The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

# RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE

Wednesday 4 March 2015

Session 4

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## RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE
**9th 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:**

Christian Allard (North East Scotland) (SNP) (Committee Substitute)
Carole Barker-Munro (Scottish Government)
Willie Cowan (Scottish Government)
Aileen McLeod (Minister for Environment, Climate Change and Land Reform)

**CLERK TO THE COMMITTEE**

Lynn Tullis

**LOCATION**

The Mary Fairfax Somerville Room (CR2)

# Scottish Parliament

## Rural Affairs, Climate Change and Environment Committee

*Wednesday 4 March 2015*

*[The Convener opened the meeting at 09:32]*

## Interests

**The Convener (Rob Gibson):** Good morning and welcome to the Rural Affairs, Climate Change and Environment Committee. Before we move to the first item, I remind everyone to switch off mobile phones because they may affect the broadcasting system. Committee members may use tablets for the business of the meeting.

We have received apologies from Dave Thompson, so I welcome Christian Allard to the meeting in his place. Good morning, Christian—I think that you have been at the committee before.

**Christian Allard (North East Scotland) (SNP):** No—this is my first time.

**The Convener:** Do you have any interests to declare?

**Christian Allard:** Not really. I worked in the fishing industry for a long time, but not any more.

**The Convener:** Thank you.

## Subordinate Legislation

### Little Loch Broom Scallops Several Fishery Order 2015 (SSI 2015/28)

### Loch Ewe, Isle of Ewe, Wester Ross, Scallops Several Fishery Order 2015 (SSI 2015/30)

### Common Agricultural Policy (Direct Payments etc) (Scotland) Regulations 2015 (SSI 2015/58)

09:33

**The Convener:** Agenda item 1 is subordinate legislation; we have to consider three instruments that are subject to negative procedure.

Members have comments on the Common Agricultural Policy (Direct Payments etc) (Scotland) Regulations 2015.

I welcome the several orders on hand-dived scallops being continued for another period. They cover areas in my constituency and are a part of sustainable fishing, which is to be encouraged. In many cases, several orders have proved to have worked well. That is in sharp contrast to the potential loss of livelihood in a large area of the Inner Sound that is not far away, and which some of the fishermen from the lochs use. The Scottish Government's approach has been proved to promote sustainable fisheries—not the opposite.

As no one has any comment to make about the scallop issues, we move on to the common agricultural policy.

**Alex Fergusson (Galloway and West Dumfries) (Con):** I would like to raise an issue on SSI 2015/58. Yesterday, members received an email from NFU Scotland that draws attention to what appears to be a disparity between the wording of the Government's "Basic Payments Scheme: Greening" booklet and the wording of regulation 18(5)(a). Without wanting to go into too much detail, the advice that the Government provides in its booklet is eminently sensible and is in line with the normal farming practice of undersowing catch crops with grass seed, but it appears that the wording of regulation 18(5)(a) is much more prescriptive in that it restricts the grass seed that can be undersown to two types of grass seed, whereas the sensible advice from the Government is that those types of seed can be undersown as part of a mixture of grass seed, as is normal.

Having spoken to the clerks, I understand that we have some time to deal with the instrument, so I wonder whether the committee might agree—

through the convener—to write to the minister to seek clarification on what might be done. Once we have received that advice, we can reconsider the regulations.

**Claudia Beamish (South Scotland) (Lab):** I support Alex Fergusson's point. As we know, the NFUS has written to all members of the committee. It is an important issue to deal with, not least because, I understand, some farmers have already bought seed for this year.

**The Convener:** We thank the NFUS for keeping a watch on the matter. We have time to take the action that Alex Fergusson has proposed, so I suggest that we write to the Government with a view to reconsidering the instrument at our meeting on 18 March. Are we agreed?

**Members** *indicated agreement.*

# Scottish Government Wild Fisheries Review

09:36

**The Convener:** Agenda item 2 is evidence on the "Wild Fisheries Review: Final Report and Recommendations" by the Scottish Government's wild fisheries review panel, from the Minister for Environment, Climate Change and Land Reform. Good morning. We also welcome the minister's officials, who are Willie Cowan and Carole Barker-Munro.

Would you like to make an opening statement, minister?

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

Good morning. I thank the committee for inviting me to give evidence on the wild fisheries review. I came into post after the independent panel had submitted its report, so I am playing catch-up with the committee, given its long-standing interest in and knowledge of the issue.

The historical perspective is interesting and particularly relevant on this matter. Over the past 50 years, a series of reports have been produced on the governance structures of salmon and freshwater fisheries. Despite the volume of considerations and the degree of consistency in the actions that have been recommended, there has been little in the way of strategic and holistic reform of structures.

We are embarking on a challenging and difficult task. The existing legislation is complex, and views are sometimes polarised and held strongly. Those are reasons enough why others have elected to retain the status quo, but we are doing the right thing in tackling an issue that has been put aside too many times. I plan to consult this spring on broad policy options for a new management structure. That will be followed by further consultation on a draft bill by the end of the parliamentary session. I strongly believe that we can work together, across the sector and across political parties, to design and deliver for Scotland a new wild fisheries management system that is truly fit for purpose in the 21st century.

As the committee has noted in its earlier evidence sessions, the panel's report is thorough and wide-ranging. It contains more than 50 recommendations for change—that means that, in effect, we are talking about a fundamental redesign of the management framework for wild fisheries.

In that context, I am particularly keen to hear the committee's views on the report. I have followed your evidence sessions and I acknowledge that considerable detail needs to be worked up in order to map out how any new structure might work. That is inevitable in such a large and complex reform project.

However, in advance of that detail, it is helpful to consider the broad management principles and themes that run through the report and those which should also characterise the management framework for maximising the value of any of Scotland's natural assets. Scotland's wild fish resources are undeniably such an asset. We need in place a management framework that seeks to conserve them and to harness their potential to deliver social and economic benefits to the whole country. Decision making based on evidence—which, on occasion, might be incomplete—must be embedded firmly in the framework. The framework must also enable us to account for how we are delivering our obligations and commitments to those in the international community and at home. I hope that we can all agree on that.

I am absolutely clear that we need reform; I am also clear that in progressing change we must not lose the best elements of the current arrangements. You have heard and noted that the sector is characterised by considerable voluntary effort and knowledge at local level, and there are many examples of excellent fisheries management in parts of the country. In taking forward the next stages of the process, I want to ensure that we harness those good elements and bring them into the new management system's design.

I very much welcome the inquiry and hearing the committee's thoughts on the review report. Those will be extremely valuable for me as I consider the next steps in the reform process.

**The Convener:** How does the Government plan to progress the review's proposals for a national unit with responsibility for fisheries management?

**Aileen McLeod:** I will reiterate what I have just said: given that I will be consulting this spring on the broad policy options for a new management structure, I hope that the committee will understand when I say that, in advance of our consultation, I am not able to take a position on the detail around specific recommendations, because we will be consulting on the roles and functions of a national unit. That will be a key part of the consultation.

However, we must ensure that the balance is right between a national strategic overview and local delivery. Crucial to designing any new management framework is the alignment of accountability with responsibility throughout the system.

**The Convener:** Has the review established the right balance between national accountability and local empowerment?

**Aileen McLeod:** The forthcoming consultation will seek views on the respective roles and functions at national and local levels. I am aware that there are a range of views about who should do what. I look forward to exploring that key issue in the months to come.

**Graeme Dey (Angus South) (SNP):** Good morning, minister. In some parts of the country there has been a history of conflict between netsmen and boards and, at times, between boards and government. Will you bear in mind that we want to get to a place where the new structures that are put in place reduce that conflict?

**Aileen McLeod:** Thank you for that very helpful question. The national strategy will certainly set out clear roles and responsibilities throughout the system. Some conflicts are not necessarily the result of the structures, so a plan-led approach and clear understanding of the roles and responsibilities may help to reduce such conflicts.

**Jim Hume (South Scotland) (LD):** Good morning, minister. A controversial review proposal is that we change from the current levying contributions to a national levy, with the possible reallocation of the levy to national priorities. That could cause concern that the levy from rivers such as the Tweed, where large levies are raised, could go elsewhere. Andrew Thin said that that would not be athator movement of funds. It would be interesting to know what percentage might be moved from one area to another. Also, is there scope for legal challenge by riparian owners to that proposal?

09:45

**Aileen McLeod:** I am obviously interested in managing a national resource, so it is important to ensure that resources are available for consistent local delivery of the national strategy. It is about having fisheries management organisations of sufficient scale to deliver against those national priorities, and about allocation of the resources available in the system to achieve that. Funding is always a challenging issue, particularly in the current financial climate, but if there is to be an element of distribution it should be on the basis of best value for money and agreed priorities for fisheries management.

Jim Hume asked whether redistribution might lead to a legal challenge. We are talking about a fundamental change to the management

structures for wild fisheries and a new legislative framework for that system. A number of district boards cover several rivers, so the principle of pooling resources, prioritising and cross-subsidising, albeit on a smaller scale, is already established.

**Jim Hume:** I thank the minister for that answer, but I am still concerned about what could be seen as centralisation. Ultimate control will be with the minister; it will be interesting to see how big that element of redistribution will be, given the national priorities. Andrew Thin said that it would not be major movement of funds, so there is a slight conflict between what the minister is saying and what he said.

**Aileen McLeod:** If you have any particular ideas or suggestions, I would be willing to consider them. At the moment, we are looking at the broad principles of a new management structure, so I am keen to hear ideas and opinions from the committee. Willie Cowan may want to add something.

**Willie Cowan (Scottish Government):** Andrew Thin's report is predicated on having a national strategy for management of salmon as a protected species for the first time, as well as for management of fisheries in the round and the maximisation of economic, social and environmental benefits of that natural asset. One of the propositions in the report is that, through the national unit, the minister would establish a national strategy supported by a research strategy, and that fisheries management organisations, if they are developed as the report suggests, would outline how their local management initiatives would contribute to the national objectives.

It is within that framework that what happens at local level will be built up into a national programme of work to achieve consistency, to protect species where that is necessary, and to maximise the value of a natural asset for the people of Scotland. The extent to which redistribution will be necessary depends on what the final framework looks like. As the minister said, we will soon be going out to consult on that in more detail.

**Sarah Boyack (Lothian) (Lab):** My question follows on from the issue of redistribution and the impact on successful rivers, because the suggestion is that there is enough money in the system to spread the money elsewhere and target protected stocks in other areas. Do you envisage pump priming from central Government? The Tay District Salmon Fisheries Board expressed concern that, if its money was taken away to somewhere else, that would limit its capacity to restock its fisheries. We have heard the same from other areas, and it has been suggested that boards would have to get more voluntary top-up moneys locally, so I wonder how that will work. Do we have figures that show the financial gap that you estimate exists on the rivers that are vulnerable and are not being properly restocked?

**Willie Cowan:** The issue of restocking polarises opinions. Some rivers restock as a matter of course, but advice from various fishery bodies suggests that restocking might not be the best way forward. It is an issue to consider but, in the round, as the minister said, the principle of redistribution or working collectively between boards and rivers already exists. The principle applies between neighbouring boards and neighbouring trusts that have common interests, so it is already established.

The proposition in the review report is that, for various reasons—not least the economies of scale—there should be fewer management organisations and they should look after larger areas. When the detailed propositions come forward, we will need to understand what those areas look like and therefore what resources are available in them. We will then be able to figure out whether there is a need for redistribution at a national level and what that might be.

**Sarah Boyack:** Do we have figures that underpin what comes in at the moment in different areas? Do we have a sense of what is needed in the areas, whether that is about management issues or other things? Do we know what is missing that needs to be targeted?

**Willie Cowan:** The issue now is that there is no national oversight of the management of fisheries. Fishery boards are responsible for managing fisheries in their rivers. The proposition is that we take that up to the strategic level and that we have national oversight of the management of fisheries as a whole.

We are not replacing like with like. We are talking about a complete redesign of the system, and on the back of that we will need to figure out the resources that are available in the system, any other resources that might be necessary and how they can be achieved.

**Graeme Dey:** Do you accept that, under the proposal for reallocation of the levy, there might be an argument for compensating rivers that have been negatively impacted on by activity elsewhere, such as netting in a mixed-stock fishery that takes fish that were destined to return to their native rivers?

**Willie Cowan:** The issue of managing mixed-stock fisheries has two aspects. In a general sense, it needs to form part of the national strategy, but specifically, the minister is already consulting on the recommendation in the review report of a kill licence. As the name suggests, that

is to manage the number of fish that are taken from rivers or coastal fisheries, but the purpose of managing that resource is to ensure that sufficient fish go up the river for it to be restocked to conservation limits.

In effect, the implementation of the kill licence—once the consultation has finished and we have final proposals—will answer the point, because fisheries will be licensed to take fish only when there is an evidenced harvestable surplus. If a net fishery cannot demonstrate that there is a harvestable surplus for the fisheries that it impacts on, licensing it might not be possible.

**Graeme Dey:** How would you determine which of the fish that were being taken belonged to the river nearby and which were headed for three or four other rivers? We are talking about harvestable stocks. How will you measure that?

**Willie Cowan:** We have work that was undertaken by our science colleagues at Pitlochry to track some fisheries, and we can demonstrate that, in some areas, the taking of fish from certain netting stations can impact on multiple rivers up and down a coast. That is part of the detail that we are working on. As the minister said, none of this is easy, and it has never been done before.

**Alex Fergusson:** I wonder whether I can draw out the minister on a point that has been made. I understand the desire to have national oversight of wild fisheries management and policy but, as has been hinted at, each river is different and has a life of its own, and one must bring individual river management down to a very local level. I find it difficult to see how this will all work without further insight into the size and shape of the local management organisations. Will you assure us that the eventual structure will still be flexible enough to allow the considerable local input that I believe is necessary for a river-by-river management policy with oversight within the national structure?

**Aileen McLeod:** I can give you that reassurance. We have said that it is clear to us that we have to retain the best parts of the current arrangements, and that also relates to our local knowledge. As I said, we need to have the right balance between the national strategic overview and local delivery, and we are keen to work with the committee to get that structure right.

**The Convener:** Claudia Beamish has a similar question about raising money.

**Claudia Beamish:** Good morning, minister. As you know, the review proposes that the Government should consider introducing rod licences. What is the Government's response to that? Has the Government assessed how much the rod licence would raise in relation to the administration costs?

**Aileen McLeod:** The report states that there is enough money in the system to pay for fisheries management but that restructuring is necessary to maximise value for money. Beyond that, as Claudia Beamish rightly points out, the report recommends consideration of the potential for a rod licence to raise revenue to develop angling opportunities. The committee has heard evidence from others on the issue and their views have differed considerably, as they have on many other issues. I would be extremely interested in hearing the committee's views on the proposal for a rod licence.

The issuing of rod licences has not been included in the removal of the exemptions for some sporting activities in the proposed land reform bill, on the ground that the funding of fisheries management is being considered by the wild fisheries review. The Government has made no assessment of how much a rod licence would raise, because it has not been Government policy. However, should there be any support for that recommendation from the sector and the committee, we would be happy to investigate it.

**Claudia Beamish:** As you know, the Scottish Federation for Coarse Angling supports the introduction of rod licences. The committee heard about the importance of the fishing traditions being passed on to the next generation and the need for opportunities to access fishing and information for fisheries. Do you agree that there should be a rod licence only if an angling for all programme is developed in tandem with it? Do you have any comments about involving young people and making access easier for residents and tourists?

**Aileen McLeod:** Today, we are discussing the broad principles of a new management structure ahead of any consultation. I am keen to hear the committee's views on the introduction of a rod licence as well as the views of the sector.

You asked about opening up access to angling for our young people, and I am aware of a number of projects that are encouraging more young people to fish and are doing good work—we have the salmon in the classroom project, for instance. The question is how we move such initiatives forward. I am conscious that the wild fisheries review concluded that the third sector probably offers the best route for driving such initiatives and that the Government would be there to catalyse, facilitate and support.

We are managing for a purpose, and we are trying to maximise the socioeconomic benefits that we deliver for the people of Scotland—for the economy, for social cohesion and for access. There is a lot that the sector could do.

10:00

**Michael Russell (Argyll and Bute) (SNP):** The argument from the wild fisheries review was that it is unlikely—at a time of financial constraint, or perhaps ever—that the Government would have the resource to invest in developing the sport. The review panel also felt that Scotland is underfished. Those two things suggested to the panel that a rod licence might provide the resource both to develop the sport and to ensure that the fishery was more sustainable. If the rod licences did not come about, what resource would the Government bring to the table to achieve the objectives?

**Willie Cowan:** I will not comment on the resources.

**Michael Russell:** You can say "none" if the answer is none, which I suspect it is.

**Willie Cowan:** I suspect that Mr Swinney would want to speak to me if I pre-committed the Government's resources.

The proposition is for a fundamental reform of the management system, based on a national strategy. We need to understand what that national strategy would look like, what the structures beneath it would look like, what the split of roles and responsibilities would look like and how changing the structures would alter the amount of resource available in the new fisheries management organisations. Once we have all that in place, we will be able to figure out whether there is a funding gap and, if so, how best it might be addressed. Until we have been through the consultation and the process and until we have brought forward specific proposals for a new management system, it is difficult to estimate what any financial gap might be.

**Michael Russell:** I am not postulating this from my own knowledge—I have very little knowledge. The people who are postulating the idea are those who carried out the wild fisheries review. The review team argued in its report that introducing a rod licence should at least be considered, which I repeat was because the resource would not be available to invest in the sport's future.

If that is true—the wild fisheries review and the quality of its information have been well received—the issue is crucial. If there is to be no resource to invest in the sport and its development, the sport will not develop or it will develop in a piecemeal way and slowly, because other bodies will pay for it.

The alternative is the major innovation of a rod licence. I have been surprised that there has not been greater resistance to such a licence. We have had little evidence of that. One of the witnesses last week, who said that his organisation was against it, was in favour it—that was probably a rather odd way to put it. In all those circumstances, that is a crucial issue.

In turning to another area, I wish to deepen the point. In all the discussions that we have had about money, the required resource that we are talking about has been elusive. There has been a lot of discussion about moving resource from one place to another and about the potential for resource to be found, but nobody is putting a figure on that. I have heard no figures this morning, and it is almost impossible to find a figure. If there is no figure for that, and if there is no figure for the savings that might be made by using different structures, we will have to determine where we find additional resource. If the resource that we have had so far has not produced the effects that we want, and if additional resource is not likely to be available, where will we get the money?

I am not asking for an answer; I am just pointing out a central conundrum, which I do not think is resolved by the fisheries review—although the review suggests how it could be done. The matter will need to be addressed. Alas, I have some experience of reform that is meant to produce resources—of course, all the reforms that I have been involved in have produced resources—but it is possible that that does not happen. We need to find where the money will come from.

**Aileen McLeod:** We are keen to work with the committee on that issue ahead of our launching the consultation. We are at a very early stage in our thinking and there will be lots of opportunity for the committee and the sector to influence our thinking ahead of the consultation.

**Michael Russell:** We will have to—if I may use this term—grasp the salmon quite firmly at some stage because, although there has been a review and we have had all the bodies around the table, the number of salmon is falling, there is a conservation issue that is becoming extremely pressing and there is conflict in the system. People will have to take some pain in the process, and sometimes it is better to bring the pain on more quickly than to keep talking about it in the hope that we might not notice it.

**Alex Fergusson:** I would not want the minister to think that there is no resistance to the introduction of a rod licence, as Mike Russell hinted. I have had quite a lot of local advice—I suspect that the minister has had some of the same emails as I have had—about the possible impact on tourism in particular at some of the more fragile, lesser-known rivers.

In a way, I agree with the rod licence—I thought that there might be more resistance to it—but, as we heard in evidence last week, the rod licence would probably be more welcome if the resource

that it freed up was put into improving rivers and fisheries rather than an angling for all programme, which is slightly nebulous at this stage. We do not know the details of that programme, but to my mind it would build up a bureaucratic element that might take up a lot of the resource that was raised.

I simply put it to the minister that it is by no means unanimously felt at this point that a rod licence is a great idea. I am not saying that it is a bad idea, but there is a bit of work to be done on it.

**Sarah Boyack:** I have a brief question on the process because I am trying to tease it out. The minister is keen to get our ideas and views, but we need a bit more sense of the process. We have had the review, which has come up with a number of questions. Will there be answers to some of them before you announce proposals later in the year?

**Aileen McLeod:** There will be, after we have come through the review but before we have the consultation. I will be happy to come back to the committee at that stage.

**Sarah Boyack:** Before you announce the structure that you will consult on, will there be a publication that covers issues such as the resources available, what you think needs to be spent and the costings of different options?

**Willie Cowan:** As the minister said earlier, there is a sequence of events. We have had the fisheries review report, which came up with 53 recommendations. We have listened with great interest to the evidence that the committee has received so far and we will take away members' comments today. The next stage for us is to present in the spring a consultation on the broad principles for a management system. That will give another opportunity for iteration in the committee and in the wider sectoral interests. After that, we will consider what a management system and the legislation to support it would look like and what that would all cost.

We are a step short of answering the questions that the committee has raised about specific resources. One of the reasons for that is that, as the minister said, the possibility of reform has been on the stocks for a number of years, but nobody has picked it up because it has been so difficult. We want to ensure that, when we get to the point of producing a draft bill, we have gone through a process in which we have consulted on and understood the issues, so that we have a bill that makes sense and garners broad support.

**Aileen McLeod:** We will also establish an external stakeholder reference group to help steer the development of the broad principles for a new management system through to detailed proposals and new legislation. Alan Wells from the Association of Salmon Fishery Boards has been seconded to the wild fisheries team in Marine Scotland to help us with the process.

**The Convener:** Thank you for that.

There are two things that I want to ask about. First, you mentioned consultations in the spring, but can you be any more precise about timing? After all, we need to know what input we will get from you in putting together our report, and we need to be able to engage and ensure that all of this fits with your timetable and ours.

**Aileen McLeod:** The consultation will be brought forward around Easter time.

**The Convener:** That is helpful.

Secondly, I want to raise a point about income that has not yet been discussed. As we know, the rebate for shooting rates will be removed, but what is your intention with regard to the fishing rates that we have had in the past? Might they be a source of income?

**Willie Cowan:** This brings us back to the point that we are currently discussing the broad principles of the management system, and the delivery of revenue to support that system is part of that equation. We have not taken any specific views on issues such as fishing rates, because there might be another money-raising proposition for the management system that comes forward. This is not a case of replacing X with Y; we need to understand what the new system looks like and how it can be funded.

**The Convener:** I hope that you take the potential income from fishing rates into consideration. I am sure that we will make a more formal comment in our response.

Alex Fergusson has some questions on sustainable harvesting. [*Interruption*.]

**Alex Fergusson:** I am sorry, convener, but I am still shaking slightly at the idea of having fishing rates on top of an annual levy. I cannot help but feel that the two are much the same thing, but—hey.

**The Convener:** Well, we have to sort that out.

**Alex Fergusson:** No doubt the devil will be in the detail.

**The Convener:** We have had fishing rates in the past. Perhaps the issue needs to be taken into account, given that they were only rebated.

**Alex Fergusson:** I guess that that is a discussion for another time, convener.

Moving on, I note that Mr Cowan has already mentioned the review group's proposal for a licence to kill. We have been quite impressed with the amount of common ground that has been found with stakeholders on some of the

recommendations, but this particular recommendation caused a bit of controversy.

When you first look at it, the proposal seems very simple—in effect, it is a quota on the number of fish taken—but it is one of these proposals that the more you look at it, the more complex and difficult it becomes. That is largely for practical reasons—in other words, how it is actually implemented. We have heard evidence about the number of runs that each river could have, about the different runs of salmon, about the number of beats on different rivers and about the varying number of proprietors on rivers, and when you start to think about how those licences or quotas can be applied across those beats, those proprietors and those rivers, particularly given the volatility of annual runs of salmon and differences between runs within each season, you start to wonder how on earth they can be practically implemented.

I absolutely understand Mr Cowan's point that the whole purpose of this is to ensure not that certain numbers of fish are killed but that a proper number of fish are able to head up the river and continue the species. I do not know whether you can answer this yet, but given the volatility and variety of runs, which can vary up to four times from one season to another, how can you base the number of salmon to be killed every year on one season's results? After all, the figure might double or be halved the next season. How do you do this with sustainability in mind? How do you prevent what looks like quite a simple system to begin with from becoming hugely complex and therefore bureaucratic and very expensive at the end of the day?

**Aileen McLeod:** We are consulting on the kill licence, the objective of which is to ensure that harvesting in domestic Scottish waters is sustainable. However, I must clarify that our salmon are a national resource; under the habitats directive, they are a protected species, and a number of variables impact on them.

Fish are being killed and there is no assessment at a national level of the sustainability of that activity. Therefore, we need to try to put in place an appropriate regulatory structure to ensure that an appropriate number of fish remain in the system and go on to spawn. That is a conservation measure for a protected species. It is about how we manage that protected species.

10:15

**Alex Fergusson:** I absolutely understand that and the thinking behind it, but have you thought yet about the technical and practical difficulties of implementing that, given the variations in each river and in each season that I tried to highlight?

**Aileen McLeod:** We know that a number of bodies want that, including the Association of Salmon Fishery Boards, the Institute of Fisheries Management, the Scottish Anglers National Association and the Scottish Gamekeepers Association. Other countries—notably Ireland—retain the resource in that way in the interests of conservation. We know that that is highly challenging, but we need to make our best efforts to address a strong recommendation of the report, because the wild fisheries review group made it very clear to us that it wanted immediate action to be taken in the area in relation to conserving our protected species.

**Graeme Dey:** The review proposes the creation of an offence of reckless or irresponsible management of fishing rights. However, last week the committee heard evidence that raised doubts about how that might work in practice. Would the introduction of such an offence be workable?

On the issuing and renewal of licences to kill fish, I wonder whether we ought to have in place a fit-and-proper-person test.

**Aileen McLeod:** On your first question, as we have already said we plan to consult on the broad principles for the new management system, and we will consider in the round the appropriate regulatory requirements to ensure that there is effective and consistent compliance.

**Willie Cowan:** As I have said a couple of times, the proposition of the review and the forthcoming consultation is not that we pick away at individual points and try to fix something that is wrong today by addressing a single issue. When we have a proposition for a management structure, obviously that will need to have a weather eye to compliance with it. At that point, we will ask what works well in terms of compliance with the existing regulatory structure and what might be transferred over, or whether there is a different approach.

When we come forward with the proposition for the management structure, the kill licence in itself will restrict the ability of individual proprietors to kill fish without the licence. As the minister said, the Government currently has no control over the number of fish that are taken either by nets or by rod and line. The kill licence in itself will regulate the behaviour of people in the fishery, in that it will limit the number of fish that can be taken. To that extent, the kill licence may impact positively on the issue that was in the report, but, as I said, the key position for us in developing the new management system is what that system looks like and how we ensure compliance. The way to ensure compliance may be similar to what we have today or different, but we need to figure that out in the light of what the new system looks like.

**Graeme Dey:** Where will heritable rights sit in relation to the licence to kill? From a legal standpoint, if someone has heritable rights, can they not just carry on fishing regardless?

**Willie Cowan:** No. The heritable right for salmon fisheries is a property right. It enables the owner of that right to fish, but the Government can impact on that right in the national interest if it feels that there is a rational need to do so. In the case of salmon fisheries, some of the stocks are vulnerable. Therefore, the Government, in the public interest, has the right to impact on the property right.

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

**Angus MacDonald (Falkirk East) (SNP):** During last week's evidence session, it was suggested that Scotland is behind the curve with its lack of policy on mixed-stock fisheries. The North Atlantic Salmon Conservation Organization stipulates in its guidelines that fisheries should be allowed only if there is an exploitable surplus. On that issue, we also heard of the need for much more research in the short to medium term. We will discuss that shortly.

Is the approach that is proposed by the review sufficient to allow Scotland to comply with its international obligations under NASCO and with the habitats directive?

**Aileen McLeod:** NASCO and the European Union recognise that mixed-stock fisheries present particular difficulties for the management of salmon populations. Therefore, the kill licence would provide a trigger to assess the impact of such fisheries on our special areas of conservation. A benefit of such an approach is the ability to use the process to manage mixed-stock fisheries. That will align with the approach and the requirements of NASCO and the habitats directive, and it will enable us to be seen to be doing so.

**The Convener:** We come to scientific advice.

**Sarah Boyack:** A key area identified by the review group was the need to consider the research requirements. Although gaps were identified, the group did not think that we needed to increase substantially the resources for data collection. However, the list of issues on which it is thought that more research is needed is substantial. It includes criteria for determining salmon killing licence applications, the link between salmon licences issued and the impact on stocks. To follow up the points that Angus MacDonald has just made, salmon-related data for reporting to the EU and NASCO is also included, as is general information about habitat productivity, resilience of fish stocks and the enhancement that needs to be carried out; a basic mapping of the wild fisheries resource of all species around Scotland; catch and release as a conservation tool, particularly the number of fish that die or survive through that process; threats to wild fisheries; and market research—indeed, the minister picked up on that issue in relation to socioeconomic opportunities.

That seems like a substantial range of research. Is the theory that the money will come up from the local money that is to be collected and that that will be sufficient to fund those research priorities?

**Aileen McLeod:** Fisheries management needs to be underpinned by sound science and the best available evidence. The review recommended a national research and data strategy. The respective roles and functions in the delivery of research priorities at national and local level will be a key part of the forthcoming consultation.

Research is commissioned and conducted at national and local level. Therefore, I anticipate that that approach will continue under a national research and data strategy.

Carole Barker-Munro will talk through some of the research that is being funded currently.

**Carole Barker-Munro (Scottish Government):** Good morning. Sarah Boyack is right to say that that is a long list of areas to be looking at. However, those things are not all new; indeed, a number of elements of the work are already being undertaken by Marine Scotland science and by local boards.

I imagine that one of the first orders for drawing together a national research and data strategy would be to map exactly where we are with each of those pieces of work, to find out where lessons could be learned and then to prioritise that list. I do not think that we would be starting from scratch in doing that. As I said, a number of pieces of work are under way, but possibly under a different badge or for a different purpose. There is already a good bank of work there, and we would look to build on that in developing the national strategy for research and data.

**Sarah Boyack:** Would the starting point not be to establish that research and science base now? The follow-on question is really about the capacity of fisheries management organisations to do that research. Do you envisage people who are currently doing research for the Scottish Government being shifted on to that? Alternatively, is it a question of the work that is done by local fisheries organisations being pulled up to the centre?

**Carole Barker-Munro:** I do not know that I can comment on whether it might mean people being tasked with doing different things. An awful lot of what is in the wild fisheries review has to do with structures and reform that can be taken forward only through legislation. However, there is an

awful lot of other work, such as the development of a national strategy, that would not require legislation to get started with.

Although we are looking at broader structures, decisions could be taken to start with some of that work now and to consider what that might mean in terms of pulling together who is doing what and for what purpose. Could it be better aligned? Is enough information being shared about what is happening? It might not necessarily be about moving people around but, rather, getting a shared understanding of who is doing what and making sure that lessons are learnt about that across the piece.

**Sarah Boyack:** That is a very helpful answer. It feels like there are a large number of unanswered questions. It could be about scoping what we currently know and what work is going on and then thinking about how the change at local level will help. One of the concerns is about the potential impact on the funding of local work for local management. I just want to tease out the difference between a national priority and national funding that would come up from local level and what would be left at local level to enable people to carry out that work.

One of the suggestions is about looking at citizen science. A framework is needed in which to report citizen science. To what extent will the local mechanism be identified as responsible for bottom-up stuff? To what extent is it a kind of Marine Scotland overview? I am trying to get a sense of how ambitious the national unit will be in setting the agenda for research and carrying it out.

**Carole Barker-Munro:** Those issues will start to come through in the consultation when we start talking about who should be doing what. However, as I said, there is an element of work that can be done now to start mapping who is doing what while considering who should be doing what in the future and marrying the two, so that we understand the impact of moving from the current structure to the new structure.

**Sarah Boyack:** Costing it and thinking about the staffing resource is crucial.

**Alex Fergusson:** To build on that, I highlight what I think is the crucial need for local flexibility. I think that it is sensible to carry out a mapping exercise of everything that is going on and bring it all together so that we have a clearer overall insight into what is being done, but there are local priorities that might not make the national list. For example, the acidification that is the biggest problem in my part of Scotland—the south-west—might not be a national priority come the day, but it needs to remain a local priority. I simply make a plea to keep that local flexibility in place whatever the final structure might be.

**Aileen McLeod:** That is clocked, Mr Fergusson.

**The Convener:** We move on to regulation and compliance questions.

**Graeme Dey:** Does the Government have any plans to look at extending the annual close times for salmon fisheries beyond those that were recently legislated for? I ask that partly because no sooner had the new close time arrangements been announced on the Esk than the Esk District Salmon Fishery Board was asking anglers on all the rivers that it oversees not to kill fish until 1 July. That suggests that in particular circumstances those with a local knowledge perhaps feel that there is a need to go further than we have gone so far in order to protect stocks.

**Aileen McLeod:** It is important to ensure that the system in the round delivers adequate protection. Annual close times are part of the current framework, but we could also look at this issue in conjunction with the kill licence rather than in isolation. Such an approach might result in a similar outcome in terms of the protection that is afforded to fish at particular times of the year. Again, I would very much welcome members' views on that.

There are a number of exceptions, as Mr Dey pointed out. The annual close time within the Esk salmon fishery district has been extended until 30 April, therefore netting has been delayed until 1 May. Spring fishing by rod and line prior to 1 May is on a catch-and-release basis. The extended annual close time does not apply in the Echaig salmon fishery district as the existing season start date of 1 May has been preserved. In the Annan salmon fishery district, where the existing statutory measures require the release of all salmon prior to 1 June, the date has been preserved. It all comes down to managing a species that is protected under the habitats directive.

10:30

**The Convener:** I turn your attention to protection orders, on which the review has some proposals. Given the evidence that we have taken, we wonder whether we should have a national system of protection orders. We have had supplementary evidence suggesting that, in some parts of the Tay system, the orders work very well and there have been no problems. There is a suggestion, however, that there could be a problem in other areas.

The Tay District Salmon Fisheries Board broadly welcomed the principle in the recommendations. Do you have a sense of how protection orders can be used across the species?

**Aileen McLeod:** Under the current system, protection orders were intended to play a part in

responsible access to fishing, which is a theme that runs throughout the report; we have briefly touched on that. I wish it to be a key feature of the management system. I am open to suggestions about how that can be achieved and whether protection orders should be part of that.

**The Convener:** We recognise that there may be questions about that in the consultation.

**Michael Russell:** The opportunity exists in legislation to redefine or properly define the role of bailiffs. The committee—or at least a couple of members—has expressed concern during evidence-taking sessions about the bailiffs' role. The report indicates that the police's position is that bailiffs have powers that they are not using.

From my perspective, there is also concern that, across the environment, there are often people who take on roles for which better judicial or legislative training is required. Sometimes, if people do not have that training, or if they exercise their roles in the wrong way, difficulties can be created.

Minister, I seek from you a commitment that that area will be considered in the consultation. It gives us an opportunity to define the role of bailiffs properly. For example, some of the rangers in the Loch Lomond and the Trossachs national park qualify as special constables, which gives them a proper context in which they can undertake some quite difficult work.

**Aileen McLeod:** I thank the member for raising that issue. Anyone who exercises powers under the law must do so within a framework that includes the appropriate training, as you rightly pointed out, along with checks and balances. The system of water bailiffs is unusual in terms of law enforcement, but it provides a strong element of local knowledge and experience, which, many argue, should be retained. I cannot take a position on the recommendation today, but I am open to how fisheries law should be enforced.

Whether the committee feels that the recommendations that have been made are the right ones or that something else is needed in the mix, it is important to point out that the enforcement power is available. The way in which the powers are exercised is a different matter, but we would be keen to consider that through the consultation.

**Alex Fergusson:** If we end up introducing rod licences, licences to kill and quotas, I suspect that more policing will be required, rather than less. Therefore, the subject of who polices the measures is extremely important; there is no point in having everything in place if there is not sufficient policing ability. I hope that that is borne in mind as the proposals are taken forward.

**Aileen McLeod:** Indeed.

**The Convener:** Okay—there are no answers to that, but you are taking it on board, minister.

I thank the minister and her team. We have had a very good discussion on these matters.

10:34

*Meeting suspended.*

10:40

*On resuming—*

# Community Empowerment (Scotland) Bill: Stage 2

**The Convener:** The third item on our agenda today is to begin our consideration of amendments to part 4 of the Community Empowerment (Scotland) Bill at stage 2.

I welcome the officials joining the Minister for Environment, Climate Change and Land Reform—and I welcome the minister again. The officials are: Dave Thomson of the Scottish Government's land reform and tenancy unit; Elizabeth Connell, a Scottish Government lawyer; and David McLeish, who is parliamentary counsel.

Everyone should have with them a copy of the bill as introduced, the marshalled list of amendments, which was published on Monday, and the groupings, which sets out the amendments in the order in which they will be debated.

There will be one debate on each group of amendments. I will call the member who lodged the first amendment in the group to speak to and move that amendment, and to speak to all the other amendments in the group. Members who have not lodged amendments in the group but who wish to speak should indicate that by catching my eye. If the minister has not already spoken on the group, I will invite her to contribute to the debate just before moving to the winding-up speech.

The debate on each group will be concluded by me inviting the member who moved the first amendment in the group to wind up. Following the debate on the group, I will check whether the member who moved the first amendment in the group wishes to press it to a vote or to withdraw it. If the member wishes to press ahead, I will put the question on the amendment. If a member wishes to withdraw their amendment after it has been moved, I will check whether any other member objects. If any committee member does object, the amendment is not withdrawn and the committee must immediately move to vote on it.

If any member does not wish to move their amendment when it is called, they should say "Not moved." Any other MSP present may move such an amendment. If no one moves the amendment, however, I will immediately call the next amendment on the marshalled list.

Only committee members are allowed to vote. Voting on any division is by show of hands. It is important that members keep their hands clearly raised until the clerk has recorded the vote. The committee is required to indicate formally that it has considered and agreed each section of the bill, so I will put a question on each section at the appropriate point.

We have agreed to consider sections 27 to 47 and any amendments inserting new sections after section 47 today. If we do not get that far, we will stop at an appropriate point and pick up where we left off next week.

### Section 27—Nature of land in which community interest may be registered

**The Convener:** We start with group 1, which is on the nature of land in which community interest may be registered under part 2 of the 2003 act—separate tenements. Amendment 12, in the name of the minister, is grouped with amendments 13 to 17.

**Aileen McLeod:** The provisions of the Land Reform (Scotland) Act 2003 state at section 33(1), in part 2:

"The land in which a community interest may be registered under this Part of this Act ... is any land other than excluded land."

Excluded land is defined in section 33(2) of the 2003 act as:

"land described as such in an order made by Ministers."

The bill as introduced amended the definition of excluded land so that it is land

"consisting of mineral rights to oil, coal, gas, gold or silver which are owned separately from the land in respect of which they are exigible",

with the exception of

"salmon fishings, or ... mineral rights".

The current provisions do not exclude other separate tenements such as oyster or mussel-gathering rights, rights of port and ferry, and sporting rights.

10:45

The purpose of amendments 12 to 17 is to exclude from the land in respect of which a community interest may be registered all separate tenements that are owned separately from the land, except salmon fishings and mineral rights other than rights to oil, coal, gas, gold or silver. That means that salmon fishings and mineral rights other than the rights to oil, coal, gas, gold or silver are the only separate tenements that are land in which a community interest may be registered under part 2 of the 2003 act.

Specifically, amendment 12 inserts specific reference to "a separate tenement". Amendment 13 changes the wording from the plural to the singular, to take account of the change in

terminology from “mineral rights” to “a separate tenement”.

Amendment 14 inserts reference to the exceptions to the definition of excluded land, as set out in proposed new subsection (2A) of section 33 of the 2003 act—for example, salmon fishings or certain mineral rights. Amendment 15 amends proposed new subsection (2A) to take account of the change of structure to that section of the 2003 act, which is caused by the new reference to separate tenements. Amendment 16 ensures that rights to oil, coal, gas, gold or silver are not included in the exception of mineral rights from the definition of excluded land.

This group of amendments seeks to bring part 2 of the 2003 act in line with part 3, section 68, of that act, which describes “eligible croft land”. I invite the committee to support these amendments.

I move amendment 12.

**Alex Fergusson:** I am not against the proposal at all but, so that I can better understand exactly what the implications are, can you tell me whether there is a full list of what those other tenements include? I feel that we are being asked to agree something that appears to be fairly open ended. You have mentioned oyster, mussel and salmon fishing, but I wonder whether it is possible to define what the phrase “a separate tenement” actually includes.

**Aileen McLeod:** We can provide a full list around that. We are trying to ensure clarity around what the separate tenements owned separately from the land are eligible for—and a community body can specify its interest. We would be happy to provide a full list.

**Alex Fergusson:** That would be useful before stage 3.

*Amendment 12 agreed to.*

*Amendments 13 to 17 moved—[Aileen McLeod]—and agreed to.*

*Section 27, as amended, agreed to.*

### Section 28—Meaning of “community”

**The Convener:** Group 2 is on ways in which community bodies and crofting community bodies may be constituted. Amendment 18, in the name of the minister, is grouped with amendments 19 to 27, 33, 2 and 40.

**Aileen McLeod:** I am conscious that there is quite a lot for us to get through here. I will try to go through this as quickly as I can.

Stakeholders have indicated a need for legislation to offer a wider range of legal bodies that a community could use when forming a community body for the purposes of registering an interest in land or of exercising a right to buy under part 2 of the Land Reform (Scotland) Act 2003. The amendments in this group offer community bodies more flexibility in deciding which form of community body best suits them.

Stakeholders highlighted Scottish charitable incorporated organisations—SCIOs—and community benefit companies as being suitable bodies for the purposes of the community right to buy. An amendment to the 2003 act, which provides that a community body can take the form of a SCIO, in addition to the option of being a company limited by guarantee, is set out in section 28 of the bill as introduced.

Amendment 18, which is a technical amendment paving the way for amendment 22, seeks to add community benefit societies as another type of legal entity that a community can use to form a community body for the purposes of registering an interest in land and exercising the community right to buy. Amendments 18 and 22 have been lodged in response to stakeholders’ requirements for greater flexibility in the types of body that are considered to be suitable for a community body.

Under amendments 19 to 21, in order to be a community body the legal entity forming the community body—which if amendments 18 and 22 are agreed to will be a company limited by guarantee, a Scottish incorporated charitable organisation or a community benefit society—must have articles of association, a constitution or registered rules that meet certain requirements. One of the current requirements is that the articles, constitution or registered rules must state that the community body must have at least 20 members.

Amendment 19 seeks to amend in two respects the list of requirements that a company limited by guarantee's articles must comply with in order to be a community body. First, it amends the requirements to provide that they state that the community body must have at least 10 members instead of the current minimum requirement of 20. That is intended to address difficulties, highlighted by this committee, of certain smaller or remote communities finding enough members to form the community body. Secondly, it seeks to amend the requirements to increase the proportion of members of a community body who must be members of the community from a majority to three quarters. That will ensure that, even for community bodies with a small number of members, the interests of the local community are protected.

Amendment 20 seeks to amend the list of requirements that a Scottish charitable incorporated organisation’s constitution must

comply with in order to be a community body so that it stipulates that the constitution has to contain a provision that the community body must have at least 10 members instead of the current minimum requirement of 20. Amendment 21 also amends one of the requirements of the constitution of a community body that is a Scottish incorporated charitable organisation to increase the proportion of members of the body who must be members of the community from a majority to three quarters. Amendment 22 seeks to set out the requirements that the registered rules of a community benefit society must contain in order for it to be a community body.

With regard to amendment 23, ministers currently have the power to disapply the requirement that the articles of a company limited by guarantee or constitution of a Scottish charitable incorporated organisation must state that the community body must have at least 20 members. If amendments 19, 20 and 21 are agreed to, the minister will have the power to disapply the requirement that the articles or constitution state that the community body must have 10 members instead of disapplying the requirement that they have 20. Amendment 23 extends that power to the requirement that the registered rules of community benefit societies must state that the community body must have a minimum number of 10 members.

On amendment 24, ministers have under the bill as introduced the power to amend the subsections listing the types of legal entities that communities can use to form a community body. Amendment 24 seeks to enable ministers to amend provisions relating to community benefit societies as inserted by amendment 22.

Amendment 25, which is a consequential amendment resulting from the addition of community benefit societies as a type of body that communities can use to form a community body, adds the definitions of "community benefit society" and "registered rules" to the bill.

On amendment 26, in accordance with the 2003 act and the bill as introduced, community bodies are prohibited from modifying their memorandum, articles of association or constitution without ministers' consent in writing during the period beginning with the application being made and ending with any of the following: the registration of the community interest in land; a decision by ministers that the community interest should not be registered; ministers declining to consider the application; or the application's withdrawal. Amendment 26 extends that to include a prohibition on modifying a community body's registered rules in the case of community benefit societies.

On amendment 27, in accordance with the 2003 act and the bill as introduced, community bodies are prohibited from modifying their memorandum, articles of association or constitution without ministers' consent in writing for as long as the interest remains registered or, as the case may be, the land remains in its ownership. Amendment 27 extends that to include a prohibition on modifying a community body's registered rules in the case of a community body that is a community benefit society.

On amendment 33, the crofting community right to buy in part 3 of the Land Reform (Scotland) Act 2003 can be exercised only by crofting community bodies. At the moment, those bodies must take the form of companies limited by guarantee that meet certain requirements. In keeping with the proposed amendments to part 2, amendment 33 seeks to add Scottish charitable incorporated organisations and community benefit societies as types of legal entity that crofting communities may use to form crofting community bodies for the purposes of exercising the crofting community right to buy. In addition, the amendment seeks to provide that the Scottish ministers can add additional types of legal entity at a later date, should that be deemed necessary.

Amendment 33 also seeks to amend the requirements of the articles of association of a crofting community body that is a company limited by guarantee. It proposes to amend the requirement that the articles of a crofting community body that is a company limited by guarantee must state that the body has a majority of members who are members of the crofting community; the amendment seeks to increase the requirement so that the articles state that three quarters of the membership must be members of the crofting community.

The amendment also seeks to remove the requirement for a crofting community body to arrange for its accounts to be audited, while retaining the requirement for crofting community bodies to ensure proper arrangement for financial management. The change aims to avoid confusion among crofting community bodies about the types of audit that they must carry out, and it will prevent unnecessary duplication of effort. The body will continue to submit an audit of accounts by the appropriate governing body, which will be Companies House, Office of the Scottish Charity Regulator or the Financial Conduct Authority as appropriate to the type of legal entity. That is in line with the proposed amendments to part 2 of the 2003 act.

Amendment 33 also addresses issues relating to the definition of a crofting community for the purposes of the crofting community right to buy. At present, the definition might not always include all

those who would consider themselves to be members of the crofting community, and the amendment seeks to change that definition in an attempt to capture those persons who consider themselves to be members of the crofting community but who at present might find themselves excluded from the definition. One example might be 16 or 17-year-old crofters who would consider themselves to be members of the crofting community but who are excluded from the definition because they are not on the electoral register.

At the moment, two registers contain details of crofters: the register of crofts, which is held by the Crofting Commission; and the newer crofting register, which is held by Registers of Scotland. We want communities to be able to rely on the information that is held on either of the registers in determining who the crofters are on the land that they are trying to purchase, including tenants and owner-occupiers. Information on tenants is held on both registers but, as was made clear last week, the Crofting Commission does not have a duty to collect information on owner-occupiers. That means that at this stage we cannot amend the bill to make it clear that the definition of a crofting community should rely on information about owner-occupier crofts held in the register of crofts.

We therefore propose to give ministers the power to make regulations to extend the definition of a crofting community at a later date. If the Crofting Commission's requirements in relation to keeping owner-occupiers' details on the register of crofts should change in the future, ministers could use the power to extend the definition accordingly. We certainly propose to liaise with the Crofting Commission on this issue.

Amendment 33 also seeks to remove the requirement that members of the crofting community must be resident within 16km of the crofting township that is situated in or which is otherwise associated with the croft land. If accepted, the changes proposed would mean that the definition of a crofting community would be all those persons who: are resident in the crofting township that is situated in, or otherwise associated with, the croft land that the crofting community body has a right to buy, and who are entitled to vote in local government elections in the polling district or districts in which that township is situated; are tenants of crofts in the crofting township whose names are entered in the crofting register or register of crofts as tenants of those crofts; are owner-occupier crofters of owner-occupied crofts in the crofting township whose names are entered in the crofting register as the owner-occupier crofters of such crofts; or are such other persons, or are persons falling within a class of such other persons, as may be set out by ministers in regulations.

11:00

Ministers will retain their current power to define a crofting community in another way if it is, in their opinion, inappropriate to define it as set out in the 2003 act.

I am nearly there.

The purpose of amendment 2 is to extend section 72 so that it includes reference to the constitution of a Scottish charitable incorporated organisation and the registered rules of community benefit society, in addition to the memorandum or articles of a company limited by guarantee. That will ensure that crofting community bodies that are Scottish charitable incorporated organisations or community benefit societies cannot modify their constitutions or registered rules without ministers' consent in writing once they have bought the crofting land.

Amendment 2 also seeks to insert provisions that will allow ministers to make an order relating to, or to matters connected with, the compulsory purchase of croft land by ministers under section 72. It also seeks to insert a power for ministers to make such modifications of enactments as appear necessary or expedient, in consequence of any provision of such an order, or otherwise in connection with the order. That is to mirror the power that is included in section 97E(4) and (5) of the proposed new part 3A of the 2003 act.

Amendment 40 is consequential to amendment 2 and ensures that, when ministers, under section 72 of the Land Reform (Scotland) Act 2003, exercise the power to compulsorily acquire land, and by virtue of amendment 2, exercise the power to make an order relating to that, the order will be subject to affirmative procedure.

All in all, this group of amendments seeks to give communities greater flexibility to choose the type of community body that suits their needs and to lessen the burden on communities by removing the need for the auditing of accounts. It ensures that smaller communities can take advantage of the right to buy by reducing the minimum number of members while ensuring that the community focus is strengthened.

I encourage the committee to support the amendments.

I move amendment 18.

**The Convener:** Thank you. One or two members wish to comment, starting with Claudia Beamish.

**Claudia Beamish:** Minister, that was certainly a wide range of amendments to have to cover all at once.

On amendment 21, I welcome the fact that the Scottish Government has included SCIOs in

recognition of the contribution that they can make. In your remarks, you said that in relation to amendment 21 the interests of the local community are protected, and I agree that that is very important. I would like to hear your thoughts on the increase from a majority to 75 per cent in the requirement in relation to members of the community and a bit more detail about the thinking behind that, particularly in relation to rurality and where SCIOs cross a wide area. Might that change be more of a barrier rather than less? I am not opposed to the amendments, but I would like to understand that issue.

**Aileen McLeod:** The reasoning behind the increase in the proportion of members who must be from the community from a majority to three quarters is to assist with protecting the interests of the community even in cases in which a community body has as few as 10 members. We wanted to strengthen the community's hand. The proposal was to decrease the minimum number of members from 20 to 10, so we wanted community representation to be strengthened and the community to be protected.

**Sarah Boyack:** I, too, welcome the fact that you have broadened the scope of community organisations that could be eligible, in particular so as to include a co-operative option.

I wish to ask you a couple of questions about amendment 22. I invite you to put some points on record in relation to paragraphs (g), (h) and (i) of proposed new subsection (1B) of section 28. Starting with paragraph (g), could you clarify who you think is likely to want to exercise the right that it provides? What would you think of as being "reasonable"? The implied question is: what would not be reasonable?

On paragraph (h), could you clarify what the circumstances might be where it would be legitimate for a community benefit society to "withhold information"?

On paragraph (i), who would decide, in the circumstances where the provision was appropriate, how the surplus funds were actually to be applied? Who would have the final say on that?

**Aileen McLeod:** On the question of who would have the final say, that is up to ministers to decide. On the minutes, it is going too far in relation to the private sessions.

**Sarah Boyack:** Sorry—could you clarify that? I could not hear that last phrase.

**Aileen McLeod:** The minutes go back too far for the private sessions. It would be ministers who would decide that—around amendment 22.

A body is not a community body unless ministers have given it written confirmation that they are satisfied about its main purpose, ensuring that it is consistent with furthering the achievement of sustainable development. It would be for ministers to do that in written confirmation for each individual request.

**Sarah Boyack:** And for paragraphs (g) and (h)?

**Aileen McLeod:** It would be for the community body to decide for each individual request.

**Sarah Boyack:** So there is no interpretation of what "reasonable" is or any explanation of who you would expect would wish to get access to the information.

**Aileen McLeod:** This is in line with freedom of information requests.

**Sarah Boyack:** Okay.

**Michael Russell:** Viewers at home—if there are any left—will understand the classic Highland definition of a croft being a piece of land bounded by regulation.

I strongly welcome amendment 33. In his evidence to the committee in November, Peter Peacock pointed out that the Land Reform (Scotland) Act 2003—welcome as it was—is for communities

"hugely cumbersome, difficult and bureaucratic".—[*Official Report, Rural Affairs, Climate Change and Environment Committee*, 26 November 2014; c 37.]

That is partly because of the inflexibility of the legislation.

In amendment 33, subsection (6) of the proposed new section gives the opportunity—if I am right—to define by secondary legislation both a crofting community body and a crofting community. Both of those definitions create a flexibility that is not in present community right-to-buy legislation.

Just for the record—this is the sort of thing for which, if there is a dispute about legislation, what is said at the various stages of bill consideration is important—it is presumably in the Government's mind to use that flexibility in a constructive way, rather than in a restrictive way, to consider the emergence of new community bodies, which is the issue around the definition of a community body, and to ensure that crofting communities are defined as working communities, which is the burden of what the Crofting Commission does, rather than being defined in any way that would assist those who are not working their crofts. I just want to ensure that we understand that the measure is progressive and flexible, rather than one that might be used regressively.

**Aileen McLeod:** I can give the member the commitment and the assurance that we are trying to simplify the process as much as we can and to

get greater flexibility into it. Obviously, that involves taking a ministerial power to expand via the regulations the definition of a crofting community, but that is to be in a progressive and productive way.

**The Convener:** I ask you to clarify one point, minister. You talked about people who have to live within 16km from their croft. What is the power in relation to the 32km rule, which I think was brought in latterly? Does that impinge on the amendments that you have lodged?

**Aileen McLeod:** At the moment, the Crofting Reform (Scotland) Act 2010 uses 32km and the bill obviously uses 16km. The two pieces of legislation are currently out of sync. We are trying to ensure that there is greater alignment.

**Angus MacDonald:** I would be concerned if the overall distance were reduced from 32km to 16km.

**The Convener:** That is not likely.

**Aileen McLeod:** No.

**The Convener:** We will seek clarity afterwards on the two pieces of legislation, which do not seem to be in sync. Do you want to wind up, minister?

**Aileen McLeod:** I am quite happy to press our amendments.

**The Convener:** We are happy with that, too.

*Amendment 18 agreed to.*

*Amendments 19 to 25 moved—[Aileen McLeod]—and agreed to.*

*Section 28, as amended, agreed to.*

### Section 29—Modification of memorandum, articles of association or constitution

*Amendments 26 and 27 moved—[Aileen McLeod]—and agreed to.*

*Section 29, as amended, agreed to.*

### After section 29

**The Convener:** Group 3 is on salmon fishings and mineral rights: public notice of certain applications under part 2 of the 2003 act. Amendment 28, in the name of the minister, is the only amendment in the group.

**Aileen McLeod:** I assure the committee that this will be a lot shorter than the debates on the previous groups.

In circumstances where a community body is seeking to register an interest in land under part 2 of the Land Reform (Scotland) Act 2003 and the landowner is unknown or cannot be found, it is currently required to affix a conspicuous notice to a part of the land over which it wishes to register an interest. However, it has been recognised that, in cases where the community body is seeking to register an interest over salmon fishings or mineral rights and those rights are owned separately from the land, it is not possible to affix a notice to those rights. Therefore, in circumstances where the community body is seeking to register an interest in salmon fishings or mineral rights that are owned separately from the land, amendment 28 removes the requirement for a conspicuous notice to be affixed to the land where the owner is unknown or cannot be found. The amendment inserts a ministerial power to set out in regulations the type of advertisement that is required in those circumstances. I ask the committee to support it.

I move amendment 28.

*Amendment 28 agreed to.*

### Section 30—Period for indicating approval under section 38 of 2003 Act

11:15

**The Convener:** Amendment 48, in the name of Dave Thompson, is grouped with amendment 29.

**Michael Russell:** This is a probing amendment that fits in well with the discussion that we have had about flexibility in the bill. Section 30 amends section 38 of the 2003 act, which sets out the criteria for registration of community interests. Section 30(b) proposes to insert into section 38 new subsection (2A), which says:

> "Ministers may not take into account ... the approval of a member of the community if the approval was indicated earlier than 6 months before the date on which the application to register the community interest in land to which the approval relates was made."

The amendment proposes to substitute a period of 12 months for the period of six months, in order to give more flexibility. However, to be fair, I would say that amendment 29 probably does the job better, in the sense that it follows the consistency of amendment 33, and gives the minister the right to make a variation that is not tied to a particular figure.

I believe that the purpose of amendment 48 is met by amendment 29. If the minister is prepared to confirm, as she did earlier, that the intention of amendment 29 is to use the power to increase rather than decrease the period, I will have no great difficulty in not pressing amendment 48.

I move amendment 48.

**Aileen McLeod:** I welcome the probing amendment and agree with Mr Russell's view that amendment 29 better meets the purpose.

Amendment 48 seeks to increase the period of approval from six months to 12 months, so that

ministers may take into account the approval of a member of the community if that approval has been indicated within 12 months of the date of application. The amendment is intended to give more flexibility to Scottish ministers to have regard to certain matters.

The Scottish Government believes that it is important for the approval of the members of the community to be current. If the approval of the member of the community was given 12 months prior to the date of application, it may be the case that the community's plans or the community itself have changed during that time. I therefore ask Mr Russell not to press the amendment.

To cater for the event that the six-month approval period causes difficulties for communities in the future, the Scottish Government has lodged amendment 29 to give ministers the power, by regulations, to amend the six-month time limit in which the approval of a member of the community supporting a community body's application must be dated. That will allow ministers to respond to any changes in the needs of communities and will give greater flexibility in terms of the time limit in which the approval of a member of the community must be dated.

Amendment 29 gives ministers the power to amend the time limit, should it be considered in the future that the six-month qualifying timescale is a barrier to communities exercising their right to buy, or is causing difficulty to communities when demonstrating support for applications to register an interest in land. I ask that the committee support amendment 29.

**Sarah Boyack:** I would like you to clarify, on the record, that you see the potential regulation as being used to increase the six-month period, not decrease it. I am keen for the issue to be explored, because regulations would take some time to come through Parliament. The proposal gives more flexibility and will let ministers change the timescale, but I would like you to state clearly that it is about increasing the opportunities for communities by increasing that period, not reducing it.

**Aileen McLeod:** We do not intend to reduce the timescale at all.

*Amendment 48, by agreement, withdrawn.*

*Amendment 29 moved—[Aileen McLeod]—and agreed to.*

*Section 30, as amended, agreed to.*

### Section 31—Procedure for late applications

**The Convener:** Group 5 contains minor amendments in relation to parts 2 and 3 of the 2003 act, including procedure for certain regulations. Amendment 30, in the name of the minister, is grouped with amendments 38, 39, 41, and 43.

**Aileen McLeod:** These are minor amendments that ensure consistency of wording across the bill and provide that the long title of the bill includes part 3 of the Land Reform (Scotland) Act 2003, in line with the inclusion of proposed changes to that part of the 2003 act.

Amendment 30 is a minor drafting amendment to the wording of section 31(1) of the bill, purely for the purposes of consistency with sections 28(1) and 29(1). The wording is changed from

"in accordance with this section",

to "as follows".

Amendment 38 will ensure consistency of wording across the bill. It is a technical amendment that does not have a substantive effect. The amendment changes the words of paragraph 2(1) of schedule 4 to the bill, so that it provides that the 2003 act is amended to "as follows" rather than

"in accordance with this paragraph".

Section 37(4)(a) of the 2003 act refers to

"land in which a community interest is sought".

Amendment 39 is a technical amendment that will amend the wording to refer to

"land in which a community is sought to be registered".

That wording is consistent with other provisions in the 2003 act.

Amendment 41 reinserts the provision that the validity of anything done under part 2 of the 2003 act will not be affected by any failure of the Lands Tribunal to comply with the time limits.

The long title of the bill currently refers to the 2003 act but only to part 2 of that act, which relates to the community right to buy. That is because, at the time of the bill's introduction, no amendments to part 3 of the 2003 act were proposed. Amendment 43 changes the long title of the bill to take account of the proposed amendments to part 3 of the 2003 act that have been lodged at stage 2.

I invite the committee to support the amendments.

I move amendment 30.

*Amendment 30 agreed to.*

**The Convener:** Group 6 contains amendments that relate to late applications for registration under part 2 of the 2003 act. Amendment 31, in the name of the minister, is grouped with amendments 50, 49 and 51.

**Aileen McLeod:** The bill as introduced amends the late application process for the community right to buy in part 2 of the Land Reform (Scotland) Act 2003. The amendments to part 2 of the 2003 act will require a community body to show that "relevant work" or "relevant steps" were carried out by a person, although not necessarily the community body, before the land was put up for sale. That is in place of the current provisions, which require a community body to show that it has "good reasons" for submitting a late application.

We propose amendment 31 to make changes to the late application process more flexible for communities. That is because there could sometimes be circumstances in which, for example, land has been on sale for a period of time prior to a need being identified by the community. That would currently result in the community that wished to purchase the land being unable to do so, because it could not show that a person took relevant steps or carried out relevant work before the land was marketed for sale. It may be that there is no other land in the area that would be suitable for the community's purposes, and there could therefore be a good reason why the application should be approved, even though the relevant work or steps have not been carried out.

Amendment 31 seeks to insert provisions to the effect that ministers may approve a late application if it can be shown that there are good reasons why relevant work or relevant steps were not undertaken to submit an application before the land was put up for sale, and, in addition, if it can be shown that there are good reasons why the late application should succeed, notwithstanding the fact that no such relevant steps or work were undertaken. For an application to succeed under amendment 31, ministers would still have to be satisfied that the level of support within the community for the registration is significantly greater than that which ministers would have considered sufficient in a timeous application, and that there are factors that the minister considers to be strongly indicative that it is in the public interest to register the community interest.

I move amendment 31.

**Michael Russell:** The concerns that were expressed by Dave Thompson have in the greatest part been rectified, particularly by amendment 31. It is important that there has been a recognition that, in the registration process, having an application refused as a result of late registration is very frustrating for communities and very often it is seen as a technical barrier to success, rather than an indication of whether the application was worthy of being accepted. Everything should be done to make sure that technical barriers are removed as far as possible.

What the minister has proposed does more or less exactly what is proposed in amendment 51. There are circumstances—for example, if the piece of land came on the market quite unexpectedly—in which the minister can take a step back and say that, although the community cannot show that the work has been done, there are reasons why that work has not been done. That ties in entirely with the principle of flexibility in the bill, so that communities do not find themselves disadvantaged or unable to move forward because of legislation that is unduly prescriptive.

In those circumstances, I will not move my amendments.

**The Convener:** We will come to that in a while. I call Alex Fergusson to speak to amendment 49 and the other amendments in the group.

**Alex Fergusson:** If I may, I will refer only to amendment 49. I am sorry that the minister did not talk about it, but I hope that she will do so in summing up. I am sure that most people would agree that a late application process is not ideal, but I absolutely accept that there are circumstances that require it and that it needs to be part of the process.

Just as there needs to be flexibility within the process, amendment 49 is designed to introduce a degree of balance into the equation by recognising that a landowner should not be unduly disadvantaged—I stress the word "unduly"—by the late application process under two circumstances: first, if they have previously offered to sell the asset to the community; and secondly, if they have entered into discussions with the community regarding the sale of the asset but subsequently the community has shown no further interest and has withdrawn from the discussions. In a way, the amendment is to prevent—and I am not saying that this would be a common occurrence by any means—the use of the late application process to impede or prevent the sale of land by the landowner for whatever reason.

I was interested in the reaction of Community Land Scotland to amendment 49, because it is not against the amendment in principle at all. Indeed, it believes that it would help the proactive process for communities purchasing assets. That is very helpful.

I accept that, as the email that Community Land Scotland sent yesterday states, it would make more sense if there was a timescale attached to the amendment. I understand that. What I would like to explore with the minister—perhaps she will comment on this in summing up—is whether she agrees to the principle of amendment 49, as

Community Land Scotland seems to. Will she consider lodging an amendment of this nature at stage 3? If not, I will probably not move amendment 49 but will bring back a similar amendment at stage 3, bearing in mind Community Land Scotland's critique of it. I would very much like to hear the minister's views of the amendment when she sums up.

11:30

**Claudia Beamish:** Following on from Alex Fergusson's comments on amendment 49, I note that, in correspondence yesterday, Community Land Scotland highlighted that it would be helpful to change

"prior to the making of the application"

in the amendment to, say, "within a year of any subsequent application"; to make it clear that the offer would be no greater than an independent valuer's valuation, which would bring it in line with other parts of the 2003 act; and to provide ministers with the flexibility to consider any case made by the community regarding any unreasonable conditions and any offer or other factors which, in the opinion of the minister, made refusal of the offer by the community a reasonable action.

I highlight those points because we hope to reach a conclusion on the matter either at this stage or at stage 3.

**Aileen McLeod:** I agree with the concerns behind amendment 49 in that community bodies should seek to agree to purchase land in preference to using the community right to buy where that is an option. Any test along the lines suggested in the amendment would need to take into account factors such as the price, the terms under which the land was offered and the community's reasons for rejecting the offer or not completing the purchase. I am happy to consider developing those factors with Mr Fergusson to ensure that the bill is fair to all parties and I propose to lodge a more detailed amendment at stage 3.

*Amendment 31 agreed to.*

*Amendment 50 not moved.*

**Alex Fergusson:** Given the minister's closing remarks, I am happy not to move amendment 49.

*Amendments 49 and 51 not moved.*

*Section 31, as amended, agreed to.*

*Sections 32 and 33 agreed to.*

**After section 33**

**The Convener:** We now come to group 7, which concerns the duration and renewal of registration under part 2 of the 2003 act. Amendment 44, in the name of Dave Thompson, is grouped with amendments 52, 53 and 55. I call Michael Russell to move amendment 44 and speak to all the amendments in the group.

**Michael Russell:** Again, this is an issue of flexibility. Registration is a complex process. I appreciate that, under this bill, it is being made simpler and I think that communities will find it easier to do.

However, I know that communities find reregistration, which is necessary in certain circumstances, to be onerous. The question is how the issue of reregistration can be better tackled by the bill. There are two proposals in this group of amendments that do that. I think that the minister has moved a considerable distance to make sure that the issues are addressed, but I just want to make the point.

Amendment 44 would double the period for which registration lasts, from five years to 10 years. That change was recommended by the land reform review group in its 2014 report. There should be at least some consideration of why the land reform review group would say that and whether it is something that should be supported.

Amendment 53 is on the renewal of registration. Clearly, things change in communities over a period of time, but going through the process of reregistration is difficult and if nothing material has changed in the applicant's circumstances, application for reregistration, at the very least, should be made as simple as possible; really, it should simply pick up those circumstances that have changed. If it were to be done electronically, the application could simply present what was applied for last time and what conditions were pertaining, and the applicant would change only those things that have changed.

Both amendments seek commitments from the minister to make sure that there is simplicity and flexibility in the process and that reregistration, where it is necessary, is something that communities can come to without considerable trepidation and in the knowledge that the likelihood and the default position is that they will succeed in it, which is essentially the purpose.

I move amendment 44.

**Sarah Boyack:** I very much want to speak in support of the objectives of the amendments. As Mike Russell has said, it is about making it easy and straightforward for communities where there has not really been a change—rather than putting them through an onerous reregistration process—and making it as simple as possible. It would be good to get the minister's views on the matter on the record.

Amendment 52 is quite interesting in that it seeks to make sure that a community knows when its registration is within 12 months of expiring. That would be a very useful prompt. Again, I am keen to hear what the minister has to say on the issue.

If the purpose is to make the process straightforward and transparent for communities, I am very keen to hear, on the record, how the minister thinks that the legislation could be applied to ensure that communities are not put off by a bureaucratic hurdle just because somebody did not notice an expiry date. The secretary of the group might be away for a few months, for example. A trigger mechanism of this kind would be very helpful and would ensure that the legislation is fit for purpose.

**Aileen McLeod:** I found the comments from both Mike Russell and Sarah Boyack very helpful. Under the existing provisions of the Land Reform (Scotland) Act 2003, a community is required to reregister their interest in the land every five years. Amendment 44 seeks to extend the time period for which a registration of interest lasts, from the current five years to 10 years. The amendment is intended to reduce the burden on communities that feel that the reregistration process is an onerous task.

However, that would no longer provide an indication of the community's support for the acquisition. It could also be the case that ministers would be unaware of other important changes to the circumstances that justified the original registration of interest. That is why I would propose to retain the current five-year period and why I would ask Mr Russell to withdraw amendment 44, for reasons that I will set out in respect of the other amendments.

Amendment 52 would require the keeper of the registers of Scotland to notify a community body 12 months before its registered interest in the land will expire. The amendment is intended to provide adequate notice to the community body of the impending lapse of its registered interest in the land, in order to provide the body with sufficient time to prepare its application for reregistration.

Under section 36 of the Land Reform (Scotland) Act 2003, the register of community interests must include the name and address of the company that is the community body that registered the interest. However, we do not consider it appropriate to place on the keeper the burden of being the appropriate person to notify the community body of the time limit for expiry of its registered interest. We believe that it would be more appropriate for that matter to fall to ministers, because the data held on the register of community interests is owned by ministers and held by the keeper on behalf of ministers.

I appreciate the concerns behind amendment 52, so to address them I propose that the Scottish Government lodges an amendment at stage 3. The proposed amendment would require ministers to contact the community body and notify it of the expiry of its registered interest in the land 12 months before the registered interest is due to expire. Consideration will need to be given to whether community bodies should be required to provide ministers with up-to-date contact details for ministers to notify the appropriate person. As a matter of courtesy, ministers currently contact the community body as the five-year registration period nears expiry in order to notify the body that it will require to submit its reregistration if it wishes its registration of interest in the land to continue.

I ask Mr Russell not to press amendment 52, given that the Scottish Government will lodge an alternative amendment at stage 3.

Amendment 53 seeks to introduce a presumption in favour of a community body's reregistration if there has been no material change in circumstances since the first registration of the interest. At the moment, a community body may reregister at any point from six months before its registration expires. As part of its work processes, the community right to buy team in the Scottish Government sends the community body a reminder one year before the expiry date, which gives a community six months in which to collect the information required for reregistration.

The Land Reform (Scotland) Act 2003 allows ministers to set out a separate application form for the reregistration process and what information must be provided on that form. We have already undertaken to provide a separate application form for reregistration. In doing so, we can introduce a simplified form whereby the community body can either confirm that there have been no changes to their original application or detail the aspects that might have changed.

We would still need the community body to demonstrate that it has a sufficient level of community support for the continued registration, even if the plans that the community body has for the land have not changed; therefore, the community body must demonstrate the continued support each time it makes an application to reregister the interest. In essence, where there have been no material changes to the information provided in the original application form, the reregistration application form will require very little information other than evidence of the continued support of the community.

The main difference between the changes that we are proposing to the application form and those that amendment 53 proposes is that the amendment proposes a presumption in favour of registration where there have been no material

changes in circumstances. The amendment also seeks to give ministers the power to set out the form and procedure for reregistration and to set out matters about which they must be satisfied to allow the reregistration and factors to which they must have regard when deciding whether there has been a material change of circumstances. So, what amendment 53 seeks would mean that it would be for ministers to consider whether there had been a material change in circumstances rather than to make a fresh assessment of whether the tests for registration in section 38 of the 2003 act had been met. The tests in section 38 include ministers considering whether reregistration is still in the public interest and whether there is still community support for registering an interest.

Obviously, I am very sympathetic to concerns about the issue of registration. However, Scottish Government plans to simplify the reregistration process by way of a separate application form will achieve the aim of making it less onerous for community bodies to reregister the community interest. In addition, they will ensure that there is still community support for the plans, that they remain in the public interest and that the process is open and transparent.

I reassure the committee of my commitment to ensure that the process is as open, transparent, simplified and straightforward as we can make it. I therefore ask Mr Russell not to move amendment 53.

**Michael Russell:** I am grateful to the minister for her positive comments on amendment 52. Clearly, her point is a valid and germane one, and I would welcome an amendment from the Government to address it.

I seek clarification from the minister on one small point. Will the information that is to be in the application form be defined in guidance to the bill, or in another way? I am certainly not questioning the bona fides that you are giving, minister; I just want to know where we will find that out.

**Aileen McLeod:** There is no reason why that cannot be in the guidance.

11:45

**Michael Russell:** If there is an assurance that the form will be covered in guidance to the bill, that is okay. The principles that you have given are entirely correct, and I accept the point that the ministerial role needs to be clarified.

That leaves us with amendment 44. The land reform review group's recommendation was for a 10-year period, and there is a strong body of opinion that a five-year period is too short. Although I will not—with the committee's permission—press the amendment when we come to it, I ask the minister to consider, as she moves towards stage 3, whether that advice from the land reform review group requires further thought.

I am sure that Dave Thompson will want to consider whether he wishes to press the issue by lodging an amendment at stage 3. We might seek some sort of procedure after five years, such as reregistration or confirmation of details, but I think that a longer period of time may be desirable for a community, and it has been seen as such by others.

**Aileen McLeod:** I am happy to have another look at amendment 44.

**Michael Russell:** Thank you.

*Amendment 44, by agreement, withdrawn.*

*Amendments 52 and 53 not moved.*

Sections 34 to 45 agreed to.

**After section 45**

**The Convener:** Group 8 is on appeals to Lands Tribunal as respects valuations of land under part 2 of the 2003 act. Amendment 32, in the name of the minister, is grouped with amendment 42.

**Aileen McLeod:** The Land Reform (Scotland) Act 2003 requires that the Lands Tribunal must give reasons in writing for its decision on an appeal as to the valuation of land within four weeks of the hearing of the appeal. The bill as introduced removes that four-week time limit. However, I propose to re-insert the time limit for the Lands Tribunal to issue written reasons for its decisions, while extending the four-week time limit to eight weeks after the hearing of the appeal. That is proposed in order to provide the Lands Tribunal with greater flexibility in scheduling its cases.

In addition to inserting an eight-week time limit, amendment 32 provides an option for the Lands Tribunal, if it considers that

"it is not reasonable to issue a written statement"

of reasons within that eight-week time limit, to notify the parties to the appeal of a new date by which it will issue its written reasons.

I lodged amendment 32 to provide greater flexibility for the Lands Tribunal in scheduling its workload, while at the same time ensuring that the parties to an appeal have a degree of certainty as to when they will receive the written statement of reasons. The amendment aligns part 2 with the proposed amendments to part 3 of the bill and proposed new part 3A of the 2003 act.

Amendment 42 is linked to amendment 32. Currently, schedule 5 to the bill removes the requirement in section 62 of the 2003 act for the

Lands Tribunal to decide an appeal and issue a written statement of reasons within four weeks of the hearing of an appeal under section 62. Schedule 5 to the bill also removes section 62(8) of the 2003 act, which provides that a failure by the Lands Tribunal to comply with that time limit does not affect the validity of anything that is done under part 2 of the 2003 act.

Amendment 32 inserts the eight-week time limit within which the Lands Tribunal must issue a written statement of reasons. The amendment also allows the Lands Tribunal, where it considers that

"it is not reasonable to issue a written statement"

within eight weeks, to notify the parties to the appeal of the date by which it will issue its written statement.

Amendment 42 removes the repeal of section 62(8) of the 2003 act, so providing that failure by the Lands Tribunal to comply with the time limit in amendment 32 will not affect the validity of anything done under part 2 of the 2003 act.

Amendments 32 and 42 are intended to ease the burden on the Lands Tribunal and give it more flexibility when scheduling its case load. Although there are no consequences should the Lands Tribunal be unable to meet the time limit, stakeholders were clear about the need to provide a date by which the Lands Tribunal is expected to provide its written decision, in order to give an element of certainty to all parties to an application.

I invite the committee to support the amendments.

I move amendment 32.

**Michael Russell:** What is proposed is admirable and could be applied in all legal circumstances, but we should remember what Derek Flyn said in evidence—it is important that the committee notes his view. He said that there is no sanction for the Scottish Land Court in such circumstances. Indeed, I cannot imagine those in charge of the Land Court, or any other court, accepting such a sanction. Although a time limit is clearly desirable, and I am sure that the committee and everybody else hopes that it will be observed, I do not think that the provision will, of itself, produce the result that we wish for, which is that crofting cases do not take for ever.

**Aileen McLeod:** In response to Mr Russell's points, I reassure him that, if the Lands Tribunal is late, that will have no effect on the application.

*Amendment 32 agreed to.*

*Sections 46 and 47 agreed to.*

**After section 47**

*Amendments 33 and 2 moved—[Aileen McLeod]—and agreed to.*

**The Convener:** We move to group 9, on information to be included in an application under part 3 of the 2003 act. Amendment 3, in the name of the minister, is the only amendment in the group.

**Aileen McLeod:** Amendment 3 relates to the requirements of an application by a crofting community body under part 3 of the Land Reform (Scotland) Act 2003. The amendment sets out that the application form must identify

"the owner of the land, ... any creditor in a standard security over the land or any part of it with a right to sell the land or any part of it, ... the tenant of any tenancy of land over which the tenant has an interest,"

and

"the person entitled to any sporting interests".

It is important that the owner or person entitled to any interest being purchased is identified because of the nature of the legislation. The mechanism in the legislation is such that the owner or person entitled to the interest must be identified in order to transfer the land to the crofting community body.

Section 86(4) of the 2003 act provides for the completion of purchase by the crofting community body by way of the owner of the land or interest transferring title. Section 86(6) of the 2003 act provides that

"If the owner or person entitled to the interest refuses or fails to effect"

the transfer,

"the Land Court may ... authorise its ... clerk to execute"

the deeds on their behalf. It is therefore essential to the process that the owner of the land or person entitled to the interest is identified.

The procedure in the 2003 act is different from other compulsory purchase procedures where, if the landowner is unknown or cannot be found, the purchasing authority can declare title, by way of a general vesting declaration that is registered in the land register.

Amendment 3 also seeks to simplify the mapping requirements for crofting community bodies. Currently, the application form that ministers must prescribe in regulations must include provision that the crofting community is required to identify "all rights and interests" in the subjects of the application. Those are:

"sewers, pipes, lines, watercourses or other conduits and fences, dykes, ditches or other boundaries in or on the land, known to the applicant body or the existence of which

it is, on reasonably diligent inquiry, capable of ascertaining".

We consider that in some cases it could be particularly difficult for a crofting community body to identify all those rights and interests. Amendment 3 proposes to simplify the requirement by stating that crofting community bodies must identify

"all rights and interests in the subjects of the application"

that are

"known to the crofting community body".

We propose to remove the requirement to identify the

"sewers, pipes, lines, watercourses ... and fences, dykes, ditches or other boundaries".

We lodged amendment 3 because we recognise that the current mapping requirements are particularly complex. Ministers will still set out in regulations the information that is required for the application, but including those interests that I have mentioned as being considered particularly difficult to identify will no longer be required.

Amendment 3 also amends the provisions relating to public notice requirements in section 73(11) of the 2003 act.

Currently, public notice of the application must be given

"by advertisement ... in such newspaper circulating in the area where the subjects of the application are situated as Ministers think appropriate; and ... in the Edinburgh Gazette."

Amendment 3 removes those requirements and replaces them with a power for ministers to set out in regulations the public notice requirements.

I ask the committee to support the amendment.

I move amendment 3.

**Sarah Boyack:** I very much welcome amendment 3. It makes the process more straightforward and it will therefore be more likely that the legislation can be used as intended.

Are we covering amendment 5 as well?

**The Convener:** No.

**Sarah Boyack:** I will hold off from commenting on amendment 5 at the moment.

**The Convener:** I think that, given their experience of various buyouts, many people in the crofting communities are very much in favour of the proposals in amendment 3.

*Amendment 3 agreed to.*

**The Convener:** Group 10 is on criteria for ministerial consent under part 3 of the 2003 act. Amendment 4, in the name of the minister, is the only amendment in the group.

**Aileen McLeod:** Section 74 of the Land Reform (Scotland) Act 2003 sets out the criteria of which ministers must be satisfied before approving an application by a crofting community body to purchase eligible croft land compulsorily.

Amendment 4 seeks to add to the conditions that are set out in section 74(1) of the 2003 act so that, in order to consent to an application under part 3, ministers must be satisfied that the owner, tenant, person entitled to sporting interests or creditor in a standard security in relation to the land or interests, are correctly identified in the application that is submitted by the crofting community body. Amendment 4 will ensure that all relevant parties are accurately identified during the application process, in line with amendment 3. That will ensure that all parties to the application are fully involved in the process and will be given the opportunity to comment on the application. It will also ensure that ministers will have received all available evidence on which to make a decision on the crofting community right-to-buy application.

As with amendment 3, it is important that the owner of any interest that is being purchased is identified because of the nature of the legislation. The mechanism of the legislation is such that the owner must be identified in order to transfer the land to the crofting community body.

Section 86(4) of the 2003 act provides for completion of purchase by the crofting community body by way of the owner of the land or interest transferring title. Section 86(6) provides that

"If the owner of the land or person entitled to the interests refuses or fails to effect such ... transfer ... the Land Court may ... authorise its ... clerk to ... execute ... such deeds"

on their behalf. It is therefore essential to the process that the owner of the land or person entitled to the interest is identified. That is different from other compulsory purchase legislation, in which the purchasing authority can register a general vesting declaration in the land register to declare that it has title to the land. I invite the committee to support amendment 4.

I move amendment 4.

*Amendment 4 agreed to.*

12:00

**The Convener:** Group 11 relates to ballots under part 3 of the 2003 act. Amendment 5, in the name of the minister, is the only amendment in the group.

**Aileen McLeod:** I have lodged amendment 5 to clarify that the crofting community body is required to meet the expense of conducting the ballot.

However, the amendment will also give ministers the power to make regulations setting out circumstances in which a crofting community body can seek to recover the cost of running the ballot from the Scottish ministers, in certain circumstances.

The reason why we do not propose to lodge an amendment to the effect that ministers will pay for the cost of all ballots carried out under the crofting community body right-to-buy provisions is that, unlike in the procedure for the community right to buy under part 2 of the Land Reform (Scotland) Act 2003, the ballot is the first indication of whether or not there is community support for the application. Under part 2 of the 2003 act, by the time the ballot takes place the community body must have already indicated community support for registration of its interest in the land.

There is also the issue of the timing of the ballot. Under part 2 of the 2003 act, a ballot would take place after a community's application to register an interest had been approved. Under part 3, it would take place before the application is received by the Scottish Government. That means that ministers would not have had the opportunity to assess the application in any way before agreeing to pay for the ballot.

Amendment 5 also seeks to give ministers the power to request further relevant information—as they see fit—from the crofting community body in relation to the ballot, including information relating to any consultation of those who are eligible to vote in the ballot. That information will assist ministers with their decision making in relation to the crofting community body's right-to-buy application. The amendments are in line with the proposed new part 3A of the 2003 act. I urge the committee to support amendment 5.

I move amendment 5.

**Sarah Boyack:** I want to dig into the reasons why the crofting community has to pay for the ballot. I take the point that the legislation is slightly different, but I am wondering why you have not changed the legislation to make the process the same, or at least more straightforward.

Can you clarify the circumstances in which the community body could seek reimbursement? Would it be when the vote is in favour of the proposal, rather than when the vote is against it? I am asking so that people's expectations are absolutely clear when we pass the bill.

**Aileen McLeod:** The ballot is carried out before the application, so someone has to see the application before going forward. In terms of the circumstances—[*Interruption*.]

**The Convener:** Dave Thomson wants to advise the minister on that point.

**Aileen McLeod:** If community support were there for the community right to buy that would be a very good reason for the Government to pay for that ballot.

**Sarah Boyack:** I just wanted to ensure that that was on the record.

*Amendment 5 agreed to.*

**The Convener:** Group 12 relates to an application by more than one crofting community body. Amendment 6, in the name of the minister, is the only amendment in the group.

**Aileen McLeod:** When more than one crofting community body applies to purchase the same land or interests, only one application can proceed and all others are extinguished.

Amendment 6 will ensure that when more than one crofting community body applies to buy the same land or interests and an application is extinguished, all persons who are invited to give views on the applications are notified that an application has been extinguished. That is in line with the provisions of the proposed new part 3A of the 2003 act. I ask the committee to support the amendment.

I move amendment 6.

*Amendment 6 agreed to.*

**The Convener:** Group 13 is on references to the Land Court under part 3 of the 2003 act etc. Amendment 7, in the name of the minister, is grouped with amendment 10.

**Aileen McLeod:** The Land Reform (Scotland) Act 2003 specifies the persons who are connected to a crofting community right-to-buy application and who may refer a question to the Land Court before a decision is made on the application. Section 81(1)of the 2003 act lists certain persons who have a right to refer a question to the Land Court at any time before ministers reach a decision on an application. Currently, the persons who have the right to refer are:

"(a) Ministers;

(b) any person who is a member of the crofting community ... ;

(c) any person who has any interest in the land or sporting interests which are the subject of the application giving rise to a right which is legally enforceable by that person;

(ca) where the subject of the application is a tenant's interest, any person who has an interest in the lease, being an interest giving rise to a right which is legally enforceable by that person;] or

(d) any person who is invited ... to send views to Ministers on the application"

Amendment 7 will extend the list of persons who have a right to refer a question to the Land Court

before ministers reach a decision on an application to include the owner of the land that is the subject of the application and the person who is entitled to any sporting interests that are the subject of the application. The amendment will therefore ensure that all relevant parties are given the opportunity to submit a question to the Land Court.

On amendment 10, the Land Reform (Scotland) Act 2003 currently requires the Land Court to give reasons in writing for its decision on an appeal within four weeks of the hearing of the appeal. We propose to extend the four-week time limit for the Land Court's decision to eight weeks in order to provide the Land Court with greater flexibility when scheduling its cases. In addition to extending the time limit to eight weeks, amendment 10 will provide an option for the Land Court, if it considers that it is not reasonable to issue a written statement of reasons within that eight-week time limit, to notify the parties to the appeal of a new date by which it will issue its written reasons. I have lodged the amendment in order to provide greater flexibility for the Land Court in scheduling its workload, while ensuring that parties to the appeal have a degree of certainty as to when they will receive the written statement of reasons. The proposal will align part 3 of the 2003 act with the proposed provisions in part 2 and proposed new part 3A of that act.

I invite the committee to support the amendments.

I move amendment 7.

**The Convener:** I have two questions. Is there enough capacity in the Land Court? Will the processes of the Land Court in such cases be simplified in any way in order to avoid delays in replying?

**Aileen McLeod:** We are happy to look into the capacity in the Land Court.

**The Convener:** We would appreciate it if you got in touch with us about that.

**Aileen McLeod:** I am happy to write formally to the committee on that.

**The Convener:** Thank you.

*Amendment 7 agreed to.*

**The Convener:** Group 14 is on valuations under part 3 of the 2003 act. Amendment 8, in the name of the minister, is the only amendment in the group.

**Aileen McLeod:** The Land Reform (Scotland) Act 2003 sets out in section 88 the procedure for the assessment of the value of the croft land or interests that are being purchased. The procedure currently requires the valuer to invite the owner of the land, the tenant or the person who is entitled to the sporting interests, as well as the crofting community body, to make representations in writing about the value of the land. Amendment 8 will allow for counter-representations to be made in relation to comments that are made on the valuation of the land, and will allow the valuer adequate time to take those into account.

Amendment 8 will extend the time limit for notification of the determination by the valuer from six weeks to eight weeks. It seeks to allow counter-representations to be made by the owner of the land, the tenant or the person who is entitled to sporting interests, in response to representations that are made by the crofting community body. The amendment also seeks to allow counter-representations to be made by the crofting community body in response to representations that are made by the owner of the land, the tenant or the person who is entitled to sporting interests. The effect of amendment 8 will be to ensure that the valuer takes account of the views of all parties to the application and has time to do so. The amendment seeks to assist the valuer in reaching a fair assessment of the value of the land or interest that is the subject of the crofting community body's right-to-buy application.

Amendment 8 will align the provisions of part 3 of the 2003 act with the proposed provisions in part 2 and the proposed new part 3A of that act. I ask the committee to support the amendment.

I move amendment 8.

*Amendment 8 agreed to.*

**The Convener:** Group 15 is on compensation under part 3 of the 2003 act for certain losses. Amendment 9, in the name of the minister, is the only amendment in the group.

**Aileen McLeod:** Amendment 9 will replace the requirement under section 89(4) with a power for ministers to make an order to specify the amounts payable by a crofting community body in respect of loss or expense incurred; the amounts payable by other persons in respect of loss or expense incurred; and the person, including persons other than the crofting community body, who is liable to pay those amounts, along with the procedure under which claims for compensation are to be made.

Amendment 9 will align part 3 with provisions in proposed new part 3A of the 2003 act. I invite the committee to support it.

I move amendment 9.

*Amendment 9 agreed to.*

*Amendment 10 moved—[Aileen McLeod]—and agreed to.*

**The Convener:** Group 16 is on the meaning of the term "creditor in a standard security with a

right to sell" in part 3 of the 2003 act. Amendment 11, in the name of the minister, is the only amendment in the group.

**Aileen McLeod:** Amendment 11 will insert a meaning of the expression "creditor in a standard security with a right to sell", for the purposes of the crofting community right-to-buy provisions in part 3 of the 2003 act, just to ensure that there is clarity on the definition of the term. I ask the committee to support the amendment.

I move amendment 11.

*Amendment 11 agreed to.*

**The Convener:** That ends stage 2 for today, although I think that some members want the chance to go on, now that their dander is up. However, I am restraining them, because we have to have another session next week. All amendments for consideration by the committee should be lodged with the clerks to the legislation team by 12 noon this Friday.

I thank the minister and her officials. That was a bit of a marathon, but we have succeeded in getting this far.

At our next meeting, the committee will continue stage 2 of the Community Empowerment (Scotland) Bill and will consider petition PE1547, on conserving Scottish wild salmon. So it is groundhog day next week, then.

*Meeting closed at 12:13.*

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e-format first available
ISBN 978-1-78568-058-8

Revised e-format available
ISBN 978-1-78568-075-5

Printed in Scotland by APS Group Scotland