OFFICIAL REPORT
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Net Zero, Energy and Transport Committee

Tuesday 18 February 2025

Session 6

The Scottish Parliament
Pàrlamaid na h-Alba

Tuesday 18 February 2025

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NET ZERO, ENERGY AND TRANSPORT COMMITTEE

6th Meeting 2025, Session 6

CONVENER

*Edward Mountain (Highlands and Islands) (Con)

DEPUTY CONVENER

*Michael Matheson (Falkirk West) (SNP)

COMMITTEE MEMBERS

*Bob Doris (Glasgow Maryhill and Springburn) (SNP)
*Monica Lennon (Central Scotland) (Lab)
*Douglas Lumsden (North East Scotland) (Con)
*Mark Ruskell (Mid Scotland and Fife) (Green)
*Kevin Stewart (Aberdeen Central) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Andrew Crawley (Scottish Government)
Dr Richard Dixon
Mairi Gougeon (Cabinet Secretary for Rural Affairs, Land Reform and Islands)
Rhoda Grant (Highlands and Islands) (Lab)
Fiona Leslie (Scottish Government)
Andrew Proudfoot (Scottish Government)
Keith White (Scottish Government)

CLERK TO THE COMMITTEE

Peter McGrath

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Net Zero, Energy and Transport Committee

Tuesday 18 February 2025

[The Convener opened the meeting at 09:11]

Decision on Taking Business in Private

The Convener (Edward Mountain): Good morning, and welcome to the sixth meeting in 2025 of the Net Zero, Energy and Transport Committee.

Our first item of business is a decision on taking business in private. Do members agree to take in private item 5, which is consideration of the evidence that we will have heard on the Land Reform (Scotland) Bill, and item 6, which is consideration of the appointment of the chair of Environmental Standards Scotland? Do members also agree to consider our stage 1 report on the Land Reform (Scotland) Bill in private at future meetings?

Members *indicated agreement.*

Land Reform (Scotland) Bill: Stage 1

09:12

The Convener: Our second item of business is our final evidence-taking session on the Land Reform (Scotland) Bill. I am pleased to welcome Mairi Gougeon, the Cabinet Secretary for Rural Affairs, Land Reform and Islands, and her supporting officials from the Scottish Government: Andy—Andrew, I mean; sorry—Proudfoot, bill team leader, and Keith White, solicitor. Thank you for attending. I also welcome Rhoda Grant to the meeting.

Before we go into the main part of the meeting, I will, as I have done at every meeting on the bill, declare an interest in a family farming partnership in Moray, as set out in my entry in the register of members' interests. Specifically, I declare an interest as the owner of approximately 500 acres of farmland, of which approximately 50 acres is woodland; I also declare that I am a tenant of approximately 500 acres in Moray under a non-agricultural tenancy, and that I have another farming tenancy under the Agricultural Holdings (Scotland) Act 1991. I also declare that I sometimes take on annual grass lets.

Before we move to questions, the cabinet secretary will make a brief opening statement.

The Cabinet Secretary for Rural Affairs, Land Reform and Islands (Mairi Gougeon): Thank you for inviting me to give evidence to the committee. I really appreciate the work that the committee has undertaken on the bill. I know that the process has been long, starting in March last year, and I am grateful for the committee's scrutiny of the proposals.

Scotland has had a proud history of land reform since devolution, and I believe that the bill represents the next step forward in Scotland's land reform journey, as it sets out ambitious proposals to change for the better how land is managed in our rural and island communities. At its heart, land reform is about addressing an imbalance that has long existed in Scotland of power and control over land. That imbalance, created by concentrated land ownership, has been highlighted in research by the Scottish Land Commission, and the bill ultimately stems from that research, the commission's subsequent recommendations and the consultation and engagement that we undertook to gather views on the proposals.

Part 1 of the bill takes steps to better ensure that landholdings that are in scope are transferred and used in ways that meet the national interest and take account of local need. The proposals in

part 1 also seek to build on and complement existing legislation and build on those reforms.

The new proposals will place legal responsibilities on the owners of the largest landholdings to engage with local communities. Those owners will also be required to set out how they use their land and how that use contributes to key public policy priorities such as addressing climate change and protecting and restoring nature. The bill will give ministers the powers to ensure that, for the first time in Scotland, the public interest is considered when more than 1,000 hectares is being sold. We want to empower communities with more opportunities to own land, and the pre-notification provisions will introduce advance notice of certain sales of large landholdings.

09:15

Under part 2, tenant farmers and smallholders will have more opportunities to improve the land that they work, to become more productive and to be rewarded for their investment of time and resources.

I know that we are focused on the bill and its passage through the Parliament, but it is important to continue the longer-term discussion on land reform and to ensure that land supports communities and helps them to thrive. I want to ensure that the bill is as clear and robust as possible, and I welcome the further advice from the Scottish Land Commission, which seeks to simplify and strengthen the provisions in the bill.

I have paid close attention to the views of stakeholders and witnesses and I look forward to discussing with the committee the issues that they have raised. I also look forward to the committee's recommendations on the bill. We will consider those carefully as we continue to work with stakeholders while the bill proceeds through Parliament.

The Convener: The process has been long and we have heard a lot of evidence from a wide variety of people. Your wish is for the bill to achieve four things: to improve the transparency around land ownership and management; to strengthen communities' rights; to improve the sustainable development of communities by increasing opportunities; and to ensure the sufficient and adequate supply of land—I think that that encapsulates your views. Bearing that in mind, the majority of people who have come to the committee to give evidence say that the bill will achieve no such thing. What is your response to them?

Mairi Gougeon: First, I have listened carefully to the evidence that the committee has received and I know the questions that you have put to the witnesses, convener, but I think that the responses were more nuanced than that. Some of the provisions that the bill introduces are important. We are, for the first time, making important changes in regulating the land market, improving transparency and giving communities more opportunities to buy land.

You have encapsulated the bill's aims, which saves me from having to repeat them. Is any piece of legislation perfect when we introduce it? We hope that it is, but that is what the scrutiny of the evidence that the committee has heard shows. We are listening carefully to that to see where proposals can be made clearer, strengthened or made more robust. We are listening carefully and keenly anticipate the publication of the committee's report.

As I said in my opening comments, the bill will allow us to take a big step forward with land reform, but we want to make sure that it is in as strong a position as possible.

The Convener: I am not sure how nuanced the word "no" can be. My questions to almost all the witnesses asked for yes or no answers and, although a few witnesses sat on the fence, a clear majority of them said no. How do you nuance "no" to make it sound as though those witnesses were agreeing with your proposals?

Mairi Gougeon: I do not want to get into too much of a battle about wording at this stage of the meeting, convener. Different questions were posed, some of which related to specific proposals, and some witnesses welcomed the proposals but felt that they could be made stronger in some areas. From reading through all that evidence, I think that the responses were more nuanced, but we want to listen to those opinions and see where we can strengthen the proposals in the bill.

The Convener: One of the things that I have found difficult is that the Scottish Land Commission, which I assume you spoke to before you introduced the bill—you certainly pay it £1.5 million to give the Government advice—disagreed with the proposals and has come up with a whole list of additional evidence. Surely that is not helpful. Surely that evidence should have come in before the bill was introduced. Why do you ignore the concerns that the Scottish Land Commission says that it has had for some time?

Mairi Gougeon: It is helpful to have the work and the report of the Scottish Land Commission about further additions or changes that it thinks would strengthen the proposals that are in the bill. I welcome that.

The committee has undertaken a number of evidence sessions since the bill was published, and we have been listening to the various views

that have been expressed throughout, as I have already stated this morning. We have listened, and we are actively considering the proposals that have been put forward by the Scottish Land Commission. We are looking forward to considering its recommendations alongside the recommendations that will come from the committee in its stage 1 report.

The Convener: It is probably fair to say, then, that the bill will be subject to heavy amendment as a result of the evidence taking, which includes the evidence given by the Scottish Land Commission. Are we not just making the legislation up as we go along? After all, the legislation will not necessarily reflect what we have now, which is what we have taken evidence on. Surely that leaves the committee in quite a difficult situation when it comes to stage 2, if we are having to consider radically redrafting the bill.

Mairi Gougeon: I do not think that it will be a case of radically redrafting the bill. For example, not all of the Scottish Land Commission's recommendations necessarily relate to changes being needed to primary legislation; some are things that can be done through secondary legislation, guidance and regulation, and there are other issues that will not require radical redrafting. As with any piece of legislation that is introduced, we want to ensure that it is in as strong a position as possible, that we listen to the evidence and that we can adapt it as necessary.

The Convener: Of course, the proof of the pudding will be in the eating, when we see how many Government amendments are lodged at stage 2. If there is nothing radical, I suggest that they will all be taken care of in one session—but we will see. Stage 2 will tell us.

Why does the bill focus on large landholdings in rural areas rather than on some other definition—say, "significant landholdings"? We have completely ignored urban areas; we are concentrating just on the countryside, where land reform affects fewer people than it might if you were to include urban settlements.

Mairi Gougeon: As I set out in my opening statement, the proposals stem from the work and recommendations of the Scottish Land Commission and the report that it published in 2019. As for your points about urban areas, I know from my meetings with stakeholders that there is a concern that such areas have not been covered in the bill. However, the Scottish Land Commission's initial recommendations focused largely on land reform in rural areas, because that was where it was felt that the most pressing issues were in relation to the scale and concentration of land ownership and the resultant impact on those communities. The commission's report also outlined that, at the time, it did not have the evidence to be able to consider proposals for the urban environment, but that it would be looking to do further work on the matter in the future.

It is important to point out that we are not going to fix all the issues in either rural or urban Scotland in this one piece of legislation, and to remember that other pieces of work are on-going that will have an impact on urban areas. One key piece of work that we are undertaking at the moment is the review of the community right to buy, and work is being carried out on community purchase orders as well as compulsory sales orders. Moreover, there is legislation planned for community wealth building as well as other measures and bills that are coming forward. It is important to remember all of those things in the round, as they will all have an impact across urban and rural Scotland. However, our focus is on rural Scotland, because the bill stems from the recommendations in the initial report.

The Convener: I am glad that you mentioned the community right to buy. I am sure that we will come back to it, but I note that the findings of the consultation will be disclosed post the next stage of the bill's consideration, which is hardly ideal.

I go back to the fact that this is our third tranche of land reform legislation since the Scottish Parliament came in, and all of it has focused on rural areas, with nothing on urban areas. Are you saying that all the problems are in the countryside and that there is nothing in urban areas?

Mairi Gougeon: No, that is not what I am saying. If you had listened to the comments that I just made—

The Convener: I listened carefully, cabinet secretary.

Mairi Gougeon: I said that the proposals were based on recommendations suggesting that the most pressing issues and areas of concern were in rural Scotland and that more work needed to be done on the urban environment. I have heard the evidence that the committee has taken in relation to the issues that exist in urban environments, and I am not saying that there are no problems there. We have taken this focus because of the work that was done and the recommendations that were made at that point.

The Convener: That was done by the Scottish Land Commission, which has come up with a whole heap of recommendations post the bill's publication. You listened to the commission before, but you have not listened to it on the bill.

Anyway, there are lots of follow-up questions. Kevin Stewart will be first.

Kevin Stewart (Aberdeen Central) (SNP): Cabinet secretary, in your opening statement, you

talked about the "imbalance of power" and said that the Parliament has a

"proud history of land reform",

but the concentration of privately owned land continues to be in fewer and fewer hands. In Andy Wightman's most recently published book, he says that 50 per cent of privately owned land is now owned by 421 owners, compared with 440 in 2012; 60 per cent is owned by 917 owners, compared with 989 in 2012; and 70 per cent is owned by 2,589 owners, compared with 3,161 in 2012. We are seeing a greater concentration of land ownership among fewer people. One aspect of the bill is to try to resolve that power imbalance. How can you assure us that the bill as it is will do that? How do we ensure that there is greater diversification of Scotland's rural land?

Mairi Gougeon: I believe that we are taking important steps in that direction with the bill through a number of means. Looking back to the initial aims of the bill that the convener set out—what it proposes to do—one of the key issues, and the reason why we are introducing pre-notification, land management plans and provisions around those, is the need to increase transparency about land ownership and management and to enable communities to have more of a say in how the land on which they live and work is managed. The bill will enable that.

Because of the scale of some land transfers and the size of some landholdings, the land tends to be sold quite infrequently. We are also seeing an increase in private off-market sales. In previous years, about 60 per cent of estate sales were private and off-market. Sometimes the opportunity to utilise community right to buy mechanisms will have gone before communities realised that the land was becoming available for sale, because they had not anticipated that it would become available or because the land had already been sold, so they would not have had the opportunity to use their rights in legislation.

The steps that we have set out in relation to those measures will help with overall transparency and will enable communities to have another route into right to buy. There are also important provisions about the transfer test and the potential for the lotting of land where we think that it will have a positive impact on community sustainability. That has the potential to increase land supply and the diversity of land ownership in Scotland.

Kevin Stewart: You talked about greater transparency and opening up new routes into right to buy. How will you monitor the effectiveness of the bill to ensure that diversification is taking place? At what point, in terms of years, will you look at whether there has been a turnaround in the concentration of land ownership towards more diversity of ownership in our rural areas?

Mairi Gougeon: You raise an important point because we will need to closely monitor some of the measures that we are introducing to see whether they are having the desired impact. We have not set out a specific timescale for what a review of that might look like. There is information in the financial memorandum and the documents that were published with the bill on that, but it mainly relates to when we would look to implement various provisions in the bill. Even that will take time, because we would have to appoint the land and communities commissioner if the bill is passed by the Parliament and then take further steps from there. So, there is an implementation period for various provisions in the bill, but monitoring will be absolutely key. We will be looking at this closely as the measures are implemented to ensure that they are having the desired effect.

09:30

Kevin Stewart: As the convener stated, we have had a lot of evidence, including from organisations that are involved in crofting. Crofting legislation is seen by many as a good thing. Have you considered extending the crofting counties to ensure that crofting is an option across Scotland—although I realise that there are some cases outwith the traditional crofting counties? Would doing that not lead to greater diversification?

Mairi Gougeon: I listened really carefully to the evidence that the committee heard from the Scottish Crofting Federation and the Crofting Commission in relation to that. Undoubtedly, crofting has had and continues to have a positive impact in Scotland. I mentioned the other pieces of legislation that are coming through Parliament and other measures that we are introducing. I am keen to ensure that we have consulted on proposals to reform crofting legislation, and there are issues that we would need to tackle first before we consider that suggestion.

Kevin Stewart: Are you looking at tackling some of the issues that you have highlighted in crofting legislation?

Mairi Gougeon: Yes, we are. The consultation on the crofting legislation was, I believe, published at the start of this year or towards the end of last year, with the intention that the bill will be introduced in the coming year, although the timetable is to be finalised. I think that that will help to address some of the key issues that have been identified through this committee and through previous iterations of the rural committee. A number of proposals have been made over a number of years. It is important that we are able to

address some of the issues with crofting through that legislation before considering steps beyond that.

Kevin Stewart: Is there no way of melding the two? Is there a way to allow aspects of this bill to take account of any future changes in crofting legislation, such as by providing for a secondary legislative route to change some of the land reform provisions?

Mairi Gougeon: I would have to look at that further. The proposals in the bill are quite complex and detailed. As you can see from the number of evidence sessions that the committee has held, there is a lot to get to grips with. I do not think that the two are necessarily mutually exclusive. I do not think that it is the case that, if this bill goes ahead, we will not be able to further develop crofting or deal with the issues that exist; however, I think that the appropriate place to deal with those issues is in any crofting bill that comes forward, rather than by amalgamating those issues into this bill.

Kevin Stewart: Thank you.

The Convener: There seems to be a lot of interest, and we are just in the first part of the session. I am nervous about saying this so early on in the meeting, but short questions get short answers, I hope, although maybe the cabinet secretary is happy to be here at 5 o'clock this evening. Monica Lennon is next.

Monica Lennon (Central Scotland) (Lab): Thank you—no pressure, convener.

Good morning, cabinet secretary. I want to return briefly to the issue of urban land and the convener's questions about what is not in the bill. In your opening remarks, you talked about the Land Reform (Scotland) Bill being about both the national interest and local needs. It was helpful to hear you talk about the previous recommendations of the Land Commission; however, we are a few years down the line, and quite a lot has changed, including with other bills that the Government is considering.

Will you expand on the Government's thinking? A constituent in Lanarkshire in my Central Scotland region might be wondering what is in the bill for them, and that will be the same for other communities up and down the country. What amendments are you thinking about?

In addition, related to that, you mentioned other bills, including on community wealth building, and work on community right to buy, purchase orders and compulsory sales orders. What is the Government doing to ensure that the work on this bill will align with those other bits of work? There might be a concern that there are some really good ambitions and objectives, particularly around sustainable development, but that the Government could be too busy, and we could miss the opportunity to make all those connections.

Mairi Gougeon: That is a really important point. I would not want to highlight those areas of work and make it look as though everybody is working in silos, but I appreciate that it can look that way. In a minute, I will pass over to Andy Proudfoot, who can talk a bit more about the interconnectedness of the different issues.

You touched on compulsory purchase orders, and a significant piece of work on those is being undertaken by another team; a review group has been set up to tease out issues in relation to that. It is important that that is a stand-alone piece of work, but I note that it is being undertaken with a view to working across Government departments where there is crossover and where it will have an impact. We have a strong interest in that.

The community right to buy review is on-going at the moment. That right is available in urban areas just as it is in rural areas in Scotland. That piece of work is being taken forward separately from the bill because of the complexities that are involved. The bill will not change community right to buy, but the notification provisions will add another gateway in. That will not necessarily impact urban communities.

I return to the fact that we have based the bill on what were seen to be and considered to be the key issues where there was evidence of potential harm to communities because of the concentration of land ownership in Scotland. We are introducing measures in the bill to address what were seen to be the key issues at the time of the initial report from the Land Commission, but we need to have evidence to back up any proposals that we introduce. As I said earlier, the Land Commission said in its report that there was not necessarily the evidence to implement recommendations in relation to land reform in urban areas, but that that would be a consideration for future work. We always have to be careful that anything that we do does not have unintended consequences, and land reform issues in an urban environment can be quite different from those in rural Scotland.

I will hand over to Andy Proudfoot, who can say a bit more about the other work that is happening.

Andrew Proudfoot (Scottish Government): Good morning. There are a number of pieces of work in the bill that can be done via guidance, which is where a lot of the interconnections with the subjects that Ms Lennon mentioned can be set out more fully, if those links are useful for the purposes of the bill. Lots of interconnected pieces of work are going on at the moment.

As the cabinet secretary said, the bill is based on the Scottish Land Commission's

recommendations. It looked at thresholds of between 1,000 and 10,000 hectares for the areas that will be covered, which, obviously, will not impact on many urban areas. The thresholds in the bill are clearly at the lower end of those parameters.

Monica Lennon: It is helpful to hear that. The issue with guidance is that we cannot scrutinise it right now, so we are trying to get as much clarity as possible on what could be in the bill and what could be strengthened.

My final question is on urban land, because I think that I understand the points around scale and why there has been a focus on rural areas. In some urban areas, we could be talking about much smaller pieces of land, but there could still be wins for those communities through opportunities to protect and enhance biodiversity and to do work on climate mitigation and so on. Is the Government aware of that? We are behind on our climate and net zero targets in Scotland, so we need to do more and go faster. Can you reassure the committee that we will not miss the opportunity to have bold and ambitious reform in our urban communities?

Mairi Gougeon: I recognise the importance of what you have said. In my role, I have visited a number of projects that are looking to tackle such work not just in rural Scotland but in Edinburgh city centre and other such areas.

All of Scotland has a role to play when it comes to tackling the big challenges that we face with climate change and nature restoration. Incredible work is happening in those areas.

I hope that we have been able to set out why we have taken forward the proposals that we have. Again, that does not preclude further work being done. Depending on the outcome of the community right to buy review and any recommendations that come from it, there could be a positive impact on urban and rural Scotland and the rights of communities in that sense.

Monica Lennon: That is helpful, thank you.

Michael Matheson (Falkirk West) (SNP): I will pick up on the theme of the diversification of land ownership. It has been a long-standing policy intention to see greater diversification of land ownership in Scotland. Kevin Stewart set out clearly how land continues to be concentrated in the hands of very few owners. From my perspective, it would be helpful to understand what "good" looks like. What would good diversification of land ownership in Scotland look like, compared with what we have at present? How would that be monitored post implementation of the bill over the course of, let us say, the next five or 10 years to see whether it is making progress?

Mairi Gougeon: You raise important points. The statistics and information that Kevin Stewart outlined paint a stark picture of land ownership in Scotland. Scotland is really an outlier. The ownership situation that we have is not normal when compared with other European countries and other nations. That is why it is important that we take the steps that we have proposed in the bill. Key to that are the community right to buy, which we have already talked about and is already in existence, and the pre-notification proposals, which would enable another route into using those powers. The proposals that we are looking to introduce through the transfer test and the provisions around lotting are also important in trying to increase land supply in Scotland and, therefore, hopefully the diversity of ownership.

As I said in my response to Kevin Stewart, the monitoring of that will be critical, because we have to make sure that the proposals that we introduce have the intended effect. It is important to highlight that our proposals around lotting are a significant step forward in relation to regulation of the land market in Scotland. It is important not to forget the significance of some of those proposals.

Michael Matheson: That is helpful. To help me to understand that further, is the priority to get greater diversity of ownership on large-scale landholdings, or is it about helping to support diversification for communities that may have an interest in areas of land that they are unable to access at present?

Mairi Gougeon: There are a number of points within that. Essentially, it is all of that. Looking at the initial aims of the bill, the first is ultimately about transparency around land ownership and management, involving communities in the decisions that are taken in relation to land—that is where the community engagement provisions around land management plans come in—and encouraging dialogue between landowners and communities. It is about ensuring that there are other opportunities for communities to take on ownership of more land across Scotland, as well as increasing the land supply and encouraging wider diversification of ownership.

Michael Matheson: Okay. Thanks.

Mark Ruskell (Mid Scotland and Fife) (Green): We have had evidence from the Scottish Land Commission and a lot of stakeholders that focuses on the thresholds in the bill and where to draw the line. The Land Commission has made a very clear recommendation that all thresholds need to come in at 1,000 hectares. We have had practical examples of where a significant landholding, such as the Taymouth Castle estate, has had a big impact on surrounding communities and where there has been a lack of transparency over the long-term objectives for that land.

Stakeholders have raised the fact that having transparency through a land management plan would be beneficial in that case, yet Taymouth Castle would currently sit outwith the provisions of the bill.

I am interested in your reflections on the evidence that we have heard, and particularly on the conclusion that 1,000 hectares is a more appropriate threshold than the current one.

09:45

Mairi Gougeon: We have listened carefully to all the evidence. It might be helpful for me to set out a rationale for why we approached the threshold in the way that we did. In the consultation that we undertook for the bill, we consulted on having a 3,000 hectares threshold, largely because if the provisions applied to estates larger than around 3,000 hectares the bill would take in about 40 per cent of the land area in Scotland.

We are trying to get the balance right when considering the burden that we are putting on landholdings in relation to the land management plan, obligations for community engagement and associated costs. We are considering all the evidence that the committee has taken and we are looking at the recommendations made by the Land Commission. However, ultimately, we are trying to get the balance right so that we do not put a disproportionate burden on smaller landholdings.

I hope that that explanation of our approach is helpful. We are considering the evidence.

Mark Ruskell: I ask you to consider what the bill looks like to communities where there is a significant or powerful landowner. They will see that the bill will not change the concentration of land ownership overnight, because that depends on many factors, including an eventual sale of land, lotting and everything else. The bill might deliver transparency but, at the moment, it does not apply to very significant landholdings—I go back to the example of Taymouth Castle. Communities will look at the bill and ask how it provides transparency that will benefit them. They will ask how they can be sure of what the future is, and how they can understand major landowners' plans for their communities. At the moment, the bill does not seem to apply to those communities.

The setting of a threshold seems to be quite arbitrary anyway. Setting it at 3,000 hectares clearly excludes a number of very significant landholdings in Scotland.

Mairi Gougeon: I have set out the initial rationale for the threshold, but we are keen to take on board the evidence that the committee has heard, to think about whether the current level is suitable, and to hear whether the committee has any suggestions for alternatives. We want to balance all those considerations, including the impact on smaller landholders of some of the community engagement obligations. We are listening to the evidence that the committee has heard, because we want to ensure that there is transparency.

We have the land rights and responsibilities statement. Some landowners are doing very good things and are looking to engage and involve communities in the decisions that they take. However, that approach is not universal or widespread, which is why we want to introduce the land management plan obligations and community engagement provisions. I am open to views on what the thresholds for those might look like.

Mark Ruskell: I know that my colleagues want to come in on other aspects of the land management plan, so I will pass back to the convener.

The Convener: The cabinet secretary was just trying to ask Andrew Proudfoot to come in.

Mairi Gougeon: I think that Andy wants to come in.

The Convener: Well, cabinet secretary, it is your call, not his—do you want to bring him in?

Mairi Gougeon: Yes.

Andrew Proudfoot: There is a provision in the bill to amend the thresholds, should the monitoring that the cabinet secretary has discussed show that there may be a requirement to do so. The level of monitoring can go up and down with the thresholds. The provision introduces a new requirement for landholdings and the Scottish Land Commission has said that it might phase in the work to allow it to bed in and become a helpful process.

Monica Lennon: The bill sets out what should be included in a land management plan, including setting out a long-term vision for the land; future objectives; and how the land will be used and managed to achieve net zero emissions, adapt to climate change and in relation to biodiversity. The plan is quite high level. Can you explain how the Government arrived at those factors and criteria? Was anything considered but not included in the final bill?

Mairi Gougeon: In the policy memorandum, we set out why we have taken the approach that we have taken, and whether any alternatives were considered.

It comes back to striking the right balance—not being too prescriptive and allowing for some flexibility—because we recognise that land will be very different across Scotland. However,

ultimately, we want to achieve a number of high-level outcomes, such as tackling the climate and nature crises, delivering our vision for agriculture in Scotland and being a global leader in sustainable and regenerative agriculture.

We have been listening to the evidence on that and we are keen to hear the committee's views in its stage 1 report. As Andy Proudfoot touched on, more guidance will be issued and there will be further consultation on what will be included in the land management plans. However, we hope that the high-level overview of our ultimate ambitions strikes the right balance.

Monica Lennon: The committee has had quite a bit of feedback from stakeholders on the bill's climate and nature aspirations, and I know that you have been listening keenly. You mentioned guidance and further consultation. Might stage 2 amendments be needed to clarify those aspects for landowners and communities?

Mairi Gougeon: There will be consultation on exactly what could be included. If the committee is of the view that amendments are needed to clarify that, we will consider that view. However, I come back to the point that we have tried to strike the right balance by ensuring that there is flexibility for different landholdings while setting out our overarching objectives in the primary legislation.

Michael Matheson: The policy memorandum suggests that the cost of a land management plan is likely to be around £20,000, although the committee has had some evidence to suggest that it could be as high as £70,000. Can you give us an insight into how you arrived at the figure of £20,000 for a land management plan and your thinking about the potential for land management plans to be significantly more expensive than what has been set out in the policy document?

Mairi Gougeon: Yes, I am happy to do that, and I will bring in Andy Proudfoot to provide more detail. I believe that some of the costs and ranges in the policy document are based on the detailed work that some public agencies undertake in relation to land management plans and their costs.

Andrew Proudfoot: The process of carrying out the bill's business and regulatory impact assessment involved speaking to a number of land managers and agents. We tried to estimate the potential costs for land management plans. The costs are dependent on the individual landholding, but there was a range. I do not have the information at my fingertips, but I think that the range was from single-figure thousands up to the figure that you suggested of about £20,000, and I can provide more detail in writing. I suppose that the committee has heard evidence from different groups suggesting different figures. We want the guidance to be as clear as possible to make it as easy as possible for land managers or people with landholdings to work through the plans. As more plans are done, experience will also help with that. The land and communities commissioner will want to do a lot of work on good practice with regard to what the plans could look like in order to make it as straightforward as possible for landholders.

Michael Matheson: Part of the challenge is ensuring that land management plans are a meaningful process for communities to engage with and that they deliver greater transparency with regard to how land is going to be managed but in a way that is not unduly burdensome to the point that managing the plan is not practical. How do you envisage achieving that balance, given the competing tensions of what different people are looking for from land management plans?

Mairi Gougeon: We have tried to balance that in our proposals, because they really bring in all the issues that you have talked about.

What should the timescale be for a land management plan review and, as I outlined in my responses to earlier questions, how flexible should it be in trying to get a balance between the overarching objectives? What we have set out has tried to achieve that balance. Should the bill pass, further work will be done on the back of that in the wider consultation that we will undertake to look at the final details.

Of course, we want the exercise to be meaningful, as you have outlined, which is why the community engagement provisions are so important. We need communities to feel that they are involved and that they have a say about the land around them and how it impacts on their day-to-day lives. That is really important, and we hope that we are striking the right balance. Again, we are listening to all the evidence and the committee's views about that.

Michael Matheson: You mentioned the duration of land management plans. As it stands, the bill envisages them being reviewed and, if necessary, revised every five years. Some of the evidence that the committee has heard suggests that five years is too short a timeframe in relation to managing land. I am told that forestry plans, for example, are often for 20 or 30 years. I suppose that part of the challenge is whether five years is an appropriate timeframe in which to look at revising a management plan and incurring further costs when that might not be realistic. Are you open to the idea of increasing that timeframe for revising land management plans?

I am conscious that, if you are open to that, it becomes more difficult. The longer the period during which a plan is due to be implemented, the more difficult it is to be specific, because circumstances change. If you were minded to look

at extending the revising period, is there a need to balance how specific a land management plan can be over a longer period of time?

Mairi Gougeon: Absolutely. We have looked at the evidence that the committee has heard on that. You are absolutely right that forestry and others are saying that they are already working to plans that cover longer periods. That is where we tried to strike that balance. Ultimately, if it becomes a yearly exercise, the costs associated with that would be overly burdensome, not to mention the administration costs of that on the other side. For plans of 10 years and beyond, we would have to make sure that they do not become outdated, just as you said.

Five years was the timeline that was selected because the majority of respondents to the consultation agreed with that level and felt that it was an appropriate period. As with most of the matters that we are discussing this morning, we are keen to hear whether the committee has any particular recommendations, but we feel that, with the proposal as it is, we have struck that balance in responding to and accepting the views of the respondents to the consultation and what they felt was an appropriate timeline with the need for review and other considerations.

Michael Matheson: Okay. I will take that as you being open to persuasion on the possible timeframe.

I turn to the way in which land management plans are to be taken forward and who is to take them forward. As the bill stands, the land management plans are intended only for pieces of land of more than 3,000 hectares, and that is limited to single, composite and contiguous holdings.

The cabinet secretary will be well aware of the significant commercial holdings of land that are owned by companies and that are all under the threshold, although in some cases those companies are in the top five landholders in Scotland. They would be left out. They would not be covered by the existing definition of how land management plans should be applied. Has any thought been given to including aggregated or corporate holdings in a way that would allow us to make sure that we are capturing what are very significant landholders who, because of the nature of the parcel of land that they own, fall under the threshold for a land management plan?

10:00

Mairi Gougeon: I appreciate that point, which I have also picked up through evidence.

What is key for us is that our proposals have an evidence base, which is why they are framed in the way that they are. I also completely appreciate the point that you make about aggregate holdings. However, the bill focuses on how communities are impacted by a high concentration of land ownership in an area, which would be harder to evidence if we were looking at overall ownership, which could be in other parts of the country, too. Bringing aggregate land holdings into the bill might not be appropriate to meet that aim and we would have to give that greater consideration.

I hope that that helps to explain the approach that we have taken. The focus is on the concentration of land ownership in an area, which becomes more difficult to evidence when looking at aggregate holdings.

Michael Matheson: I understand that, but do we want, for example, the third-largest landowner in Scotland potentially not to be required to produce any land management plans because every parcel of land that they own falls under the threshold? Is that seriously what we are trying to achieve?

Mairi Gougeon: I completely appreciate and agree with your point, but we need to make sure that the proposals that we introduce are evidenced, so that they stand up to scrutiny. I am not averse to considering that point, but we would have to give greater thought to how that might work and what the evidence base for that might be. I understand the concerns that were raised in evidence in relation to that.

Michael Matheson: If we get to the point where someone is the third-largest landowner in the country but does not have a land management plan to their name, while someone who happens to have one piece of land that is just over the threshold has to go to the extent of having a full land management plan, there will be a real inequity to that. That needs to be addressed.

Mairi Gougeon: We would have to give greater thought to how that could be done and to the evidence base that we would use if that was to be the proposal.

Michael Matheson: Okay. Thanks.

The Convener: Of course, they might have another plan, such as a forestry plan, if that is required under the law.

Mark Ruskell: We have taken evidence from a range of communities that have developed local place plans. It is clear that there is a relationship between what is in the wider land management plan, what could be in the local place plan and what is actually taking place in that surrounding community, particularly in the built environment. Do you see a role for local place plans in the bill, and should they be specifically mentioned in relation to LMPs? We would not want a situation in

which a land management plan that is not really binding on the landowner is developed in one space and a local place plan is developed in another space and for those not to meet up.

Mairi Gougeon: I have listened to the evidence on that. First of all, the land management plans and the local place plans have different aims, so they have different purposes. My concern is that local place plans are not universal. I think that a review is due to be undertaken this year—I am sure that Andy Proudfoot will correct me if I am wrong—in relation to how local place plans are operating. It makes sense for that to be considered through the land management process, but I would be reluctant to introduce that into the primary legislation. Given the different nature of the plans, perhaps that is more appropriately addressed in secondary legislation or guidance. However, it makes sense for there to be some consideration of that because local place plans are important in identifying the local communities' needs.

Mark Ruskell: It comes back to my earlier point about what it looks like from the perspective of communities. If you turn up to a village hall, you want to see where the future housing sites are, but you also want to know what is happening with the land that surrounds the community and where those options are.

Mairi Gougeon: Absolutely.

Mark Ruskell: There needs to be a joined-up picture that people can input into, rather than many complicated consultations that do not mean anything to anybody.

Mairi Gougeon: Absolutely. I hope that the process of the land management plans encourages that greater dialogue to take place, so that those discussions are not happening in separate places, if that makes sense.

The Convener: Before we leave this area, I have a couple of quick questions. Imagine a 3,000-hectare holding with four communities around it, which is quite possible. You want the plan to involve engagement with local communities. What do you envisage that the person drawing up the plan will do? How will he or she engage with the local community?

Mairi Gougeon: The guidance that accompanies the bill will be important in setting that out. The process could be quite a daunting prospect for some, but some will already be doing such work. We want to make sure that people are engaging in best practice when they undertake consultation.

The Convener: Come on, cabinet secretary—with respect, you have suggested engagement. What will the guidance on plans say?

Mairi Gougeon: Different forms of guidance have already been published. For example, the Scottish Land Commission has guidance on what good community engagement looks like.

The Convener: I am asking you, cabinet secretary, about the legislation that you want to introduce. What guidance will you give local landowners? What are you going to do? I am one of those people who hate legislation that does not clarify what it is and needs secondary legislation or guidance to do that. To me, as a parliamentarian, that is not the way to produce legislation. What are you expecting landowners to do?

Mairi Gougeon: It is not for me to sit here at this time, without undertaking wider engagement and discussion, and say specifically what people will have to do. As I said, we have principles in place that have been published by the Scottish Land Commission that people can look at to see what can be expected.

The Convener: What are the principles that you sign up to?

Mairi Gougeon: Do you want me to search for them and read them out? I would be happy to do that or to send them to the committee.

The Convener: No, I would just like you to paraphrase them. Do you expect people to have a couple of meetings of an evening? How will they get hold of the community? Will they write to all the people?

I am just trying to work this out. You have given a figure of £20,000 for the consultations. I was a surveyor for a bit and I used to manage land for other people, so I know how much that process costs. I also know how much it costs to produce forestry plans and how much Forestry and Land Scotland spends on reviews of forestry plans. All that I am trying to do is to get an idea of what you expect people to do, so that I can find out whether the figure of £20,000 that is in the financial memorandum is justifiable.

Mairi Gougeon: I cannot outline to you right now every piece of guidance from the Scottish Land Commission, but that information is publicly available, and I am happy to send you it. However, as MSPs, we all know and have seen in our areas what good and bad community engagement looks like.

We want to make sure that the process is meaningful. To me, a meaningful process is about direct engagement with people. Bad engagement is when you put a form on a website and expect people to tick a box and, essentially, that is it. We want to make sure that the process is meaningful and that people feel that their voices have been listened to. There are good and bad examples of

that, but we have guidance available. All this will be subject to further consultation to make sure that we are clear on what our expectations are.

The Convener: We heard evidence from a surveyor who runs a firm that the process costs more than £300 an hour, so £20,000 looks like a very light-touch consultation. If you want it to be detailed, it will cost considerably more, will it not?

Mairi Gougeon: I will bring in Andy Proudfoot.

Andrew Proudfoot: The costs that were given in the business and regulatory impact assessment were based on the experience of landholders who had done some work on land management plans. Although land management plans are new under the bill, the Land Reform (Scotland) Act 2016 brought in good practice guidance on the land rights and responsibilities statement. A number of landholders, public and private, already do some such work in communities.

The cabinet secretary mentioned the consultation, which will need to ensure that land management plans are proportionate and workable for landholders. Costs will be part of that consideration, too.

The Convener: The difficulty is that, if all that is to be in secondary legislation, it is virtually impossible to see whether the figure is proportionate.

Bob Doris has some questions.

Bob Doris (Glasgow Maryhill and Springburn) (SNP): I do, convener—I am inspired by your line of questioning. We heard evidence that large landowners who are doing their job properly do all this community consultation and meet all the requirements of land management plans anyway, because that is what good landowners do. However, the same landowners tell us that it is going to be really expensive to do what they are already doing anyway. What is the cabinet secretary's view on the idea that many of the costs that are associated with land management plans are the costs of activities that good landowners are probably already doing anyway?

Mairi Gougeon: That is an important point. As you said, the committee heard evidence, which I have considered, that some landowners are already undertaking such work. There are costs associated with that, as we have set out clearly in the documents that are associated with the bill. The issue is how we balance the requirements, which comes back to why we have brought forward the proposals in the way that we have. As you said, a lot of people are engaging in that work anyway, so I would not expect the costs for them to be considerably higher than they already are. That is within the ranges that we have set out in the accompanying documents.

Bob Doris: My colleague Mark Ruskell made an interesting point about local place plans. Cabinet secretary, I think that you made the point that I would have made, which is that having an additional focus on local place plans might create inequity in the approach, given that they are not consistent and that not every local authority has one. However, I draw your attention to the 10-year strategic plans that local authorities should have for their areas. What will be the relationship between a 10-year planning document and land management plans? I ask because community consultation is a core aspect of 10-year local authority plans and we would not want local authorities to assume that community consultation that took place in relation to a land management plan would suffice in relation to the job that they should already be doing directly with the communities that they serve.

Mairi Gougeon: It might make sense for a land management plan to take into consideration work that is already being undertaken on an area's overall priorities. That could be considered as part of the wider associated guidance.

Bob Doris: We could return to the matter when we consider the evidence but, as Mr Ruskell mentioned local place plans, I wanted to tie together where they sit in the planning framework.

A breach of a land management plan could be simply not preparing one in the first place, or it could be not fulfilling the obligations in the plan. There has been much debate about the costs of producing a plan. If the maximum fine is £5,000 for not producing or not complying with a plan, might there be an incentive to simply pay the fine and not produce a robust plan that is compliant? How was the figure of £5,000 arrived at? Will it be a one-off fine of £5,000 or might it be £5,000 levied on an annual or a recurring basis, depending on the level of compliance or otherwise? What more information can you provide?

Mairi Gougeon: A variety of views have been expressed on that issue. Probably quite a general view that those who have given evidence to the committee have expressed is that the penalties that the bill sets out are not proportionate and will not act as enough of a deterrent. To give a bit of background, the fines are set at a level that broadly mirrors the penalties in relation to the register of persons holding a controlling interest in land. That also involves a maximum penalty of £5,000, albeit that the penalty is criminal rather than civil. The question always comes back to the point about balance and ensuring that the fine will have the desired effect and act as a deterrent, so we want to consider the committee's views and any recommendations that members might have.

Bob Doris: So you are open minded about reviewing the level of fines that could be levied.

Mairi Gougeon: Yes. Ultimately, we have to ensure that fines are proportionate, but we are keen to hear members' views.

Bob Doris: The Scottish Land Commission suggested that we should extend the relatively narrow list of those who can report non-compliance or a breach of a land management plan to include community councils, national parks and enterprise agencies. What would the benefits be of extending the narrow list? What is the Scottish Government's position on that?

10:15

Mairi Gougeon: I come back to why we set out the provision in the way that we have, which is to ensure that bodies that report breaches have some experience in relation to land management and working with communities on the ground. We also wanted to guard against, and deal with, the potential for vexatious complaints. That is why we set out the bodies for reporting breaches in the way that we have. However, I have heard the evidence that the committee received, particularly from the Crofting Commission and other bodies, about what people feel should be on the list. Again, I am open to hearing the committee's recommendations on that, although we have a power to add bodies to the list if it were felt that more should be added.

Bob Doris: It sounds as though the Government is open minded but has not made a final decision on whether the list should be extended. One reason for extending it would be to give anonymity to some who would like to report a breach, because of the power imbalance that can exist in some rural areas. Those people could, for example, go through their community council or an enterprise agency to report a breach.

Another way to address that issue might be to allow the new land and communities commissioner to have the proactive power to instigate their own investigation if they believed that there was potential evidence of a breach. Would you like to see that?

Mairi Gougeon: On the first point about dealing with anonymity, the relevant section of the bill sets out provisions to protect the confidentiality of information that has been obtained on behalf of the land and communities commissioner in the course of their investigations. However, I recognise some of the dynamics that are at play here and, from listening to the evidence that the committee received, why the ability to be anonymous is of concern. I am happy to consider any particular views that the committee has on that.

I am sorry—I missed the second part of your question.

Bob Doris: I will return to it and put in my final question along with it, because of time constraints. What are your thoughts on the land and communities commissioner having the power to proactively instigate their own investigation if they have reason to believe that there could be non-compliance or a breach?

More generally, what are your thoughts on general monitoring of compliance across the board, not just to catch landowners who might be non-compliant—although that would clearly be welcome—but to identify best practice and share good practice and expertise on what an effective and compliant land management plan looks like?

Mairi Gougeon: I come back to the rationale for why the provisions have been proposed in the way that they have been in the bill. They are designed so that the land and communities commissioner can investigate a breach only if there is a report from one of the defined bodies in the bill. Ultimately, that is to try to balance the commissioner's enforcing role with the Scottish Land Commission's advisory role. However, from the evidence, I feel that people have generally felt—although some have disagreed—that the commissioner should have the power to have an investigatory role; I am sure that the convener will correct me if I am wrong. I am open to considering recommendations about that if there is a particularly strong view on that.

Overall monitoring of compliance will be critical. As we have discussed in relation to the other measures that the bill introduces, we need to ensure that what we are introducing is having the desired effect.

Bob Doris: Can you say any more at this stage about what overall monitoring of compliance will look like?

Mairi Gougeon: I will bring in Andy Proudfoot.

Andrew Proudfoot: That will also be part of the land and communities commissioner's role. The Scottish Land Commission has a good-practice team that supports its work, and the land and communities commissioner could pull from that. The history of the tenant farming commissioner has always been one of taking a collaborative and inclusive approach, and the policy approach being taken with the land and communities commissioner is that they would want to continue with that as part of their work.

The Convener: I do not know whether I can say this, but we are coming up to halfway through our time and we are about a quarter of the way through our questions. I am just giving you an idea of timescales; it is up to members and the cabinet

secretary to work out how they respond to that comment.

Douglas Lumsden will ask the next questions.

Douglas Lumsden (North East Scotland) (Con): I want to move on to the community right to buy, cabinet secretary, and will start with a general question. You have mentioned that the existing community right to buy powers are presently under review. Why is the bill being brought forward at the same time as that significant review, and what will happen if the review recommends significant changes to the process that is in the bill?

Mairi Gougeon: First of all, I know, because I heard it quite strongly in the evidence that the committee took, that the view that was expressed pretty much universally to the committee was that the community right to buy should have been included in the bill. As I started to outline earlier, the review of community right to buy is significant, and there are a number of powers in that respect that we need time to review. That review started last year, and we will consult formally on the powers later this year.

However, what we are proposing in the bill will not change that. As I have outlined, it will provide another gateway to part 2 of the Land Reform (Scotland) Act 2003 and to utilising the existing community right to buy, but it will not fundamentally change it. If, at the end of the review, it were to be recommended that there should be legislative change, that would serve only to improve the provisions that we have with regard to accessibility of the community right to buy. However, we have yet to see the outcome of that review and what the proposals will be. There will be full consultation on that, too.

Douglas Lumsden: I do not want to put words in your mouth, cabinet secretary, but just for clarification, are you saying that the Government would go forward with the bill and make changes to the community right to buy, but the review might then recommend other changes, which might result in further changes to the legislation? Is that right? The question is just for my understanding.

Mairi Gougeon: That is absolutely fine. What we are doing with the powers in the bill and with pre-notification is enabling another route to use of the community right to buy as it is at the moment. The review could propose changes that we would need to implement. That would have to be part of consideration once we have consulted, but if changes to the legislation were required to adjust the powers, they would be subject to future legislation.

I am sorry—I hope that I am explaining things and providing some clarity.

Douglas Lumsden: Does Andy Proudfoot want to say anything?

Mairi Gougeon: I hope that he can help, if I cannot.

Andrew Proudfoot: The final thing to say, just for total clarity, is that the bill will not change the community right to buy: its provisions will sit on top of it. As the cabinet secretary has said, it is a gateway—another route—in to the existing community right to buy provisions; it is not a new community right to buy.

Douglas Lumsden: Okay. I am a lot clearer on that. Thank you for that explanation.

On the bill, we have heard evidence that there is no minimum threshold for prohibiting and notifying land transfers, which means that a minor land or property sale of part of a large landholding would trigger the relevant section. Why has the Government gone down that route? Given the evidence, are you planning to make changes to accommodate some of the concerns that we have heard about?

Mairi Gougeon: I recognise the concerns and the quite universal call for some sort of de minimis provision in the bill to exclude certain transactions that need not be controversial.

It might be helpful if I briefly explain why we have introduced the provision as we have, and the rationale behind that. With regard to pieces of land that communities might be interested in taking ownership of, the vast majority—I think that the figure is between 60 and 70 per cent—are areas of less than a hectare. They are quite small pieces of land, but they might still be very significant to a particular community. That is why we did not want to prevent from being part of those transactions areas of land that could be significant to or of interest to a community.

We have, however, listened to the evidence that the committee has heard and the subsequent recommendations that have come from the Land Commission on that issue, and we are happy to consider that further.

Douglas Lumsden: Have you any ideas about changes that you might make to the bill to accommodate concerns that we have heard?

Mairi Gougeon: For me, it is about ensuring that we strike a balance. We do not want to block out transactions and transfers of areas of land that could be important for communities, so how that might work in practice and how we ensure that we achieve that balance are part of our consideration of the recommendations.

Douglas Lumsden: Do you think that Government amendments will be lodged?

Mairi Gougeon: Yes. Again, we are considering all that, at the moment. There is no set way forward, so we are working through the matter. We have heard the evidence and, of course, we want to address it, if possible.

Douglas Lumsden: The committee has also heard evidence suggesting that the pre-notification and registration provisions in the bill are unnecessarily complex and difficult to navigate. Why was that approach taken? Could there be changes to them?

Mairi Gougeon: The pre-notification measures that we are introducing are really important. Ultimately, the reason for doing so is to ensure that we address some of the key barriers to community ownership that we know exist at the moment, and which relate to overall transparency. That relates to points that I made at the start of the meeting about off-market sales and transactions and transfers sometimes taking place that communities might not have been aware of and that they could have had an interest in. The pre-notification requirements are hugely important, because they are about ensuring that we enable communities to register interest and that there is transparency about land transactions.

Douglas Lumsden: Were any alternatives considered?

Mairi Gougeon: Again, the alternatives that were considered are set out in the policy memorandum to the bill. There were a number of considerations that we consulted on, but we feel that our proposals on pre-notification, increasing transparency and allowing further opportunities for communities to take ownership of land are key.

Mark Ruskell: I turn to the transfer test. I am struggling to understand why the original proposals from the Scottish Land Commission for a public interest test were rejected. Instead, we have a transfer test, which is, in effect, backward looking. It is applied to the seller of the land rather than to the purchaser of the land. I am interested in why that judgment was made and why the Land Commission's proposal on a public interest test was discounted.

Mairi Gougeon: First, I want to clearly set out that the transfer test is a public interest test. It does not use those exact two words, but that is what the transfer test is: it will ensure that we take the public interest into consideration when a land transfer involves more than 1,000 hectares. Various proposals emerged about where the test should fall, whether it could fall on the buyer and the different ways in which it could work. However, the transfer test has been introduced on the basis of the evidence that we have and our ability to implement it, because the only way that we can implement a public interest test is by doing a test at the point of transfer of land.

Mark Ruskell: I am struggling to see how that can be enforced. You are saying that it is, in effect, a public interest test, but it is not applied to the owner of the land. How would the public interest be carried through to future plans for an estate? Would that be done through land management plans? I am struggling to see how the public interest would be considered if the test is to be applied retrospectively, at the point of sale, on the person who is selling the land.

Mairi Gougeon: The public interest test as proposed in the bill is about community sustainability. The key question is whether lotting of the land would lead to an increase in land supply, which would have a positive impact on community sustainability. That is the key question that we are looking at, and it would be considered as part of the lotting process. That is how the public interest will be taken into consideration.

10:30

Mark Ruskell: I will move on to lotting. I understand the interaction between the two things, but there is a concern that new owners could just combine land that has been lotted under a ministerial decision. Concern was raised around natural capital projects, with major investors perhaps seeing small parcels of land and deciding to buy them. What is your answer to that concern?

Mairi Gougeon: We are listening to concerns that have been expressed about that potential. The only provision that we have at the moment is that, if land were to be lotted, a person could not buy multiple lots. We must be alive to potential loopholes—we want to avoid them wherever possible. We might need to take other factors into consideration, because we want to ensure that the measures that we introduce have the intended effect.

Mark Ruskell: You have spoken about decisions on lotting embedding the public interest. Does that mean that particular obligations and conditions should be applied to lotted land?

Mairi Gougeon: I have referred to the public interest test. The key question is about increasing diversity in land supply. Will the provisions be positive for the community, and will they improve community sustainability? We have had to frame our consideration in that way, because certain conditions must be met when a public interest test is introduced. It is important that considerations are about the evidence, the basis of what we are doing, the proportionality of what we are introducing and the aim of the measure. That is why the test will apply at that point, rather than

conditions or obligations being put on a future buyer.

Mark Ruskell: So, it will be implicit within a lotting decision that there will be land management that is different from how the land was managed previously. I am still struggling to see how ownership will deliver on aspects such as the public interest.

Mairi Gougeon: Ultimately, the bill is about increasing diversity in land ownership.

Mark Ruskell: So, diversity is good.

Mairi Gougeon: The bill is opening ownership up. All that will have to be factored in to the tests and our decisions in relation to lotting. It is a question of what should be taken into consideration as part of that, in seeking positive outcomes for communities. For instance, a housing development trust or a new business might look to buy land. It is about diversity and increasing the supply of land. That will be the key aim of lotting decisions.

The Convener: The deputy convener has some follow-up questions.

Michael Matheson: In your view, the transfer test is a public interest test. It is not a public interest test that applies at the point of acquisition of the land, however. Why is that the case?

Mairi Gougeon: There are a number of factors. The matter was part of the consultation that was undertaken, and we have outlined some aspects in the policy memorandum.

In other countries, interventions or obligations after the point of sale, or obligations on potential buyers, tend to fall into a couple of areas. We think that there is an example of authorisation of buyers in Australia, but that is more about national security risks.

There are alternative purchase models. The Land Commission has done work on the SAFER model in France, for example, whereby a public body or an interim body would buy the land, and the owner of the land would be compelled to sell. The body would hold the land for an interim period before determining use of the land.

We have introduced the transfer test and the lotting procedures as we have because we could not identify an option that would allow lotting to be applied where the test was on the buyer. That is why lotting will apply before that point.

Andrew Proudfoot: Briefly, the challenges were about concentration of power: the Scottish Land Commission's initial recommendations stemmed from that. As the cabinet secretary has outlined, the lotting approach is about diversifying and giving more opportunities for land to be owned by more people in order to address the concern about concentration of power.

I will add to what the cabinet secretary said about that. A decision's being based on the buyer might narrow the options by limiting the buyer to agreeing or denying the sale, whereas the approach that is taken through the transfer test opens up more opportunities to own land, through the lotting process.

Michael Matheson: Okay. Let us examine the approach to lotting that is set out in the bill. I understand that the transfer test will be a public interest test, but I still struggle to understand why we would not put on a statutory footing, through the bill, some form of public interest test duty for the factors that will be taken into consideration in decisions about lotting, for example. Why does the bill not set that on a statutory footing?

Mairi Gougeon: That is because we have to be specific about the intention of a public interest test. If what you are suggesting is that a broad provision on public interest be included in the bill, I do not know that we could implement that.

Michael Matheson: We could spell that out: we could put the duty in in an amendment that could cover anything from protecting and enhancing human rights to maintaining or restoring biodiversity. We could spell it out if we wanted to.

Mairi Gougeon: We have had to introduce the provision as it is because of what must be taken into consideration in the public interest, our direction of how that is used and why the measure is proportionate in respect of what we are talking about.

Michael Matheson: I do not understand why we cannot spell out in the bill what will be considered in the public interest test duty. Why can we not do that? We do it in other legislation, do we not?

Keith White (Scottish Government): Legislative measures take various forms. Sometimes the public interest test is spelled out and is the only thing that is said. At other times, the legislative measure itself will indicate the aim that is being pursued in the public interest.

In the bill, the issue that is to be considered is sustainability of communities. That is the approach. If we were to add "the public interest", I would have difficulty in understanding whether the intention was to limit the times at which a lotting decision could be made—that is, it could not be made if that was not in the public interest—or to widen the circumstances in which a lotting decision might be made. I think that some people who have given evidence to the committee talk about a public interest test because they want things other than lotting decisions.

Michael Matheson: I understand your point. However, if the transfer test is a public interest test in essence, albeit not in name, I am still not clear why we cannot be more specific in statute about exactly what will be taken into account in terms of the public interest. I understand that we have done that in the Planning (Scotland) Act 2019 and in the Community Empowerment (Scotland) Act 2015, so I struggle to understand why this bill should be treated differently.

Keith White: The legislative measure that is being looked at is about making a decision that land is to go to different owners. The test that will be applied has to be relevantly connected to whether ownership will help communities to be sustainable. If other aspects of the public interest could indicate a rational connection to supply of land to different people, those might be open to consideration. However, putting "the public interest" on the face of the bill is not necessary for making the test work.

Mairi Gougeon: Andy, do you want to come in?

Michael Matheson: Before he does, why is it not necessary to put the test in this bill, but it was necessary in other legislation?

Keith White: The test has been designed to consider sustainability of communities, and whether the supply of land is having a negative effect on communities—

Michael Matheson: I understand that, but I do not understand why you are asserting that it is not necessary to spell that out in the bill, given that, as I understand it, we spell it out in other legislation. Why not spell it out in this bill, too?

Keith White: We spell that out in other legislation for different purposes.

Michael Matheson: Let us take a step back, please, because I do not think that that was a helpful response.

Can you explain why the bill should be treated differently from other pieces of legislation in which we have specified the public interest test, if the intention is for the transfer provisions in the bill—the transfer test—to be a public interest test? What prohibits us from doing that?

Keith White: The purpose of the provisions in the bill is to provide for circumstances in which ministers can interfere with sale of land to say that it must be sold in lots. In such circumstances, we would be doing it for no reason other than ministers thinking that it would improve the sustainability of communities.

Michael Matheson: If, however, we wanted to introduce additional measures alongside that, they could be put on a statutory footing in the bill.

Keith White: That would have to be considered.

Michael Matheson: So, there is nothing to prohibit such a test's inclusion, then. It is just that at the present time how you have drafted the bill is your preferred option.

Keith White: Yes—that represents the policy.

Michael Matheson: I think that we have got the point.

The Convener: Before we leave the issue of lotting, I should say that, from having done quite a lot of lotting for the sale of land in the past, I know that you really need to know all the players in the area. I am concerned that the bill would allow—indeed, would force—the Government to buy the land if the owner could not get fair market value for it. You do not seem to have factored that in. I think that it would happen every time the Government dealt with the lotting procedure, because it would be judging any such situation on what it perceived to be the right reasons for lotting, while the owner of the land would be expecting a fair market value—which we have heard is, by definition, an open market price with a willing buyer and a willing seller. The Government would be—to use your own word, Keith—"interfering" with that. Cabinet secretary, are you expecting that every time a lotting decision comes before you—if the bill passes—you will end up paying a lot more money for the land?

Mairi Gougeon: Again, I do not know whether you are talking about the valuation. Is that the specific point that you are getting at?

The Convener: It is part of the valuation. Let me give you a perfect example. Andrew lives on the edge of the village, providing employment for a couple of people and running a sanctuary for animals; another person called Mairi, who lives at the other end of the village, does some small-scale farming; and then there is Keith, the big landowner round about, who wants to increase the size of his farm. Keith knows that he will have to pay more than Mairi to get the whole lot as one, and Mairi knows that she will have to pay a proportion on top of the open market value if she wants to get it, as will Andrew. How do you balance that? How do you assess that, given that it will be you, as cabinet secretary, who will have to agree what the open market value is? I just see the whole thing ending up in the courts every single time the Government makes a lotting decision. It is such a difficult thing to do, and I say that as somebody with 12 years' practice of trying to do it.

Andrew Proudfoot: Scottish ministers will, when deciding whether lotting is the appropriate measure, have to make a decision on potential costs, should the land not be sold, or, as you have said, the market value. There are existing requirements in community right to buy legislation

on the compensation to be paid to the landholder should the land be sold for—

The Convener: That is not lotting up a community purchase, which is usually based on a whole estate being purchased with a one-off price that is then agreed and compensated for. Rather, we are talking about a specialist form of dividing out the market, which invariably results in a higher price being achieved, rather than the whole lot being sold as one.

10:45

Andrew Proudfoot: The advice that ministers would take on that would have to include those sorts of options and, ultimately, any costs that the landholder would not have covered from selling the land. If it were lotted, compensation elements would be considered.

The Convener: As you are answering these questions, Andy, do you predict that ministers will end up paying more for the land if the purchase was achieved by lotting than would be achieved otherwise?

Andrew Proudfoot: I do not think that I am in a position to say that. It is an individual circumstance.

The Convener: We have also heard that, if they have more than 1,000 hectares, some investors in land who are trying to reach their net zero targets—and to help the Government meet its targets—by planting more trees would, having planted their trees and set up forestry management plans, suddenly have to go through a whole lotting process every time they want to move on to invest elsewhere. We heard that that will positively discourage them. How do you answer that, cabinet secretary?

Mairi Gougeon: I am sorry—do you mean in relation to overall investment in the land or how to take those proposals forward?

The Convener: I am saying that those investors who are helping the Government and Scotland to achieve our net zero aims are frightened that lotting will depress their ability to deliver at scale—indeed, they all said that. What are your views on that? Are they right, or are they wrong?

Mairi Gougeon: We will, of course, listen to all the views that have been expressed to the committee. It all comes back to the idea that you can meet the Government's objectives only if you are doing things at scale, which is not necessarily helpful. I have visited various estates and seen incredible work being done, but I see the same when I visit smaller landholdings. I do not think that it necessarily needs to be one or the other in order to meet the Government's objectives—indeed, I do not think that that is the case elsewhere, when we consider international comparisons.

We recognise the role and importance of private investment, because the public purse will never have enough funding to enable all the activity that we need to see to meet our climate and nature targets. However, we must try to tackle the issues that we have with the scale and concentration of land ownership, and the impact that that has on communities. Via the measures in the bill, we have proposed a way to try to address the issues, and that is what is important.

The Convener: Those investors were already concerned when they heard that the figure was 1,000 hectares. It has been suggested that the figure will be brought down to 500 hectares. Would they not then be doubly concerned—and would that not concern you? It would be more difficult to justify the measure with small-scale schemes of 500 hectares than with big-scale schemes.

Mairi Gougeon: Again, we have set the threshold at the level that we have in order to try to balance all those factors.

The Convener: Okay—I assume that you will not be changing it.

I think that Michael Matheson has another question. Oh, no—Douglas, you are next.

Douglas Lumsden: I will follow up on your question, convener. What evidence is there that smaller landholdings can deliver similar outcomes in relation to nature and climate targets to larger holdings?

Mairi Gougeon: I do not think that it is a case of one can and one cannot. It is about how landowners deliver at scale. As I said, I have seen that when I visited projects, but small landholders can do exactly the same. It is about encouraging that co-operation. We see that with projects across Scotland—I think that there is a peatland restoration project with the crofting communities in the Outer Hebrides. There are also lots of international examples, some of which I know have already been mentioned to the committee in the evidence that it has heard.

The Land Commission did a study, too—I think that it was published around 2019—which looked at European comparisons and showed that work does not need to be done at scale for all the objectives to be met. It is about how we encourage that wider, landscape-scale co-operation. Again, that touches on other work that we are taking forward through regional land use partnerships. It is about how we can foster those relationships and encourage people to work together to help deliver the objectives that we want to see at scale.

Douglas Lumsden: May I check that the intention to fragment patterns of land ownership in

Scotland will not slow down or reduce the scale of the delivery of climate mitigation?

Mairi Gougeon: No, I do not see why it should do that.

Michael Matheson: The bill will establish a land and communities commissioner. Why not just vest the powers that are intended for the new commissioner in the Land Commission's existing commissioners?

Mairi Gougeon: Quite a few people who have given evidence to the committee have raised that issue. I think that I touched on this in a previous response, but, ultimately, the role is proposed in this way to provide for separation between the commission's regulatory and advisory roles.

Michael Matheson: You will be aware that, in its supplementary evidence to the committee and in its advice to ministers, the Scottish Land Commission made two recommendations on how the new commissioner should operate. The first is that the land and communities commissioner should consult the land commissioners and the tenant farming commissioner on their investigations before submitting a report or making recommendations to ministers. The second is that, if the new commissioner investigates breaches that pertain to the duties around land management plans and makes recommendations, they should consult the land commissioners and the tenant farming commissioner on their findings and recommendations. Are you minded to support those recommendations?

Mairi Gougeon: We are considering the recommendations further. I have set out why we proposed the role in the way that we did, and there is scope for such wider collaboration. The Scottish Land Commission can deal with the governance of that—it has the powers to do so. We need to give the matter more consideration, but we are looking at those recommendations in the light of the evidence to the committee.

Michael Matheson: Can you think of any reasons why you would not incorporate the commission's recommendations with regard to how the commissioner operates?

Mairi Gougeon: It is just a case of teasing that out. I come back to the point about balance. We set out a separate power to rest with a specific commissioner in the commission because the commission has had a largely advisory role. If we provide powers that create a regulatory function, it is important that those powers sit with an individual, notwithstanding the point that there can be further collaboration with other members of the commission, as needed. We have tried to achieve that balance, but we are open to considering the issue to ensure that we get that right.

Michael Matheson: The recommendation is not to fetter the new commissioner's powers but to require them to consult the other commissioners on recommendations and on investigations that they undertake.

Mairi Gougeon: I believe that the way that the power has been drafted would not necessarily prevent that from happening. That is why we are considering the matter further.

Rhoda Grant (Highlands and Islands) (Lab): We have had some discussion about a transfer test versus a public interest test, which has all been geared towards communities buying land. However, I wonder whether anyone who is buying large tracts of land should face a public interest test. There is nothing in the bill that insists that a new owner follows the land management plan. Given the power and control that owners of large land holdings can have, should whether they will manage the land in the public interest be considered before they buy land?

Mairi Gougeon: You made the point about only communities being able to buy land. I want to ensure that we are not mixing up the pre-notification process with the lotting proposals, which allow for more diverse ownership. I hope that I have been able to set out today the fact that we looked at those other options—I think that some of that information is also set out in the policy memorandum. The only way that we could feasibly introduce the public interest test was at the point of transfer, taking into account the various things that we have talked about today in relation to the aim of the test, which concerns the diversity of land supply. I touched on examples from elsewhere in relation to looking at that and potential tests for buyers. However, it is not possible for us to do that, and, as Andy Proudfoot outlined, it would actually be more restrictive. That is why we have taken this approach.

Rhoda Grant: So private buyers are held to a different code, if you like, from community buyers.

Mairi Gougeon: We had to introduce the provisions in the way that we have to ensure that the transfer test will take place at that point. That is not to say that all the land that goes through the transfer test would necessarily be lotted. That might not always be the case—there is a whole process that is set out in the provisions of the bill. There could be a transfer of land at scale.

What we are providing through pre-notification is, first of all, a route for communities to enable that to happen. However, if land was to be transferred that had not been lotted and that was above the threshold, any new owner would be expected to undertake the requirements that we are looking at through the land management plan provisions and community engagement.

Rhoda Grant: With regard to pre-notification, have you given any thought to extending the time allowed for communities to decide whether they want to act on a transfer of land? There has been a lot of feedback from communities saying that the time allowed is simply not long enough for them to do that, or that there should at least be a period of time in which they can register an interest and then do some more work, or say that they are not interested, with the sale therefore allowed to go ahead.

Mairi Gougeon: I appreciate that point. It has come through quite strongly in the evidence that people feel that the time allowed is generally not enough. We have been trying to strike a balance, because you do not want to withhold a sale for longer than is necessary. However, I appreciate that people feel that the period is not an adequate amount of time. Again, we are considering the evidence on that and any potential recommendations that the committee might make.

Rhoda Grant: Thank you.

The Convener: From what we have heard from the cabinet secretary, it sounds like there will be a few amendments. We will pause until just before 5 past 11 to allow a changeover of witnesses and everyone to stretch their legs.

10:56

Meeting suspended.

11:05

On resuming—

The Convener: Welcome back. The cabinet secretary has been joined by two new officials as we consider part 2 of the bill. I welcome Fiona Leslie, agricultural holdings and women in agriculture team leader, and Andrew Crawley, a solicitor at the Scottish Government.

Cabinet secretary, I start with the easy question. Why did the Government decide not to proceed with the statutory land management tenancy that had been consulted on?

Mairi Gougeon: Ultimately, we listened to the views that were shared through the consultation. It was felt that there was a broad need for the provisions on a model lease to be introduced. It is important that we bring that forward because there are some types of land management that people—whether they are in community groups or environmental organisations—would like to be able to undertake but the type of tenancy that would enable them to do so is not currently in place. That is where the model lease provisions have come from.

The Convener: The responses from people regarding whether that was a good or a bad idea were a bit more nuanced. Would it have been helpful to have a lease-forming part of the bill rather than introducing it through secondary legislation?

Mairi Gougeon: Ultimately, the latter will allow more detailed engagement to take place to ensure that we get the model lease right in the first instance.

I will hand over to Fiona Leslie, who might be able to provide more information on that.

Fiona Leslie (Scottish Government): Good morning. If we included a detailed model lease in the bill, that would potentially create a degree of inflexibility for communities, individuals, landowners, companies and businesses that want to undertake hybrid land management. If we framed it too tightly, we would inevitably end up excluding an activity or a practice that we require in the 21st century. The land management tenancy would enable hybrid land management, so it could be used in urban or rural areas. It could be used for Arthur's Seat, or for different scales and sizes of land. It is designed to be able to flex to meet the needs of individuals in the community. The key element is that flex.

We have spoken to stakeholders and land agents about the model lease in a lot of detail and there is significant interest in creating a guide and a framework that is sufficiently flexible, almost like a form, but not restrictive due to being constrained by legislation about specific elements, because that would not give us the flex that we will need for climate change mitigation and adaptation.

The Convener: So you see it being set in stone when the lease is entered into. Do you think that it will help people to get carbon credits?

Fiona Leslie: The carbon credit landscape is complex. It will help individuals and communities to do more for themselves. It will enable them to do climate change activities, which might include carbon capture, in a dynamic way with somebody who controls the land, whether that is a council or somebody who has a woodland that they manage but is reaching an age where they feel that they cannot manage it themselves. They might have 50,000 hectares of trees, but the scale does not really matter; it is more about the activity on the ground.

For some communities and individuals, there will be elements of discussion about carbon in the lease, which may be reflected in the rent. The carbon might sit with the landlord and the tenant of the land might undertake the activity, with that being reflected in their individual arrangements. Legislating for that could hamstring those individuals. We need to be very careful about the

design so that it does not create an unintended consequence.

The Convener: It would, especially as carbon credits are usually based on a long period of 50 to 100 years. The applicant would be entering a lease of up to 100 years, which would then, in your word, hamstring someone for the next 100 years. The lease would set out what can and cannot be done. In my mind, that makes it a bit of a questionable activity, and I do not understand it. It would have been helpful for me to have seen a lease in the bill so that I could understand it. Once you start fiddling around with legislation after it has been passed, you distort the land rental market, do you not?

Fiona Leslie: The legislation is drafted in such a way that it creates an enabling power and places a duty on ministers. It does not go as far as pushing future activity in a certain direction, so it does not create that constraint. There is flexibility for the purpose of making the system function. We have already discussed the Land Commission and the new tenant farming commissioner's views on the lease and how they could assist in ensuring that it is dynamic enough and that it works, as well as the range of technical skills that would be required to pull together the framework for a lease so that it functions. There is interest from charitable organisations such as RSPB Scotland, Historic Scotland and the National Trust for Scotland, because they can all see there being dynamic use of land.

Some public bodies may also find it useful. For example, in the case of headlands, Scottish Water is hamstrung on what it can and cannot do on the land, and in some circumstances the land is not suitable for agricultural use because of pollution risk. The bill could provide an alternate solution for land use that works for a group or a community. There is widespread interest in it and there is functionality and a willingness to make it work. We are in a slightly different position. I hope that that is helpful.

The Convener: I am not convinced, but I hear your arguments. The next question is from Kevin Stewart.

Kevin Stewart: Recently published advice by the Scottish Land Commission states that it supports the intention to improve the position for small landholders and to align their rights and opportunities with those of mainstream agricultural tenants. In a letter to the committee last year, the cabinet secretary acknowledged that there needs to be more consistency for small landholders by aligning them with the tenant farming legislation. What elements of the provisions will be changed in order to achieve that? With that positivity about aligning legislation with tenant farming legislation, is there also an opportunity to align small landholders with crofters?

Mairi Gougeon: You are absolutely right about that letter. The work on the amendments that we are intending to lodge is very much on-going. Ultimately, that is about further consolidation of small landholding legislation to try to make it more accessible, as well as aligning it with tenant farming legislation.

I am trying to understand what you mean about crofting. Most of the provisions that we have proposed have been on the back of consultation that we have undertaken directly with small landholders, so the provisions are based on where they would like to be and where they see themselves, as well as how they would like to be aligned with other legislation.

11:15

Kevin Stewart: The point that I am getting at is about expanding crofting outwith the traditional crofting counties. We have heard—I have heard this even though I have a very urban constituency—that many small landholders in parts of Scotland outwith the traditional crofting communities think that they would benefit if they were covered by crofting legislation.

Mairi Gougeon: The proposals are based on consultation of small landholders. According to the agricultural census, there are around 59 small landholders in Scotland, and their preference was to be aligned more with the agricultural holdings legislation rather than to become crofts. Applications can already be made by the landowner to the Crofting Commission in the crofting counties, should they wish that to take place.

Fiona Leslie may have more detail as she has been involved in many of the immediate discussions that have taken place with small landowners.

Fiona Leslie: Yes. There may be small landholders outwith the crofting communities who are interested in becoming crofts. That is not necessarily to do with the legal framework; it may be to do with the fiscal support that is available to crofters through the agricultural support scheme. Crofters, quite rightly, get bespoke crofting support in relation to the range of activities that are required to support them to croft, and there is interest in that from small landholders.

As part of the conversion from the small farms grant scheme, which was available from the Scottish rural development programme, to the small producers pilot fund, we will be making support available to smallholders and small landholders in a similar way to the provision of

support to crofters, but it is not for the same activities and it is not capital money—it is resource. That is why small landholders still call for access to crofting money, because that is capital funding and not resource. That capital enables crofters to buy sheds and other things to support the business. Small landholders in those areas will see a direct benefit that crofters get but which they do not get at present in relation to capital funding.

We can respond to you separately on that and provide you with more information on the differences between the funding for those two groups. The matter is important in influencing what people think the benefits may be of becoming a croft.

Kevin Stewart: That is a fairly good answer. I look forward to receiving further information on that. Whether it is a fiscal reason or a legislative reason that folk outwith the traditional crofting counties have an interest, there is obviously interest out there. Would you consider the expansion of crofting outwith the traditional crofting counties?

Mairi Gougeon: I come back to the comments that I made when we discussed the part 1 measures. There are issues to address in crofting, not least with vacant crofts, which we need to try to do something about. Legislation is coming forward to address the key issues that have been identified for crofters. It is important that we deal with that and address those issues through that legislation before we take any further steps.

The Convener: We move on to questions from Douglas Lumsden.

Douglas Lumsden: We have heard mixed views from stakeholders on whether registration should be required in advance of people exercising a pre-emptive right to buy. Some have argued that there are barriers to registering and others have argued that it is important that the landlord knows which areas of the farm are subject to a pre-emptive right to buy and the boundaries of those areas. Does the Scottish Government recognise that both concerns are valid? How will it balance those two considerations?

Mairi Gougeon: I do not think that any of those issues are particularly easy to work through. Some of them have been on-going, and we have tried to tackle issues in previous legislation. We want to ensure that we get the right balance and address any issues where they exist. The pre-emptive right-to-buy measures that we have brought forward have been discussed largely with the tenant farming advisory forum. Ultimately, it is about trying to make that process clearer, and I want to be clear with the committee that we will discuss any regulations and will develop them very much with the industry.

As part of those measures, we would seek to repeal section 99 of the Land Reform (Scotland) Act 2016. It was felt that, if that section was commenced, there would be a lack of clarity on how the process would operate. There was a general consensus that there should be registration but that the process could be improved.

I hand over to Fiona Leslie, who has been dealing with the issue and will be able to provide the committee with more information.

Fiona Leslie: Registering interest in a pre-emptive right to buy is available only for secure agricultural tenancies, which apply to tenants who hold heritable tenancies. That group can already register their interest in a pre-emptive right to buy with Registers of Scotland on the community right to buy schedule. They are meant to follow a certain process when they do so, but we have seen significant variability in the quality of the information that is provided. In the past, we have seen everything from a blank sheet of A4 paper with only a couple of lines serving as a map to Ordnance Survey Pathfinder scale maps with significant detail.

Stakeholders have differing views on the quality of the data and of the information for the mapping element of the registration. The committee will have heard in evidence the suggestion that information from the rural payments and inspections division field identification system could be used as a proxy for that data. However, not all the fields in that system collect the full extent of interests in an agricultural tenancy. Also, some tenancies are so old that they are recorded in the register of sasines, and the information from the lease documents is really variable. For example, some might talk about measuring extent by starting from a giant tree in the corner of a field, going a distance of 200 yards and then coming down a hill.

Registers of Scotland has a view on the range of information that is required for clarity for conveyancing purposes. At the end of the day, we will need to be guided by ROS on what is required to provide transparency for buyers and sellers. Someone who is looking to buy an estate where a tenant has already registered their interest in a pre-emptive right to buy would want their conveyancing solicitors to know about that in any potential purchase. They would want clarity on the extent of the tenancy and the range and scale of its impact before considering such a purchase any further.

Part of our process involves working with Registers of Scotland and all our stakeholders to

provide a set of guidance and information that will work practically for ROS's interests as well as those of the stakeholders, but also to offer clarity for purchasers, to enable others to view what was purchased and to provide transparency on ownership. That needs work, and there are differing views on how such transparency could be achieved. However, ROS will need to be in the driving seat so that it can tell us what is required for its systems and for data protection purposes. We will be guided by those factors. All the stakeholders recognise that there will need to be compromise. They know that the process has to work for ROS because, otherwise, the system will not function properly.

Douglas Lumsden: So that will come from guidance further down the line.

Fiona Leslie: Yes. We have already started meetings with ROS about that. It has had concerns previously because the data quality was so poor, and we were having conversations with it about those.

It is worth noting that ROS holds the only public data source for secure heritable tenancies in Scotland. That is the only public data set that is available at the moment. People can go on there and see who has registered interests in any piece of land across the country, and who the landowner and the tenant are. Rightly or wrongly, that is the case at present. We need to ensure that whatever process we develop will still provide such transparency and does not mean that we lose that data source, but without breaching the data protection rules.

Douglas Lumsden: When processes are vague, it can lay them open to legal challenge further down the line. It seems that views vary on how strictly boundaries should be specified. Some stakeholders have told us that they need to be properly defined, but the Scottish Land Commission has argued that boundary definitions are not necessary at the point of registration and could occur later. What is the Scottish Government's view?

Fiona Leslie: It is complex, but people need legal clarity, particularly in relation to undertaking a range of activities on a holding or if a tenant and a landlord are looking to do different activities in the future. Knowing your lease is critical. Understanding all the elements that make it up is important, and both sides need to understand that. There is an added complexity in that not all leases are written—some are unwritten, and the parties to such leases will need to enter discussions with each other on how things will work.

All of that comes into play regularly anyway in rent reviews and rental discussions. The elements of the tenancy go into the conversation about what rent is payable on a holding, and the purpose for which the lease is set affects how the rent is calculated. Tenant farmers and landlords who receive rents therefore need to know the extent of the tenancy and the purpose of the lease in any case. It is a complex arrangement, and they need to have transparency.

Douglas Lumsden: Does the Scottish Government feel that the boundaries need to be defined at the point of registration or not?

Fiona Leslie: Registers of Scotland will tell us the thickness of the line that needs to be on the boundary to which the tenancy extends because, before someone buys an estate with a tenancy on it, they need to know that somebody might exercise their pre-emptive right to buy. People need to know the extent of what they are trying to buy and the tenant's interest in the estate.

Douglas Lumsden: Are you saying that that needs to be agreed up front as opposed to later on?

Fiona Leslie: Yes. Once we modify the legislation, they will have to agree that. We need to work through what will happen to tenants who have already registered their pre-emptive right to buy. Roughly a third have already registered that interest. They are the ones with variable information. However, their landlord had the opportunity to disagree with that information when the interest was registered at the beginning. The landlord has already had the opportunity for engagement.

We will have to see what Registers of Scotland's position is, but it may want additional information to be provided by the tenant in order to bring the information up to a similar standard to everybody else's. There will then be a discussion about that process and the ease of making that happen for both sides.

The Convener: We will now get into the technical bit, which I am really going to enjoy—[*Laughter*]—although I am not sure that everyone else will. Let us talk about compensation on resumption. The legislation that you propose will make changes to existing legislation. Are you happy that that will send the right message to the people who let land in the future that they can do so with confidence and without the Government's subsequent interference?

Mairi Gougeon: I am confident about the measures that we are bringing forward. I know that a number of views were expressed when the committee took evidence. Again, we are considering all of that but, ultimately, this is about creating more fairness in the processes and provisions that we are introducing.

The Convener: Having been involved in the sector for a while, I know that, every time that land reform comes along, it puts a check on the number of tenants who go into agricultural tenancies. That happened in 2003 and in 2014. I am concerned. Are you not concerned that the legislation is going to send the wrong message? Surely we need more tenants, and we need it to be easier for tenants to rent land knowing that they can be secure there, as well as for the person who lets the land to be secure in the knowledge that they are there under an agreement that they have made.

Mairi Gougeon: We want a thriving tenanted sector in Scotland. There is absolutely no question about that. That is why the provisions that we have included as part of the bill will modernise the legislation and bring it up to date. Ultimately, they seek to ensure that tenant farmers can play an equal role in delivering the outcomes that we all want, which we have outlined in our vision for agriculture, and that they can be as much a part of that process as anyone else. Ultimately, that is what this is about.

As you said, whenever land reform provisions come around, we hear a lot about what landlords might look to do in relation to tenancies, but I think that there are always going to be bigger factors at play in that respect. For example, what is coming down the line with regard to the United Kingdom Government's announcements on its proposed changes to inheritance tax will do far more damage than any of the proposals that we are looking to introduce in the bill.

11:30

The Convener: In response to your comment, I have to say that I think that they will do as much damage as the proposals that are being suggested. My question to you is therefore this: how do you compensate somebody? You are suggesting that there will be a different form of compensation. When I enter a lease with somebody, as people have done with me, they know that I am going to farm the land and I am not going to do anything else with it. I am not after the hope value—I am there to farm it. If they want me to leave—because they can, say, build a house on it—do you think that I should get a bit of the house value, or should I just get the value that I have lost from the farmland?

Mairi Gougeon: A number of factors are already taken into consideration. Ultimately, we are trying to make the process fairer for tenants so that the value is recognised for them.

I will hand over to Fiona Leslie, as she will probably be able to add more information.

Fiona Leslie: In relation to the valuation methodology, our land agents undertake a significant number of valuations. They take a range of factors into account, and those factors are relevant to the individual circumstances with regard to the holding. When it comes to resuming a piece of land for a house, the valuation at the moment is four times the annual rent, and that is regardless of the scale of resumption. It is the same for a tiny piece of land as it is for a massive piece. That does not take into account the full scale of impact, which is why we have a range of proposals on the table in relation to the valuation.

We have heard what stakeholders are saying about that, and we have also heard their concerns about hope value. We have spoken to the valuers, and they have a range of methodologies that they use for standard valuations, as set out by the Royal Institution of Chartered Surveyors and by the Scottish Agricultural Arbiters and Valuers Association and the Central Association for Agricultural Valuers, which are the agricultural valuers for Scotland and the UK. They have a set of prescriptions and rules that they operate by, and they are confident in their minds that those valuations and that methodology are correct. They might suggest that they are unclear as to whether hope value is within or outwith scope in the bill, but their valuation methodologies and systems are very clear when it comes to how it all works.

If you say that hope value is excluded from the provisions, will that take account of every single scenario that arises? Will we have to define "hope value" legally in the bill? Yes, we probably will. Will we get it right? No, probably not. There is a risk of interfering with standard valuation methodologies that are used by professionals in the industry in order to try to solve a problem that might not be there, because it is not actually referred to in the bill. After all, we do not talk about hope value in the bill—we are silent on it.

The Convener: Some people are talking about it. They feel that it should be part of the bill and that they should be compensated for something. It is a bit like buying a Mini and then handing it back and saying, "I had been hoping for a Rolls-Royce, so I'll take the money for the Rolls-Royce rather than the money that I would have got for the Mini". Is that not a fair analogy?

Fiona Leslie: I think that, at one point, some stakeholders were hoping for hope value, but it has been recognised that that was unrealistic.

We are doing some work on the impact and the assessment of the disturbance payment. For businesses that will be disturbed by resumption, we think that, given the price inflations that we have seen on steel and the fixed equipment on tenant farms, and given the way in which the costs of all the inputs are firing up, the disturbance

payments will be significantly higher than they would have been before Covid and, indeed, than they might have been even two years ago. For example, deer fence is now £50 a metre.

The Convener: How much?

Fiona Leslie: It is £50 a metre.

The Convener: I will make some deer fences for you at that price, because I am not paying that.

Fiona Leslie: That is what we have been quoted—£50 a metre.

The Convener: Well, you would be. [*Laughter*.] Farmers get it for a good deal less, I suggest.

Fiona Leslie: There has been a 200 per cent increase on all sorts of things. Global markets drive price fluctuations on fertilisers and steel, which then directly rank up the prices for farmers to actually farm. The disturbance payments for some farmers may therefore be significantly higher than was envisaged at first, which is why we are doing a desk-based analysis of that.

I am not trying to divert from the question, but it is important to set it in context. A range of factors are at play here, and some of them will vary depending on the individual circumstances of the holding.

The Convener: A lot of resumptions that I have seen have been done with people sitting round a table, negotiating and coming up with what is considered to be a fair value.

I am concerned that you are not defining the methodology. I make it clear that I was a member of RICS, although I have let my membership lapse—like my memberships of the other organisations—because I do not use it any more. If you do not define the methodology, is there not a danger that you will leave things open to question?

Fiona Leslie: We can cover that with guidance for the tenant farming commissioner. I think that the valuations around the resumptions will be so variable that a point will be reached where a specialist is needed anyway because of the nature of the resumption. In those circumstances, people will lean on experts as part of the valuation method. For tenant farming, even when people are doing rents, they will use two different experts. They will come to the table with two sets of valuations and price tags and, when they have both set their positions, they will negotiate at the table.

If we put too much into regulations and we do not put enough flex into the system, there is a risk that we will cause a problem instead of solving a problem.

The Convener: The bill suggests that the tenant farming commissioner will be approached to produce a valuer, does it not?

Fiona Leslie: It proposes—

The Convener: The TFC will have to produce a valuer. I think that the TFC is saying, “Let us produce a valuer if agreement cannot be reached”. Would that not be a worthwhile amendment?

Mairi Gougeon: We are considering that as well. I recognise that it came through quite strongly that going to the tenant farming commissioner to appoint a valuer should be the next option and not necessarily the place to start.

The Convener: What about agreeing the compensation 12 months in advance? Fiona, you have just said that steel and fertiliser prices go up in days, let alone over 12-month periods. What it costs to produce a fence today may be doubled tomorrow. According to your books, a metre of deer fence costs £50. Is 12 months a reasonable period, or should it be shorter?

Fiona Leslie: It is feasible to agree the parameters. Some elements may require to vary, and we may require to consider how we handle that. Stakeholders also have differing views on the treatment of people on variable tenancies. That has a bearing on the validity of the scale of resumption, which needs to be carefully considered before stage 2.

The Convener: Okay. Cabinet secretary, you will be pleased to know that I am not going to be allowed by the rest of the committee to ask all my other technical questions, so I will submit them in writing.

We will turn to questions from Mark Ruskell.

Mark Ruskell: My first question is about the provision in the Agricultural Holdings (Scotland) Act 1991 on compensation for landlords where tenants plant trees. That often includes the cost of returning the land to agriculture. I see in my notes that that is covered in section 45A of the 1991 act. That issue that has been raised with me by tenants in my region for a number of years. Do you have any thoughts on whether that issue could be rectified in the bill?

Mairi Gougeon: There is a distinction between what is set out in relation to improvements and what is set out in relation to diversification. At the moment, schedule 5 relates to activities that support agricultural use of the land—for example, in relation to trees for shelter belts—whereas diversification is about non-agricultural activity. I believe that the former tenant farming commissioner provided information to TFAF about the range of considerations that must be taken into account with regard to planting trees. The work that has already been done will inform any future

codes or guidance in that area. I do not know whether that answers your question.

Mark Ruskell: Do you believe that that issue has been largely resolved or is in the process of being resolved and that a legislative change is therefore not required?

Mairi Gougeon: As I said, work has been done on that and it will inform future guidance, which is the place to deal with that.

Mark Ruskell: Another point that stakeholders have raised is that the bill does not provide a procedure to calculate compensation for game damage. I am interested in hearing more details on that.

Mairi Gougeon: Officials are working with the tenant farming commissioner and wider stakeholders—including NatureScot and organisations such as the British Association for Shooting and Conservation and the Game and Wildlife Conservation Trust—to look at how we can support training and advice for tenants and landlords. NatureScot already assesses damage that has been done by geese, for example, so we have experience that we can use to address the issue, but that work is on-going.

Mark Ruskell: Do we fully understand the impact of damage caused by game? I am thinking about avian flu. Would a mass release of pheasants in the countryside have an impact on the spread of avian flu and disease? Is that seen as damage? It feels as though we do not have a full grasp of some of the impacts of game. That came up in some of the committee's private discussions with stakeholders.

Fiona Leslie: On the risks of animal disease and zoonoses from pheasants and pheasant releases, Food Standards Scotland has issued specific guidance and instructions on animal feed stores. A farmer who produces animal feeds must follow specific rules to prevent the risk of contamination of animal feeds by wild birds or poultry.

During the business and regulatory impact assessment process, we were provided with specific evidence and research papers on the disease risk of zoonosis from game birds in relation to cattle in sheds, where large volumes of birds were coming into sheds. The sheds housed what are called store cattle—cattle that are overwintered and kept inside for fattening. Large quantities of birds were hanging out in the sheds and there was a lot of faecal matter. Research was done by vets in relation to disease risk. We can provide the committee with specific information about disease risk of avian flu and zoonoses and transmission to other species. That information would be provided by the team of the chief veterinary officer for Scotland, who is Sheila Voas.

Mark Ruskell: However, if good practice has been stuck to, you would not envisage that being part of a compensation claim.

Fiona Leslie: No, but the position depends on what the compensation is for. We can think about other farming issues, such as tick burdens on sheep and other disease risks, such as tuberculosis transmission. I used to work in animal health, which is how I know about this.

Sometimes results come up from faeces contamination where animals have been grazing, and there are risks from that. There is damage not just to crops but to fixed equipment, such as farm structures. Deer might destroy stuff by trashing dry-stone dykes and fencing; going into silage clamps; ripping open bales to search for food; or consistent sward damage.

11:45

The degree of significance will be key. This is not just about one-off cases of species turning up to trash a place and wander off; it is about an element of continuous damage. The volume of damage needs to be such that the damage is not coincidental and is happening continuously or at such a scale that it can be evidenced. The tenant will have to evidence the damage, so training and information on how to do that will be critical, because they will need to understand the process and when damage is not considered to be damage.

If a farm is affected by damaging geese, the degree of agricultural damage and the scale of loss can be seen really quickly and is pretty obvious. It can involve large volumes of birds walking into a crop and destroying whole sections of a field. That is not just a few birds wandering about; it is a mass flattening of the crops. When a farmer goes to combine and harvest, they cannot pick up the crop in the same way, or the crop will have been destroyed and will no longer be as viable a product. For the maltings, that would be quite a considerable sum.

Mark Ruskell: Thanks for the useful detail.

My last question is about deer. If tenants have a limited right to control deer on their land, does that preclude them from claiming compensation for deer damage?

Mairi Gougeon: That is one of the things that would depend on individual circumstances and whether a tenant has been given rights by the landowner to control the deer.

Mark Ruskell: Yes, and whether they have the ability to discharge those rights to the extent that they can mitigate the damage.

Mairi Gougeon: Absolutely.

Mark Ruskell: I think that that is me on the technical stuff.

The Convener: I have a couple of further questions. Rent reviews are very difficult; sometimes it is just a case of sitting down to agree them. You have proposed a change in the wording, and I know that the committee is going to write to you, cabinet secretary, about section 13 of the Agricultural Holdings (Scotland) Act 1991, which, I am sure, you will be delighted about. The bill uses the phrase "similar holdings", rather than the current "comparable holdings". Why have you proposed that change, and what is the difference?

Mairi Gougeon: I ask Andrew Crawley to provide clarity on that. I believe that there is not necessarily much difference between the two.

Andrew Crawley (Scottish Government): Our view is that this is a drafting choice. Of course, we make many choices when we draft legislation. We are not looking to achieve a different effect and we think that the phrases are functionally the same. There is no particular policy driver that we are seeking to deliver. Perhaps the committee will have a view on that, which it may want to express.

The Convener: I do not know; I just think that, if one word works, I do not understand why you would replace it with a different one simply for drafting reasons.

Andrew Crawley: I am not the drafter, so I cannot speak for colleagues who worked on the provision. If the committee has a view, we will take account of it.

The Convener: I am trying to find out whether there is a view; you say that you are using a different word with the same effect, which creates confusion.

I have a further question on diversification and how rent reviews take place. Farms, whether they are owner occupied or tenanted, have to look at all the options to make ends meet, because things are different. Ten years ago, a farm probably needed two farm labourers to do what one labourer can do now, because of machinery. That might throw up the issue of diversifying the use of a house, or a house might no longer be required. The bill does not cover that at all. Is that a mistake?

As Fiona Leslie said, farming is changing so quickly, so should we consider that the resources that are needed for farming should be changed? Should that be taken into account when setting rent to allow the landlord and the tenant—or the occupier and owner, if they are the same person—to make the best use of a property?

Fiona Leslie: Tenants and their landlords already have the ability to agree to a different treatment of surplus housing stock if the housing is no longer required. For example, it is quite common for a tenant to say that they no longer require a house or that they no longer wish to be involved in the management of a house, depending on how the lease is structured. That can—and does—happen at present.

I have heard of tenants handing back houses that they no longer use because their farming method has changed or because they and the landlord have come to another arrangement in relation to something else. There is normally a lot of negotiation around the rent and all the equipment and items that make up the farm. Depending on what both parties are trying to achieve, scenarios will arise whereby a tenant may agree to hand back surplus housing or agree that they will rent that housing out for private rent, in discussion with the landlord, so that there is a different rental arrangement and treatment of that property.

On diversification generally, a kind of "Suck it and see" thing goes on between landlords and tenants whereby, if a farmer wants to diversify into a new activity, the landlord will often let them do that until they see how it goes. The tenant might start off with a little honesty box or honesty shop; then, as business expands, they will reach with their landlord a point at which that item becomes more diversified or moves out of the tenancy. Sometimes, for example, farm shops are very profitable, and they are carved out of the tenancy and become a commercial lease arrangement between the tenant and the landlord. A range of scenarios may come into play, depending on a diversification's scale and activity.

All of that also has a bearing on rates and tax treatment. There are a lot of variables and calculations in the mix, for both sides.

The Convener: That is quite tortuous at the moment, is it not? My experience makes me ask whether the bill provides a chance to level the playing field for both parties.

Fiona Leslie: Yes. Stakeholders that have proposals on diversification can bring them forward, and we can look at them. TFAF—the stakeholder group—has the ability to look at such proposals, stress test them and make sure that they work for the whole industry. It is not always possible or appropriate for it to reach a consensus, because it represents member groups, but it is possible for it to bring forward proposals.

The Convener: I have never seen that working to any extent, but there you go.

Douglas Lumsden has a question.

Douglas Lumsden: It is a brief one. A common concern is the lack of a clear definition of "sustainable and regenerative agriculture". How will you ensure a consistent understanding of that term?

Mairi Gougeon: That discussion will be familiar to Rhoda Grant and me, particularly through the consideration of the Agriculture and Rural Communities (Scotland) Act 2024, which was passed before the summer last year. Definitions of "sustainable and regenerative agriculture" were raised during evidence sessions on that bill. That is why we set out as part of that bill, which is now an act, that we would bring forward a code of practice on sustainable and regenerative agriculture, because it includes a wide variety—a basket—of measures that can be used.

An awful lot of work is being undertaken on producing that code and the various iterations of consultation that have been under way before it is due to be published. I appreciate that there is no definitive definition of "sustainable and regenerative", but that is the specific reason why. A basket of measures is included that can look different in different pieces of land and in different farming systems across Scotland. That is why we developed the term in the way that we did for the 2024 act and why we are taking the work forward in that way.

Douglas Lumsden: So the definition will come from that piece of work.

Mairi Gougeon: Yes.

Douglas Lumsden: Will the Land Reform (Scotland) Bill cross-reference that? Is there a need for that?

Mairi Gougeon: We would have to consider whether it was necessary for the bill to refer to the code of practice. Again, that work is largely being taken forward through the agricultural reform programme.

The Convener: Mark Ruskell has a question before I go to Rhoda Grant.

Mark Ruskell: I have a final question. The committee has been looking at the bill for quite some time, during which other legislation has been progressing through Parliament, including the Wildlife Management and Muirburn (Scotland) Act 2024. Is the bill also an opportunity to address some loopholes and issues in other acts that relate to land use? In particular, there are concerns about a loophole in the aforementioned act in relation to the area that is subject to grouse moor licensing**.** Clearly, some such issues were not foreseen when the bill was drafted. Given that we are in the last year of the parliamentary session, is the cabinet secretary considering whether the bill would be an appropriate vehicle to try and tidy up anything that exists in that space? [*Laughter*.]

Mark Ruskell: I am inviting you to do that—I will not mention the seals.

The Convener: Cabinet secretary, I am sure that you would like to answer that question, but I know that parliamentarians have very strong views about introducing at stage 2 things that have not been consulted on at stage 1.

Mark Ruskell: Indeed.

The Convener: I might find myself in complete disagreement with a fellow committee member, but I ask you to bear that in mind.

Mark Ruskell: The matter came up in the evidence on the bill.

Mairi Gougeon: I am aware that an issue has been raised with us, and I am more than happy to follow up with the committee on that. NatureScot has been adding conditions to the licences to try to address the issues that have been raised. We are considering the issue further, but I do not anticipate the bill being the vehicle with which to tackle it. Again, more work needs to be done to find out whether a solution is needed beyond what has already been put in place, and what that solution might look like.

Mark Ruskell: Okay.

Rhoda Grant: On an issue that the committee has discussed with you previously, there are concerns that there could be unintended consequences whereby resumption of a small part of a farm could cost a landowner more than resumption of the whole farm. Will you look at that and how that could be rectified? I am not saying that there should not be compensation for small areas, but if it becomes easier to take the whole farm back from tenancy, that would make matters much worse.

Mairi Gougeon: Of course we want to consider any unintended consequences. I will bring in Fiona Leslie on that.

Fiona Leslie: TFAF has been considering resumption for a number of years now. There are on-going discussions with it on the provisions, including on treatment if a whole holding is resumed through an incontestable notice to quit. That is still under active consideration.

Rhoda Grant: That seems to be fair. There has also been discussion about compensation and "hope value", and I can understand why. If a tenant were to have done something, resumption could mean the owner making a profit from somebody else's endeavours. If the hope value were available to tenants to realise, would that need to be considered when looking at

compensation—for example, if the tenant could do the development that the landowner intends to do and profit from it themselves?

Fiona Leslie: To clarify, do you mean that the tenant would be doing something in advance of the landlord doing it for the same purpose as the landlord wishes to resume the land for? I am not trying to put words in your mouth; I am just trying to understand.

Rhoda Grant: They could be working on a similar proposal. The tenant might think, "Here's an opportunity for me. I'm going to do this—I'm going to develop it and I am going to make a profit." The landowner might see that and think, "Actually, I could do that on an even bigger scale if I resume that piece of land and do it with some of my own land", and therefore stop the tenant from realising the benefit.

Fiona Leslie: There are specific rules of engagement for that kind of thing. If the tenant wanted to do something that was non-agricultural, that would be heading towards the territory that we have just covered in relation to diversification in commercial leases or whatever else.

For example, if the tenant wanted to put houses on the land, that would not be a permitted agricultural activity under the terms of the lease. They would need to have discussed that already with their landlord and come to a separate agreement on it. That land might be taken out of the lease, or something else could happen with it. However, things are unlikely to happen in that way between a tenant and a landlord.

12:00

There might be a scenario where a tenant wanted to diversify in another way, and the landlord was willing, up to a point, but could see commercial opportunities that could come with a larger development than the tenant is offering. Depending on its purpose, that could be a reason for a valid resumption or the landlord might be inadvertently irritating the lease. It is all quite technical, so we could get back to you in writing

Rhoda Grant: That would be useful.

Fiona Leslie: In doing so, we could set out how that interfaces with the bill as it is at the moment, because that will have a bearing on what you might or might not do.

Rhoda Grant: That situation is likely to be where conflicts would arise.

Fiona Leslie: Yes—although a landlord and a tenant probably would not get that far, in practice. It would be quite rare to get to that point, because of the cost of planning consent, how the planning process works and the amount of investment that would have to be put in to get such a scale of development over the line.

Rhoda Grant: Okay. I look forward to getting something in writing.

I turn to crofting and smallholdings. Rather than reform the legislation on smallholdings, what consideration was given to transferring them to crofting tenancies?

Mairi Gougeon: That largely comes down to the engagement that took place with small landholders and how they wanted to proceed. The legislation needs to be modernised, but what we produced and proposed was largely based on small landholders' suggestions.

Rhoda Grant: I had wondered whether they had considered their interests being transferred into crofting tenancies.

Mairi Gougeon: That is the thing. As Fiona Leslie outlined in her earlier responses, some small landholders might have wanted to do that or, at least, would have liked it to be considered. Fiona took part in direct discussions with small landholders. In broad terms, that was the direction of travel that they wanted to go in. Is that correct?

Fiona Leslie: Yes. Some 71 per cent of respondents to the small landholding consultation wanted to remain small landholders. That is possibly tied to the existing power for them to become crofters if they want to do so. Those who wanted to do that have, largely, already done so after discussion with their landlords.

For those who did not, that touches on the part of their psyche that dictates whether they are a crofter or are undertaking agricultural activity. Crofters and farmers have different views on what they do: crofters will tell you that they croft, and farmers will tell you that they farm. Small landholders are very precise in saying, "We farm: we do not croft." There is a cultural difference between the two groups, which has perhaps influenced their responses to the consultation. We can send over the section of the consultation report that contains the response rates, which might explain why respondents reacted in that way.

If we consider where small landholdings are located, we can see that a large percentage of them are on Arran. However, outwith that, they are spread out—for example, they are in Ayrshire and up in Glenlivet. Across the board, they are not based particularly in the Highlands or on islands, so they are not in traditional crofting communities. Does that affect their perception of who they are? It possibly does.

Rhoda Grant: I argue that crofters have agricultural landholdings.

Fiona Leslie: It is not about their house.

Rhoda Grant: A croft is an agricultural landholding—although it comes under different legislation, obviously.

The Convener: I am glad that you clarified that, because it could have ended up with lots of correspondence coming to the committee. When the Government introduces its crofting reform bill, perhaps it will clarify which of the three acts on crofting we are supposed to be working under, and will resolve all the sump issues that were brought up years ago. It will all be easier, and small landholders will then be able to decide whether they want to become crofters.

We have come to the end of our evidence session. Much to my annoyance, we have skipped over some questions. Cabinet secretary, we will send you those in writing, and I ask that you respond to them fairly quickly. Fiona—if you respond to Rhoda Grant, I ask that you do so through the committee, and we will ensure that she receives the answers to her questions.

We will now have a short break from land reform matters before we start considering our stage 1 report, which I am sure will be a lengthy but interesting process. We will make a start on that in roughly two weeks' time.

I thank our witnesses very much for their evidence. I suspend the meeting for five minutes.

12:05

Meeting suspended.

12:08

On resuming—

Appointment of the Chair of Environmental Standards Scotland

The Convener: Welcome back to the third part of today's Net Zero, Energy and Transport Committee meeting. This evidence session is a chance to consider the Scottish Government's nomination for the chair of Environmental Standards Scotland, and I am pleased to welcome its nominee, Dr Richard Dixon, to the meeting. Appointments to the ESS board require parliamentary approval under the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021.

This evidence session is an opportunity to put questions to Dr Dixon about his vision for the role, and what qualities and experience he thinks he would bring to it, prior to Parliament considering a motion on his appointment. "Dr Dixon" is very formal. Richard, do you want to make an opening statement?

Dr Richard Dixon: Yes. Thank you very much, and I thank the committee for inviting me to speak. Obviously, this is part of a job application process, but I hope that we might talk about ESS more generally and the environment, perhaps, as we go through the meeting.

Your papers have a truncated CV, so I will very quickly go over my history. I have been the acting chair of Environmental Standards Scotland for nearly a year and have been on the board since we set the organisation up five years ago. Before that, my public-body experience included eight years on the board of the Scottish Environment Protection Agency. I have been active in the environmental charity sector for 30 years. I was the director of WWF Scotland and, after that, the director of Friends of the Earth Scotland.

That gives me an excellent network in the sector, which is an important group of stakeholders for ESS. In that package of different things, I have experience of environmental science, policy formulation, communications, regulation and—most recently—scrutiny of public bodies.

With regard to my priorities, I am, should I be appointed, not looking to bring revolution to ESS. I have been on the board since its start, and I think that our first chair did an excellent job of setting up the organisation from scratch during Covid restrictions, then running it for three years. I think that the organisation is doing really well.

I have priorities but, as I said, they are not revolutionary. First of all, there is the key task of creating a new five-year strategy. We are due to bring it to the committee in October this year, after consulting stakeholders over the summer.

In the next four years, I want to see ESS making the maximum difference that it can make on the biggest issues, which are climate change and biodiversity. On climate change, I share the committee's concern about the long timescale for creating the next climate change plan. That also raises the problem that, while we wait for that plan, it is not very clear whether activity is going on to deliver existing commitments. The foot has potentially come off the pedal on that.

On biodiversity, I am very much looking forward to seeing the proposed natural environment bill when it arrives soon in Parliament. There is a proposal that ESS will become an independent review body that will review the Government's strategies and, more widely, what is happening on biodiversity and achieving new biodiversity targets. My determination is that the body really will be independent and that, like our other work, we will be answerable to Parliament but not answerable to ministers in performing that role. It is important to me that we preserve that independence.

Finally, we had the rather lacklustre review of the Scottish Government's environmental governance. There is unfinished business on environmental courts and on access to environmental justice in general, so I would like us to make progress in that area.

I look forward to working with you over the next four years, if you recommend me and I am accepted by Parliament. Thank you.

Michael Matheson: Good afternoon, Richard. You have been a member of the board since the setting up of ESS, as you mentioned in your opening contribution. What would you bring specifically to the role of chair of the board, if you were appointed?

Dr Dixon: I have suggested that I have a few priorities. In reviewing what we call our strategic plan—the first three-year strategic plan—we concluded that it was not very clear what our priorities were. That was because we had just set up a new organisation: we did not know how many representations and inquiries would come to us and, from looking at strategy and analysis reports, we did not know exactly what our programme of work should be. It was quite excusable that the priorities were not as clear as we might want.

In the new strategy, I want the priorities of the organisation to be very clear and I want very clear flexibility in those priorities for urgent and emerging issues. I want clarity around the things that we mostly work on, but we should have space to cope with new things, as well. That clarity is important.

We have a great board, so I want to develop that board and harness those people, who all already make a good contribution beyond the hours that they put into board meetings. Everyone has another role within the organisation—helping with something, advising on something or chairing something. I would like to build on and support that work

One of our challenges is that the public sector is moving into an even tougher period in terms of resources, so our relationships with the public sector need to be as strong as possible for when we say to organisations that they are not doing something that we think they should be doing and they say, "Ah, but there is no money." We need to be firm on our side, but we need to be understanding about the situation that local authorities and other public bodies find themselves in. Part of the job of the chair is to help to build those relationships, to maintain them and to smooth those discussions.

12:15

Michael Matheson: You mentioned in your opening contribution that you thought that ESS had been doing well since it was established. What do you think it has been doing well, and not doing well, during your time on the board?

Dr Dixon: The board sees reports about the inquiries and representations that come in. About six months ago, I was reading the board papers and saw a report from the team that does investigations. It included a whole page of things that we had done. I looked at it and thought, "That's great—the world is different and the environment has improved because we did all those things." I am very pleased with the progress that we have made on those things, and I am pleased with the approach that we have taken. The board—led by the first chair and now supported by me—is keen on the idea that we should resolve things by talking to people, if we can, and that we should resort to our formal powers only when we have to do so.

We have achieved a lot of things. For instance, it is now almost impossible to put a seal scarer on a fish farm. Someone had complained to us that an assessment was not correct, so we worked with Marine Scotland—as it was at the time—and the guidance was changed. Now, farms must do a much more rigorous assessment and it is very hard for them to justify having a seal scarer, which in most cases would be very damaging for protected dolphins and porpoises. That is one example of a thing that has changed in the real world because of what we have done.

There is frustration that things sometimes take a long time, but there are natural timescales built in to the process. If someone raises a concern with us and we write to a public body, it is only fair to give the public body 30 days to respond. If it writes back with not quite the right information and we have to ask again, or if it does not write back and we have to remind it to do so, that takes another 30 days. Suddenly two months have gone by in which we are just waiting for information. That is frustrating, but it is naturally built in to the system. We are working on it, but there is not much that we can do about it.

Recently, we have seen that, when we come to an arrangement with a public body, it agrees to do certain things. We publish a report saying that we have found an issue, that we have discussed it, and that the public bodies has agreed to do specific things. However, what is not obvious from the website or from any document that we publish is that there is a lot of follow-up activity. We continue to talk to that public body: "You said that by April you would do this. Have you done it?" We have learned that we need to be better at communicating the on-going discussion in which we make sure that what the public body has agreed to do is happening. That is building up to being a big bit of work, now that we have quite a few investigations under our belt, but it is not really visible to the outside world.

Finally, a thing that I think has gone well is our use of our enforcement power on publishing a report that compels the Scottish Government to address an issue. We have done two of those—we publish an improvement report and the Government has to come back with an improvement plan. We have published one on air quality management, and one on the public sector duty on climate change and what local authorities are or are not able to do with it. Both of those reports have come to the Net Zero, Energy and Transport Committee for discussion.

I am pleased that we did them and think that we did them well. We had a long discussion with the Scottish Government, when we had identified what we thought the issue was. The Scottish Government moved quite a long way on a number of issues, but would not move as far as we thought it should move on some final key issues, so we moved to the enforcement measure of producing an improvement report.

I am pleased that we have exercised our teeth, in a sense, and also that we have not had to do so in most cases because we can get the right result by talking to people and agreeing a way forward.

Michael Matheson: Okay. Thanks.

Mark Ruskell: I was struck by your initial comments, Richard, about the big challenges in making sure that there is a climate change plan that delivers for Scotland's potential role under the proposed natural environment bill and around unanswered questions about environmental governance. However, there is a whole range of other issues as well. You mentioned seal scarers in fish farms, and the whole raft of regulatory reform analysis that Environmental Standards Scotland performs.

How challenging is that landscape at the moment? Week in, week out, I come across demands for reform of regulation and questions about enforcement. Most recently, we heard about the treatment of battery waste at recycling centres, which is an issue that raises questions about whether the regulations are adequate.

In a landscape in which there is such a strong demand for ESS's services, how do you equip the organisation to deal with the breadth of that demand, to analyse whether regulations are being enforced appropriately and to consider whether they are fit for purpose in the first place?

Dr Dixon: There are probably two parts to that question. On the investigations side, the number of inquiries and representations that come to us has been slowly but steadily increasing over the years of our existence, and we have several scenarios for what that might look like in the future. We are in the process of recruiting a new officer to work in investigations, so we are anticipating an increase in demand. However, in five years' time, the demand could be really quite big, and we need to build that into our thinking.

On the analysis side, we have some subject experts. For example, we produced a report on soils, in which we identified gaps in the regime governing soils. That was written by our expert on soils. However, in some areas, we will not have an expert, so we commission external work. For example, the report that we produced on antimicrobial resistance was done by external consultants. There are a range of ways in which we can do work.

For areas that are priorities for us and in which we know that a lot of work will come in, or on which we decide proactively to do a lot of work, we will have such subject experts, but, for other areas, we will look at ways of sharing resources, including with the Office for Environmental Protection down south, which has offered us help from its college of experts. In addition to having experts on the team, there are ways in which we can get free help or cheap help, as well as quite expensive consultant help.

As we look forward to the next strategy period, it is a question of thinking about which people we will need to have in-house and which people or

services we might need to buy in from time to time.

Mark Ruskell: Are you able to predict what the demand on your resources will be? You can strategise and say, "These look like the areas where we're going to be asked to do more work," but there might be new and emerging areas that have not yet been scoped out.

Dr Dixon: That is right. We can make our best estimate. That is what the scenarios in relation to what the future level of representations might be are about. Will that continue to grow in the way that it has been growing? Will it be a steady growth, such that, in five years' time, it will be at a certain level? Will it accelerate as people hear more about us or as the environment degrades further and more people come to us? We have scenarios for that, and we are looking at financial projections for the next 10 years.

With regard to subject matter, if we have a set of four or five big priorities, we will have people who are able to address those priorities, but we will also make sure that we build in space to enable us look at an issue that emerges that we had not thought of, as you suggest.

We also want to ensure that we can do cross-cutting work. We are beginning to look at public registers. Someone made a representation to us about public registers in forestry that were not available for environmental impact assessments in the way that they should be. We fixed that, and, in August, those things will go online. That is not the first time that someone has told us that a public register is not working or does not exist, so we are doing a broader piece of work across the public sector on which public registers should exist on environmental matters and which of them actually exist and work well. We do such cross-cutting governance work, as well as looking at subject matter such as climate change.

Mark Ruskell: Would you say that the resources that you currently have as an organisation are adequate?

Dr Dixon: The UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021 asks us to report to Parliament every year on whether we think that we have the resources to do our job. We have recently written to the committee to say that we think that that is the case this year.

Obviously, staff costs go up, and 70 per cent of our costs are staff costs, which everyone expects are likely to rise 3 per cent a year over the next five to 10 years. Therefore, if our budget stands still, it will not be very many years before we cannot really trim anything else and start to not be able to do our job, at which point we would come back to you to say, "We can't see how to do this."

We are obviously thinking about savings at the moment. This year, we got a 3 per cent increase. The figures in the papers include a one-off technical capital allowance and the actual comparable figures are 3.02 per cent this year and 3.1 per cent next year—so, an increase of about 3 per cent. Apart from the changes to national insurance for employers, that is pretty much a standstill budget. We are, of course, grateful for that, but should we start to get a budget that is declining in real terms—although we would obviously work on that ourselves—we would come to you to talk about it.

Mark Ruskell: This is probably the final question—if there is time, convener. It is about your relationship with other stakeholders, Dr Dixon. We now have the Environmental Rights Centre for Scotland, which presumably drives quite a lot of referrals to ESS; there was also the work that ESS did—with, I think, the Convention of Scottish Local Authorities—around reporting scope 3 emissions. There was perhaps a different interpretation about what was appropriate there. Do you have any comments or thoughts about how those more challenging stakeholder relationships are working and how you wish to progress and develop them? To summarise, I guess that there will be those that want you to go faster and those that want you to go a wee bit slower.

Dr Dixon: Obviously, I come from the environmental charity sector, so I have been a campaigner. The job of a campaigner is to have a nice, calm conversation with you, but then they go outside and say, "It's not going fast enough. They're not taking this seriously." I understand that some groups will say to us that we do not move quickly enough or take on things that they think that we should take on. There is a bit of that going on. However, we have very cordial face-to-face relationships with most stakeholders.

In the very early days, public bodies perhaps did not know who we were, why we were writing to them to ask for something and whether they even needed to respond. We have completely got over that. Pretty much every public body that we write to knows that it has a statutory duty to respond to us. There is a good set of relationships with those stakeholders.

If I become chair, I would expect to, with the chief executive, meet some of the key public bodies regularly to talk to their chairpersons and chief executives. As I come from that sector, I already have good established relationships with bodies such as the Environmental Rights Centre for Scotland. That body wrote quite a critical report on us, which I did not find very fair, but we still have very cordial relationships with it.

Mark Ruskell: Thank you.

The Convener: That was not the last question, Mark—the last one is from Monica Lennon. Sorry, Monica.

Monica Lennon: I thought that I had been forgotten there. Thank you, convener.

The Convener: You are not forgotten, Monica.

Monica Lennon: Good morning, Richard, or rather good afternoon—you have been here all morning. Thank you for putting yourself forward for scrutiny. I was looking at your CV and background information, and my favourite fact is that your PhD is in astrophysics, which, in your own words, makes you "nearly a rocket scientist"—it is good to know that.

I want to ask about European Union alignment. You have said to the committee previously that one of the challenges is keeping pace with environmental law changes at the EU level. Could you say a brief word about the current approach taken by ESS and how you see it developing or improving in the future?

Dr Dixon: That is an extremely important area to us. It is not just the EU. Obviously, there is a policy commitment from the Scottish Government to keep pace with developments in EU environmental law but, as a board and an organisation, we are very interested in best practice around the world. If Brazil does something very forward thinking about forestry, why should we not learn from that?

The problem is, of course, understanding all that. Helpfully, the EU has just published a comprehensive report on how its package of green deal measures—which is a huge package of environmental targets—is going. That is a very useful monitoring stick to see whether there is something there that we should be taking on.

12:30

We will commission work on keeping pace that will consider what Scotland has missed so far and what is coming up. For instance, there is a revision to the urban waste water treatment directive, which is about how we treat water before it goes into our rivers and burns or out to sea. That issue is quite high in the public's consciousness. There is already discussion about how we can afford to make the improvements that are needed to meet the current standards, and there are new standards coming from Europe. There are also new standards coming on air quality. We could ignore those standards and just carry on as we are, but we will not be doing our best to protect people's health if we do not meet them.

We will be part of that work, but we will only be a part, because it is a very big job. We will certainly be working with many others to try to understand what is coming, what its significance to Scotland will be, and over what timescale Scotland should be requested to meet new standards and change legislation.

Monica Lennon: That is helpful to know.

A few years ago—perhaps five or six years ago—you were on SEPA's board, but there has been a lot of change since then. You have touched on some of the resource pressures. We hear in the committee and in our individual regions and constituencies that people feel that it is hard to get information if they report something to SEPA or have a concern about pollution, and the public do not always hear about the lighter touch that is taken by having a dialogue with people who might be causing pollution. It feels as though there is a growing gap between the concerns that are reported and what the public hear in relation to outcomes and resolutions.

You have talked about your role in the networks and your insight. I have given the example of SEPA, but it is not the only organisation with such issues. How do you see ESS being able to be fair but firm and being able to improve public understanding and confidence? Right now, people feel that there is not a lot of accountability.

Dr Dixon: What we do involves a number of stages. We begin an investigation when someone makes a representation to us or when we decide that we should look at an issue. After talking to the public body or bodies concerned, we make a conclusion about what we think is wrong. What is not being delivered, or what is the failure in the law that means that something cannot be delivered properly? It might be that the environment cannot be protected or that human health cannot be protected properly. That is the bit that we do. We say what is wrong.

We usually set out the things that we think should change, but that is the beginning of a discussion. We might say to a public body that there is a problem and that we think that it should do A, B and C, and it might come back to us and say that it agrees that there is a problem that it should fix but that doing X, Y and Z would be more efficient and would have additional benefits. That is the sort of discussion that we have. We make a judgment about whether what has been done has fixed the problem that we identified and, if it has, there is agreement.

At that point, a final report is published, so anyone can go to our website to see the agreement that we have come to. We set out why we think the problem has been fixed and the timescale over which pieces will be put in place to achieve the final solution to that problem. The person who made the representation is contacted

during that process. They are told how things are going and receive the final report.

Sometimes, we have a timetable with a public body that sets out six things that will happen over the next 18 months, but it is pretty impossible for someone outside the organisation to understand that there is on-going dialogue about those things. Unless something goes seriously wrong—if one of those things was definitely not going to be delivered, we might start to take enforcement action or reopen the investigation—that part is a bit invisible, so I would like to make it more visible. I want someone on the outside who is tracking the issue to be able to see that the problem has been resolved as long as certain things are delivered and to see what is happening in delivering those things, so that, at some point, we can say that a case is completely closed because the problem has been fixed to our satisfaction and the public body's satisfaction.

Monica Lennon: It is fair to say that concerns about access to environmental justice in Scotland are well documented—it is very much a topical issue. You mentioned environmental courts and governance. We do not have an environmental court at present, and we do not know what the Scottish Government will do in relation to compliance with the Aarhus convention. Does that matter to ESS? If Scotland goes down the road of compliance and ends up with an environmental court, will that affect the operation and capacity of ESS and its relationships with other bodies? If that does not happen, what is your take on what would happen next in Scotland? What would be the effect on ESS?

Dr Dixon: First of all, compliance with the Aarhus convention and the European directive that implements it is about compliance with environmental law, so it is something that we are very interested in. If we were to fully comply with those—and one of the ways that we might comply is by having an environmental court—that would change the environmental governance landscape. ESS would have to learn how to work with such a court, because some things would go there, some things would come to us, and sometimes there might be grey areas. We would make an input into the formulation of that court or tribunal so that it would be, in our view, the best possible version, and we would try to build a good working relationship with that court so that we could build on each other rather than confuse people by appearing to compete.

ESS is keen on the idea that the right sort of environmental court would make a big difference in relation to access to justice, and so it thinks that we should have one. The Scottish Government appears to be determined not to have one. I brought quotes from the Government, which are from the review of environmental governance. The Government recommended

"that ESS, when they revise their strategy, should give further consideration to the conditions where it would be appropriate to investigate the individual circumstances of a local area, group or community, given the restrictions on exercise of its powers and functions. We further recommend that the Parliament considers this matter in their oversight of ESS's activities and in particular when reviewing a draft revised strategy in due course."

The key phrase is

"given the restrictions on the exercise of its functions."

ESS is forbidden from looking at individual cases. My personal interpretation of those paragraphs from the environmental governance report is—if I may paraphrase—that ESS should look at what it can do on the things that it is legally forbidden from doing, and then the Parliament should ask us why we are not doing the things that we cannot do—which is a bit of a waste of time for all of us.

Monica Lennon: I do not know what will happen after today, but I think that we need to hear more about that. Thank you for your answers.

The Convener: That is an interesting conundrum to leave us with. Before we leave, there are two things that I would like to say. One is a question and one is a comment. When people come in and take on new roles, I am always nervous that there will suddenly be a splurge of spending—although for you, Richard, the role will be a continuation of what you are doing. When the new chief executive officer of SEPA came in, I noticed that the first thing that happened was that a massive amount of money was spent on teaching the executive team how to deal with matters, which cost the taxpayer £175,000. Will you confirm that you are not proposing to do anything like that in your term?

Dr Dixon: Yes—and that would be trying to micromanage the organisation. That is a matter for the chief executive, so I might have a discussion with them, and the board might discuss such things, but the personal development of the senior team is finally a decision for the chief executive. I would certainly not be at all pleased if we were spending that kind of money on anything of that nature. Personal development is great and we should spend money on that, but not huge amounts of money.

The Convener: I think that everyone questions the vast amount of money that is being spent on training people when they perhaps already have the skills that they need.

My other point is just an observation. I remember when Jim Martin initially came to the committee and we discussed ESS and the role that the committee would have in relation to it. I think that his comment was—I probably

paraphrase it very badly—that "We look forward to working closely with the committee; we are not going to do everything you tell us to do, but we are very happy to have regular meetings and updates." At that stage, the committee was happy with that, and it seemed an eminently sensible way of going about it. Will that be the way that you are going to continue?

Dr Dixon: Yes. I welcome close contact with the committee—you are absolutely essential. You are our masters, in a sense, so we need to be closely in touch. When we produce, for instance, an improvement report that generates an improvement plan, that will come here for discussion. This is the most important committee to us—it is very important indeed. We offer to come every year to give you an annual report, and, when issues come up, we get someone to input as well. I very much welcome that, and I look forward to plenty of close contact over the coming years.

The Convener: Thank you. We will consider the recommendation that we will make to the Parliament as a result of this discussion, later in the meeting. The clerks will be in touch with you. Thank you for your time this morning and for waiting patiently when I let the earlier part of the meeting run over time.

We will move on because we are quite pushed for time.

Subordinate Legislation

Persistent Organic Pollutants (Amendment) (No 2) Regulations 2025

12:40

The Convener: The next item of business is the consideration of a type 1 consent notification relating to a proposed statutory instrument, the Persistent Organic Pollutants (Amendment) (No 2) Regulations 2025.

On 22 January, the Scottish Government notified us of this proposed UK statutory instrument. It would involve the UK Government legislating in devolved competence and it is seeking the Scottish Government's consent to do so.

The Scottish Government proposes to give its consent and our role is to decide whether we agree to its doing that. That involves determining whether we agree to the UK Government legislating in this particular devolved area and whether we are content with the manner in which the UK Government proposes to legislate. If we are content for consent to be given, we will write to the Scottish Government saying so. In doing so, we have the option to draw the Scottish Government's attention to matters or to pose questions. There were some suggestions in the clerks' papers for things that we could consider.

Do any members have views on the statutory instrument?

Mark Ruskell: I have a concern about the process that the new regulations have gone through. As I understand it, we are signed up to an international convention on these "forever chemicals". That convention is meeting again in April for a conference of parties to decide which chemicals will be exempted from the regime. The parties will come up with a technical formal wording, which signatories can adopt.

It seems a bit odd that the UK Government is laying the regulations in March—three weeks ahead of the international convention meeting, which may end up requiring rewriting of some of the terms that the Government is introducing on exempt chemicals. I do not understand that thinking. Does it relate to a notification at the beginning of last year, which set a particular timeline running? I am not sure. However, if we sign up to an international convention, and we want to stick with it and its rule-making process, it is odd for the UK Government to lay regulations in advance of that. It does not feel right in terms of process. It would be ideal if this regulation were brought forward in May, after the meeting in April.

The Convener: Things are seldom ideal. I understand your concerns and we can certainly include them in our letter to the Scottish Government. Are you content to agree to the instrument, having drawn the Government's attention to that point? What is your position?

Mark Ruskell: Yes, I am content to agree to it. We are where we are. However, there is a risk of the regulation having to be brought back again, for the Government to amend the amendment on the basis of there having been another international conversation. It seems like a bit of a waste of time.

The Convener: As no other member has any comments, I will move to the substantive question. Is the committee content that the provisions set out in the notification should be made in the proposed UK statutory instrument, subject to writing to the Scottish Government at the same time to say that we are concerned about why the process has proceeded in this way?

Members *indicated agreement.*

The Convener: We will write to the Scottish Government to that effect.

12:43

Meeting continued in private until 12:57.

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