. Is it likely that the amendments will encourage crofting communities to seek the right to buy and point more people in the direction of taking such action?

Susan Walker: I distinctly hope so. I suggest that all the buy-outs that have taken place in the Western Isles have taken place because of the existence of the Land Reform (Scotland) Act 2003—it was only the coming into existence of that act that enabled that progress to be made. In our little township, we have managed to negotiate the purchase of a very small area of land for a community hub by virtue of the existence of the 2003 act. I think that it is an extremely important piece of legislation, and everyone should welcome any improvement that is made to it.

Peter Peacock: I would like to add something to that and to make a point about process.

If the amendments to part 3 of the 2003 act are agreed to—in general, we hope that they will be—proposed part 3A will have to be amended in line with those amendments, because it was drafted on the basis of the current part 3. That is a technical point, but I wanted to flag it up, because if that does not happen, we will end up with another anomaly.

I completely support what Susan Walker said about the proposed amendments encouraging people. It is very important that the law is credible. If it is believed to be credible by all parties, that will encourage more people to talk to one another in the way that people have been doing in the Western Isles. The proposed changes could make the law more credible in the eyes of communities, because currently the folklore surrounding part 3 is that it is impossible to use, so people should not even try to do so. That discourages communities. The amendments will make the process that bit easier, so communities will be prepared to think about using part 3, if necessary. In turn, that will encourage more discussion between communities and owners of the sort that is taking place regularly in the Western Isles.

The Convener: I thank the witnesses very much for their participation in what has been a comprehensive session on an area in which there is a wide degree of agreement.

The committee has another couple of items that we have to consider in private, so although it would be nice to talk to you all about the price of lamb in Harris et cetera, it would be a good idea if we could clear the room quickly.

The next meeting will be on 25 February, when we will hear from the Minister for Environment, Climate Change and Land Reform on the Community Empowerment (Scotland) Bill. We will also take further evidence on the Government's wild fisheries review from stakeholders.

11:57

Meeting continued in private until 12:52.

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