OFFICIAL REPORT
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Net Zero, Energy and Transport Committee

Tuesday 19 November 2024

Session 6

The Scottish Parliament
Pàrlamaid na h-Alba

Tuesday 19 November 2024

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NET ZERO, ENERGY AND TRANSPORT COMMITTEE

34th Meeting 2024, 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:

David Bean (Countryside Alliance)
Gemma Cooper (NFU Scotland)
Sarah-Jane Laing (Scottish Land & Estates)
Gillian Martin (Acting Cabinet Secretary for Net Zero and Energy)

CLERK TO THE COMMITTEE

Peter McGrath

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Net Zero, Energy and Transport Committee

Tuesday 19 November 2024

[The Convener opened the meeting at 09:15]

Decision on Taking Business in Private

The Convener (Edward Mountain): Good morning, everyone, and welcome to the 34th meeting in 2024 of the Net Zero, Energy and Transport Committee.

Our first item of business is a decision on whether to take in private item 5, which is consideration of the evidence that we will hear on the Land Reform (Scotland) Bill. Are we content to take that item in private?

Members *indicated agreement.*

Subordinate Legislation

Greenhouse Gas Emissions Trading Scheme (Amendment) (No 2) Order 2024 [Draft]

09:15

The Convener: The second item is consideration of a draft statutory instrument. The Greenhouse Gas Emissions Trading Scheme (Amendment) (No 2) Order 2024 makes various changes to the United Kingdom emissions trading scheme. In its report, the Delegated Powers and Law Reform Committee made no comment on the instrument.

I welcome Gillian Martin, the Acting Cabinet Secretary for Net Zero and Energy. I also welcome the Scottish Government officials who are joining us for this item: Mariana Cover, senior policy adviser; and Nanjika Nasiiro, head of just transition policy.

The instrument is laid under the affirmative procedure, which means that it cannot come into force unless the Parliament approves it. Following this evidence session, the committee will be invited to consider a motion to recommend that the instrument be approved. As always, I remind everyone that Scottish Government officials can talk under this item, but not in the debate that follows. I ask the cabinet secretary to make a short opening statement.

The Acting Cabinet Secretary for Net Zero and Energy (Gillian Martin): Good morning to you, convener, and to the rest of the committee. I am pleased to give evidence supporting the draft instrument to amend the Greenhouse Gas Emissions Trading Scheme Order 2020.

The emissions trading scheme authority, formed by the four UK nations, is implementing changes to strengthen the ETS's climate ambition. In June last year, the authority published a response to the consultation on developing the UK ETS. It included the following commitments, which are being implemented through the instrument: amending the cap trajectory so that it is better aligned with net zero targets; covering additional emissions in the upstream oil and gas sector; and improving the penalties process, on which we delivered an additional consultation earlier this year.

On the new cap trajectory, in 2023, the authority committed to reduce the ETS cap by 30 per cent by 1 January 2024. That amendment needed approval by the four UK legislatures. Northern Ireland did not have a sitting Assembly at the time, so the authority used powers reserved to His Majesty's Treasury as a temporary measure to

amend the number of allowances to be auctioned from 2024. That ensured that the number of allowances in the market was aligned with the agreed 30 per cent cap reduction. Ms McAllan sent a letter in July 2023 explaining that decision.

Now that Northern Ireland has a functioning Assembly, we are looking to amend the cap through the Climate Change Act 2008, which gives the committee the opportunity to scrutinise the new net zero cap-aligned trajectory. We are also amending the industry cap, which limits the number of free allocations and creates a flexible share on the back of the changes to the cap trajectory.

The instrument also expands the ETS to cover emissions from CO_2 venting in the upstream oil and gas sector. CO_2 venting—releasing emissions through pipes or vents—was not previously included as an ETS-regulated activity. In contrast, the flaring of CO_2—burning the gases before releasing them into the atmosphere—is an ETS-regulated activity. The inclusion of venting in the ETS aims to remove any perverse incentives for operators to vent gas containing CO_2 that, if flared, would be exposed to the ETS carbon price.

We are also extending to Northern Ireland legislative changes that were implemented in Scotland, England and Wales during 2023 to ensure that the ETS is consistent across the whole of the UK.

Finally, the instrument will introduce two penalties and amend existing penalties to improve the consistency, proportionality and fairness of the penalty process. I am happy to answer any questions.

The Convener: Thank you. I am looking around the table and I see that Douglas Lumsden wants to come in.

Douglas Lumsden (North East Scotland) (Con): I was going to ask about venting. What will the order mean in practical terms for companies operating in the North Sea basin?

Gillian Martin: Effectively, it means that there will be no loophole for getting rid of CO_2. At the moment, if you were to flare off any gas, you would have the ETS to cover that. We do not want a situation in which CO_2 is being vented into the atmosphere, because that essentially has the same effect as flaring. It means that operations will have to be consistent with not venting CO_2. The order is really closing a loophole.

It is my understanding that such venting is not exactly a practice that goes on an awful lot, but the order will remove that loophole in case, as I think that I mentioned in my statement, there is a perverse decision to vent without flaring, to avoid impacting ETS allocations.

Douglas Lumsden: Are the operators able to measure that accurately? Is that in place now?

Gillian Martin: My understanding is that all the emissions that the oil and gas industry produces are measured. They have to do that by law.

Douglas Lumsden: Would you not see that as an extra burden on them?

Gillian Martin: It would not be an extra burden.

Douglas Lumsden: Maybe it would be an extra financial burden.

Gillian Martin: In fairness to the oil and gas industry, it is working hard to reduce production emissions. The order is therefore helpful, because those who are reducing their production emissions will save money as a result.

Douglas Lumsden: Okay. Thank you, convener.

The Convener: A few questions are lining up. Mark Ruskell will be followed by Kevin Stewart.

Mark Ruskell (Mid Scotland and Fife) (Green): My understanding is that Norwegian production of gas is lower carbon than our own production of gas, because they have a restriction on venting and flaring. Is that your understanding of the situation? If it is, do the adjustments to the ETS and the overall regime for venting bring us into closer alignment with Norwegian practice and therefore make us more comparable in terms of emissions?

Gillian Martin: First, I do not know much about the Norwegian sector. If what you are saying is true, obviously the order will bring us in line with that. At the moment there is a kind of loophole, in that operators would have to use their ETS allocations to make up for flaring activities, but not for their venting of any CO_2.

It might not stop there, however. We might also look at methane emissions, which might happen in the next couple of years. I am not entirely sure whether the Norwegian sector includes methane as well as CO_2. It would be interesting to see whether it does—I will look into that after the meeting. However, from what you are saying, if your understanding of what the Norwegian sector does is correct, the order will bring us more in line with them.

Kevin Stewart (Aberdeen Central) (SNP): Good morning, cabinet secretary. Can you give us an idea of why venting was missed out in the ETS previously, or is that beyond yer ken?

Gillian Martin: It is slightly beyond my ken. There was a great emphasis on reducing the amount of flaring—that was the real focus. I would have to look into why venting was missed out, but the order is about correcting that and, as I say,

closing that loophole so that we do not have CO_2 emissions being vented and going into the atmosphere that do not need to be.

Kevin Stewart: Closing that loophole is grand. It would be interesting to see why it was left in place in the first place. Obviously, that has nothing to do with you, cabinet secretary; it has to do with others.

In some of the questioning, it has been suggested that some other areas have decarbonised to a greater degree than we have. Will there be further moves in the ETS to lead to even greater decarbonisation of the oil and gas sector? What general discussions have you had with the UK Government about further decarbonisation of the sector? Importantly, will the UK Government put in place the right fiscal regime to ensure that that decarbonisation continues apace?

Gillian Martin: Only a north-easter could ask such an intricate question, which I am pleased to answer. There are a couple of things in there.

Our position is that there must be a fiscal regime in place that allows the oil and gas industry to support its workforce and be instrumental in the transition to net zero. Quite a lot of oil and gas producers are involved in ScotWind licence options, and they support a vast supply chain. There is a well-rehearsed argument that we must ensure that we do not discourage activity in that area because, if we do, the workforce will relocate to other parts of the world, leaving Scotland without the expertise that we need in both the supply chain and the workforce to build out ScotWind and the other industries that will keep us as an energy-producing nation.

Scotland has a good story to tell about decarbonisation, because we have the innovation and targeted oil and gas licensing route. The first licences that have been given through the consenting unit have been for the INTOG scheme, which is about allowing the build-out of floating offshore wind to provide power to existing oil and gas-producing platforms. That means that they can use electricity, rather than diesel, in their production processes, which will markedly reduce production emissions in that area. We are the only part of the UK that has done that, and there are quite a lot of lessons for other oil and gas-producing countries to learn if they are looking to decarbonise their emissions from oil and gas production.

Kevin Stewart: What has happened with INTOG is obviously fantastic.

I have a question about continued dialogue. Do you think that the UK Government is listening to either the oil and gas industry or others regarding what is required not only from a fiscal regime but from a regulatory regime to allow for greater decarbonisation?

Gillian Martin: Yes and no—it is listening in part. There were warnings from the oil and gas sector that a lot of people would pull out of the North Sea if certain fiscal penalties were put in place around tax, but that did not come to pass in the budget.

However, the extension of producer liability—EPL—has had an impact. For example, we have seen Apache deciding to pull out of the North Sea as a result. Those are existing fields, not new ones. That takes us into the energy space in general. There is still demand in the UK for natural gas, which we still use in the majority of heating. The oil and gas sector still employs 58,000 people, so anything that has a precarious drop-off point because of the fiscal regime is problematic.

As I said, we need a just transition. We know for sure that the amount of oil and gas available in the UK continental shelf is reducing, but we need a managed transition. Any cliff edge in production will mean that we have to import more gas from elsewhere to meet demand and will also lead to a cliff edge for workers. ScotWind has not been built out yet and we do not yet have the jobs to replace those that will be lost. We will have those jobs in the future if we manage the transition well, and the fiscal regime for oil and gas is an important part of that.

Kevin Stewart: I have many more questions but they would probably take us beyond the order of business for today, so I had better give up.

The Convener: I was going to say that some of that drifted beyond the boundaries of the instrument. We move to questions from Monica Lennon.

09:30

Monica Lennon (Central Scotland) (Lab): I will be really dull and just stick to the instrument. I am keen to cover compliance and enforcement.

The instrument introduces two new penalties and changes several existing penalties. Has there been any assessment of what the regulatory regime around that would look like? Are we expecting breaches to be the exception? Would they be quite a rare occurrence?

Gillian Martin: I hope so.

The regime would be the same one that we have in relation to penalties now. There will be penalties in relation to operating without a permit. There will also be a penalty associated with underreporting, and a deficit penalty if an operator fails to surrender allowances to cover its emissions.

Another important point is that the penalties will change in line with inflation, so there will be an increase in the value associated with them. There are therefore more incentives for people not to breach any of the rules and incur any penalties; it is also about tightening up the penalty regime.

There will certainly be plenty of warning that the ETS is coming into place. We would hope that breaches would be very rare.

Monica Lennon: Do you have any figures on non-compliance issues to hand?

Gillian Martin: I do not have them in front of me, but we can ask for them. They would probably be held centrally by the UK Government; we can certainly look into that.

Monica Lennon: It is helpful that you explained the inflationary increase. The penalty for failure to submit information, for example, is a civil penalty of £5,000, which a big operator might not notice. I was therefore curious to understand how robust the regime has been.

Gillian Martin: Other things are also happening in order to incentivise decarbonisation. For example, there has been a reduction in the amount of free allocations.

In relation to aviation across the UK, for example, we will have no more free allocations after 2026. That has been loudly trumpeted, and people are building up to it. Some of the larger emitters in that area—particularly in aviation, where there is not much danger of carbon leakage—are preparing for the fact that they will not have any free allocations.

It is about a real tightening up and really aligning the ETS with the net zero ambitions and targets of all four nations of the UK.

Monica Lennon: That is helpful. It is clear that the instrument tightens things up.

Is it a minor change for regulators in relation to any inspections or proactive work that they do, or are we expecting any capacity issues for them?

Gillian Martin: None is expected at all.

Monica Lennon: Okay. It is fair to say that it is business as usual then.

The Convener: Mark Ruskell wants to come back in.

Mark Ruskell: I know that there was discussion with the previous UK Government about the introduction of a carbon tax. That was an option at one point, although I am not sure whether it was intended to run alongside an ETS or as a replacement of an ETS.

It would be useful to get your thoughts on whether a carbon tax is now off the agenda and whether everything is now completely focused on an ETS.

I note that Norway also has an ETS—presumably aligned with that of the European Union—but that it also has a carbon tax on both its oil and gas sector and the production emissions from oil and gas. The fact that it has an ETS and a carbon tax means that the industry makes a significant contribution to the Norwegian state.

I am interested in where the discussion is. Is a carbon tax on or off the agenda? Are we simply considering this instrument as the main way to decarbonise?

Gillian Martin: I will be upfront: in the three months that I have been cabinet secretary, I have not had any discussions about a carbon tax. The UK Government has obviously set out its budget, and no carbon tax was mentioned in that, either.

I note that we have the extended producer liability, which I would say is, in fact, a carbon tax on the oil and gas industry.

Given that Mark Ruskell has given me the opportunity to do so, I also note that any money or funds that are gleaned from those kinds of taxes should be used for net zero activities. It is my view that, if emitters are taxed, that money should come back to the Treasury and be allocated to net zero efforts—to the big, expensive things such as decarbonising heat in buildings or decarbonising the gas grid. That is for the UK Government to decide, but, again, I have not had any conversations about a carbon tax.

The carbon border adjustment mechanism goes alongside this. We are working with our UK counterparts, as well as the Treasury, to design the UK carbon border adjustment mechanism, so that it works alongside the UK ETS and does not have any negative impacts or additional costs on Scotland's exporters. We are still looking at alignment with the EU ETS, and conversations about alignment with the EU are still happening.

A lot is happening in that space, but I have not had a discussion with the UK Government specifically about a carbon tax.

The Convener: I listened with interest to that exchange about carbon taxes being used to fund net zero. It would be remiss of me not to say that ScotWind was to do that as well, but does not appear to have been used for that either.

You commented that very little venting is going on in Scotland. What are you talking about? Can you quantify what "very little" means? How many companies?

Gillian Martin: I do not think that I said that, because I do not have the numbers on how much CO_2 venting is going on in Scotland. I am sorry if I

misspoke. I was just saying that the instrument will put the venting of CO_2 on the list of actions that will be part of the ETS.

To come back on your ScotWind comment, ScotWind was designed for four reasons: to decarbonise the electricity that we supply to the whole of the UK; to provide an opportunity for Scotland to have a thriving energy sector; to fund net zero work, which I wish it to do—however, I will not pre-empt anything in the budget—and to encourage investment in Scotland, which it is absolutely doing.

My comments about anything that is done on funding from big emitters apply to the whole UK. That is certainly my view of what should happen. However, it is also my view that ScotWind should address those four aspirations. However, I do not want to pre-empt anything that is said in the budget.

The Convener: Neither do I, but I am sure that we can have a conversation about how the £750 million that was raised from the option payments has been spent—including how much was spent on net zero. However, let us park that.

One concern that I had when I was looking through the briefing was over a suggestion about the trading scheme: that, if the carbon capture, usage and storage scheme went ahead, the cost of the trading units would be kept down. Have you made an assessment of what the cost will be if the CCUS scheme does not go ahead? Will it become very expensive? We have seen that Scottish businesses have already invested a huge amount of money. Have I got that wrong?

Gillian Martin: I do not quite see the correlation between the ETS costing businesses money and carbon capture, utilisation and storage not going ahead. However, your mention of the possibility of CCUS not going ahead gives me the opportunity to say that it must go ahead. We must get action on the Acorn project's track status. The Climate Change Committee has made it clear on many occasions that we will not reach our 2045 net zero target if carbon capture and storage does not happen in Scotland. We would also be missing a massive economic opportunity for Scotland, which might align more to your question.

The Convener: I am sorry to interrupt, cabinet secretary, but, just to help you, I will say that the committee's papers stated that the ETS impact assessment, which is for the UK, estimated that the scheme would probably cost business £2.4 billion, and that assumes that the carbon capture, usage and storage scheme and hydrogen go ahead as planned. Have you made an assessment of what it will cost businesses in Scotland if those developments are not delivered as planned? I am sorry if I explained that badly.

Gillian Martin: Now I get you. With regard to a CCUS scheme—we were just talking about oil and gas and particularly about venting—the ability to capture and store carbon will reduce businesses' costs. If those schemes are not available to the Scottish cluster and all the industries that want to be part of the Scottish cluster, that is a real problem. However, the biggest issue is that we are missing out on a major opportunity to take carbon out of our processes and our atmosphere, which puts 2045 on a bit of a shoogly nail, as the Climate Change Committee has said time and again. Therefore, I will use this opportunity to say that we need track 1 status for the Acorn project as soon as possible.

The Convener: I was trying to work out the cost to Scottish businesses as a result of the ETS if the Acorn project does not happen.

Gillian Martin: It would be difficult to quantify the cost at the moment. However, basically, not having a carbon capture and storage scheme available in Scotland will have an impact on emitters.

The Convener: As there do not appear to be any further questions, we move to agenda item 3, which is the debate on motion S6M-14755. No, it is not—I am sorry. Yes, it is. I am sorry—I almost confused myself, but I was not confused. Agenda item 3 is the debate on motion S6M-14755, which calls on the committee to recommend approval of the draft order.

Cabinet secretary, I invite you to move and speak to the motion.

Gillian Martin: I will just move the motion.

I move,

That the Net Zero, Energy and Transport Committee recommends that the Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 2) Order 2024 [draft] be approved.

The Convener: I see that no member wishes to make a contribution. On that basis, I am not entirely convinced that you will need to sum up, cabinet secretary, but, if you want to, I have to give you the opportunity.

Gillian Martin: I am happy to leave it as it is.

Motion agreed to.

The Convener: The committee will need to report on the outcome of the instrument in due course. I ask the committee to delegate authority to me, as convener, to approve the draft of the report for publication. Are we agreed?

Members *indicated agreement.*

The Convener: I thank the cabinet secretary and her officials.

I suspend the meeting briefly to allow for a changeover of witnesses.

09:42

Meeting suspended.

09:45

On resuming—

Land Reform (Scotland) Bill: Stage 1

The Convener: Agenda item 4 is an evidence-taking session on the Land Reform (Scotland) Bill at stage 1. Today, the committee will hear from a panel representing landowners and land managers, with the focus on part 1 of the bill.

Malcolm Mathieson, convener of the Crofting Commission, was going to be here, too, but unfortunately he is unable to attend today, for very understandable reasons. We will try to work his attendance into another meeting.

I am pleased to welcome Sarah-Jane Laing, chief executive of Scottish Land & Estates; David Bean, Parliament and Government relations manager at the Countryside Alliance; and Gemma Cooper, head of policy at NFU Scotland.

As usual, I will declare my interests. I am a member of a family farming partnership in Moray, as set out in my entry in the register of members' interests. I specifically declare an interest as owner of approximately 500 acres of farmland, of which about 50 acres is woodland. I am also a tenant of approximately 500 acres in Moray under a non-agricultural tenancy, which is an interesting permutation, and I have another farming tenancy under the Agricultural Holdings (Scotland) Act 1991. I sometimes take lets for grass on a short-term basis.

We have allowed just under two hours for this item, and we will move straight to questions. As convener, I will begin with some simple ones, which I will give all three of you a chance to answer. Is there a need for a further land reform bill? Will the bill improve transparency and strengthen the rights of communities? Does it reflect all the negotiations that took place before its introduction?

Who wants to kick off? I should say that if you all look away at the same time when I ask who wants to answer a question, I will pick the person who is the slowest to do so, so you will need to be really quick. [*Laughter*.] Sarah-Jane, as you did not look away, you will be first to go.

Sarah-Jane Laing (Scottish Land & Estates): Thank you, convener. I thank the committee for giving us the opportunity to share our thoughts on the Land Reform (Scotland) Bill.

Perhaps I can take a step back. Our common goal is a thriving rural Scotland that makes a contribution to the wellbeing economy and which delivers for people, jobs and nature, and I believe that, if we are to deliver those things, we must

have a continued evolution of land use policy and legislation. That is not just about land reform, of course—it is about changing our planning framework, about the delivery of affordable housing and about renewable energy, too. As an organisation, we agree that we must continue to evolve land legislation.

When it comes to the bill, though, the biggest issue that we have is that it is hard to understand the perceived problem that we are trying to address. Elements of it address issues such as transparency of ownership, which we completely support, and we think that the provisions on land management plans will play a part in that. However, we feel that other elements of the bill, including those on pre-notification and lotting, will take us further away from delivering those laudable outcomes for people, jobs and nature at the local and national levels. That is partly because they are, we feel, based on the premise that big is bad.

We do not believe that the discussions that we have been having with the Scottish Land Commission and the Scottish Government since the Land Reform (Scotland) Act 2016 came into force reflect that. Lots of the provisions in the current bill are based on a 2019 report that members will be familiar with. It looked at the scale and concentration of land ownership in Scotland and found that, where problems exist, they can be exacerbated where there is a concentration of power or where there is large-scale ownership. It was not that such concentration or being large scale were problems in their own right.

We have had lots of productive discussions with the commission and the Scottish Government, and great work has been done to improve community engagement. The bill might help take that to the next stage.

What has been difficult is ascertaining how we can find the solution to a perceived problem that we fundamentally disagree with. That has been a challenge for Scottish Land & Estates, but we have sought to see how we can improve the current legislation and the process for communities registering interest in land. Fundamentally, we want to move away from reactive powers for communities towards a longer-term collective visioning through local place plans and other measures that will bring people together to deliver the right outcomes for Scotland.

David Bean (Countryside Alliance): I thank the committee for having us here to discuss the bill. Although we are representing the Scottish Countryside Alliance on a panel that broadly represents the interests of land and estate owners, we wish to be seen as advocates for rural communities, many of which in Scotland are closely associated with rural land and estates. That is why it is relevant for us to take an interest in and a position on a bill such as this. That said, our position closely resembles that of Scottish Land & Estates; in fact, in our submission, we have leaned to a large extent on its research into the impacts of landholdings in Scotland.

Nevertheless, there are some other concerns that it would be worth my putting on the record now. First, the bill is, to a large extent, an enabling bill; it gives Scottish ministers powers to make regulations in various areas. Under those circumstances, we as stakeholders can find it difficult to gauge how to react to such a piece of legislation, given that the detail of the regulations is not known at this early stage.

The bill sets out various requirements with regard to community engagement, which we would very much like to see and to support. However, we have found that what community engagement will look like in practice is less clear. One of the questions in the consultation asked whether we supported the proposal that the

"Scottish Ministers may, by regulations, impose obligations on landowners to promote community engagement".

We absolutely support a duty to promote engagement, but we might not necessarily support certain more prescriptivised forms of community engagement. Once the regulations have been introduced, as empowered by the bill, it might not necessarily be the same story. Issues can arise, and, as this evidence session goes on, we might well come to discuss issues with community consultation. There might be issues arising from the proposed obligations, particularly the risk of penalties being imposed on people who fail to meet requirements set out in legislation.

That said, I come back to this earlier stage of the process. It is true that, as Sarah-Jane Laing has said, the model of legislation that founds land ownership and land management needs to evolve over time. We have no particular issue with the objectives in the bill; our one concern is that we are not entirely sure how tightly defined all the terms that are referred to as objectives in the bill are. For example, it is difficult to see how the bill directly supports a just transition to net zero. Again, as I have said, a lot of this has to do with the fact that the bill is enabling legislation.

I will bring my remarks to a close there, convener.

The Convener: I will bring in Gemma Cooper and then come to Kevin Stewart, who has a question. However, I should say that, if that question is about community engagement, the issue is going to be addressed later by another member.

Gemma Cooper (NFU Scotland): A lot has been said already. Our members broadly accept the concept of land reform, but the fact is that this is the third piece of land reform legislation that we have had since 2003. The bill is important, because it sets the tone for how we go forward and for the operating environment that farm businesses work in. We can probably welcome some parts of it, but it remains to be seen whether the combination of measures that the Scottish Government has proposed will achieve the desired outcomes. I do not want to go into much detail now, though, because I suspect that the questions that follow will take us into those individual details.

Kevin Stewart: I have a brief question. What does Mr Bean mean by "prescriptivised" community engagement?

David Bean: I was referring to the idea that regulations might set out in detail the form that community engagement must take. As I have said, if they create a duty on a landowner to consult the community about what their land management plan must look like, and if that is some sort of general duty that might be enumerated within the plan, that will not, in itself, be problematic. However, the consultation also talks about having penalties if someone fails to abide by a duty, which goes to the question of how tightly those requirements will be defined in the regulations.

Kevin Stewart: So it is the penalties that you have a problem with.

David Bean: If a penalty is to be levied, there must be some objective means of determining whether it should be applied. That indicates a degree of prescription of what community engagement should look like, in order to determine whether a landowner has met his or her legal duties.

Kevin Stewart: I will leave it there, convener.

The Convener: I feel convinced that we will cover the matter in more detail later.

The second part of my question is very simple, and as it relates to something that Sarah-Jane Laing touched on, I will come to her last. I will bring in Gemma Cooper first and then work round.

Might any existing policy levers resolve some of the issues that the bill seeks to address? If so, please tell me one of them before I move on to the next person. It will be helpful if each person could give me one policy lever.

Gemma Cooper: On transparency of land ownership, I would note the register of controlling interests. It is referred to in the bill and makes public the information about ownership structures in Scotland.

David Bean: I understand that the community right-to-buy scheme is already under review, so the outcome of any such review might provide policy levers, too.

Sarah-Jane Laing: I will try to choose one. The 2016 act included sustainable development measures that allowed communities to take action when they found a landowner of any size or type acting as a barrier to sustainable development in their community.

The Convener: That issue was quite extensively raised when the committee went to Aberfeldy and listened to the aspirations of the community there.

The next questions will come from Mark Ruskell.

Mark Ruskell: The committee deals with climate change, among other issues, and we know that land use and management is now the biggest cause of emissions. Do you think that the biggest holdings, or those that generate the most emissions, should be obliged to adapt and to mitigate climate change? Should there also be reporting of that? Do you accept that, or do you contest it?

Sarah-Jane Laing: A report from the Scottish Government earlier this year showed that even if we add agriculture and land use together, they still produce slightly fewer emissions than domestic transport. That is not to say that they are in a great place, but I am not aware of updated figures. I would be happy to look at that.

10:00

Mark Ruskell: I think that, if you take out carbon sinks—wetlands and woodlands, which we are not planning to change—the land use sector, as a direct emitting sector, is now the highest emitter. That needs to be addressed.

Sarah-Jane Laing: On how we report, we are all bound by the international guidelines on what can be included in those calculations. We all agree that the land use sector can do more.

On the activity that is already happening in Scotland, the Scottish Government is struggling to keep up with demand from landowners and land managers for peatland restoration, woodland planting and renewables—all the things that they want to do on their land.

When we did some research, through BiGGAR Economics, we found that 70 per cent of Scotland's renewables are currently generated on rural estates and farms. The generation of renewables does not form part of the calculation for the net emissions; they go into the energy pot.

Can we do more? Absolutely. The changes to the agricultural support system, which Gemma

Cooper might want to talk about, will help to drive change across the whole of Scotland.

You mentioned the largest polluters. I do not think that there is any link between the scale of landholding and activity. When we look at carbon emissions, small-scale intensive farming can sometimes be more polluting than some less intensive large-scale farming.

I want to pick up one other thing. Carbon is one part of the issue and methane is another. However, we must also consider the nature benefits of some of the work that is happening. Some of the riparian planting, for example, will make a pretty small contribution to the net carbon position, but it is really important that we capture the wider benefits of reducing water temperature and addressing natural flood management. We need to consider how we capture all the wider benefits rather than just looking at the measurement of carbon.

As I said, we can do more. Our members are wholly committed to that, and, indeed, they are working with the Scottish Government to do so.

Mark Ruskell: The context is that the bill seeks to establish land management plans and to require reporting above a certain threshold. We will come on to questions about where that kicks in. You say that small but more intensive farms might have a higher carbon output per hectare, so where do you draw the line? They probably would not be captured by the bill.

Sarah-Jane Laing: No. We would expect to see in land management plans what people are doing at a higher level to deliver for climate. I do not foresee that a land management plan would have a very detailed account of where people are doing that across all their activities, but it would certainly give an indication of the steps that they will be taking in the future to potentially change land use in order to play a greater role.

Gemma Cooper: Sarah-Jane Laing made the point that I was going to make about scale. You can have really extensive hill farms that are probably quite low emitters in the grand scheme of things, so I second her point.

We have to be careful that we do not try to make the bill do too much. It should be climate aware, but, as Sarah-Jane Laing referred to, there are mechanisms under the Agriculture and Rural Communities (Scotland) Act 2024 that will do similar things, so we have to be careful that there is no duplication.

As of next year, all farmers who receive support will have to produce a whole-farm plan, under which they will have to carry out carbon audits, biodiversity audits and soil testing and to produce integrated pest management plans. A huge amount is happening just in relation to future support.

It is worth saying that we recognise that farmers can do more, and our members are generally embracing that. We know that agriculture is often talked about as the villain of the piece. The science around this is incredibly complicated and is still evolving. A lot of work is on-going to understand the sequestration on grassland, for example, and it is quite slow progress. We have to be careful not to legislate ahead of the science that is developing.

Lots of good work is being done, and I think that things will continue to evolve as time goes on, but we have to ensure that there is no duplication when it comes to what we are asking our land managers to do.

The financial memorandum on the bill said that it could cost up to £15,000 to produce a land management plan. That is a significant amount of money. If you make it even more difficult and more expensive, it will be impossible for land managers to comply with.

David Bean: I agree with the premise of your question, and I agree with both Sarah-Jane Laing and Gemma Cooper. Frankly, I think that where the bill can make a positive contribution is in increasing transparency. In fact, we will probably find, as time goes on, that the bulk of the real changes that are made come from incentivisation through agri-environment schemes and the terms of the post-Brexit agricultural settlement.

Mark Ruskell: I want to go back to the issue of community consultation on land management. When I was looking at the evidence, I saw NFUS's comment about

"informal practices that have taken place for generations"

in rural communities. I feel that that sort of thing is probably a bit patchy, having lived in rural areas most of my life. It is probably the case that some good and some not-so-good things happen. To what extent do you believe that voluntary engagement with communities is strong enough to effectively obviate the need for a statutory requirement in the bill? I am interested in your thoughts on that. The convener has already alluded to our visit to highland Perthshire, where we saw some pretty good practice, but we have also heard about some less-than-good practice, some very disengaged landowners and frustrated communities.

Shall we go back round again, kicking off with Sarah-Jane Laing?

Sarah-Jane Laing: I am happy to kick off. Scottish Land & Estates has played an active part in helping to promote effective community engagement. Mr Stewart asked what was meant

by “prescriptivised” earlier; I think that one of the advantages of the work that has been carried out in the past few years is that it has ensured that communities have a choice with regard to the style and format of community engagement that works for them in their local situation, instead of its becoming some formal tick-box exercise that does not deliver effective community engagement.

Looking at the bill in isolation, we think that the land management plans give us a new tool, but that new tool does not stand alone; instead, it sits alongside formal consultation processes, whether they be for planning, the new emerging local place plans, forestry plans or other things. I would be concerned if we were putting all the weight of community engagement on to the land management plan, but, as a tool, it certainly has the potential to be a driver in opening up conversations and creating more awareness and understanding of land management constraints and opportunities and community aspirations.

Mark Ruskell: You mentioned forestry strategies, local place plans and lots of potentially overlapping forms of local engagement and active planning. Do you have thoughts on how those things can be brought together? Is that what the land management plan is for, or is there nothing that brings all the overlapping parts together in a way that allows people to say, “Yes, I can see what’s happening in my local area” or “I want to see X and Y. I wonder what that conversation with my local estates is looking like”?

Sarah-Jane Laing: That is a fantastic question. We have a plethora of ways of engaging but, in some cases, that has created less engagement, because of engagement fatigue or disengaged landowners or business owners.

The regional land use partnership should be a framework in which some of the things that are happening at lower levels can exist. For Scottish Land & Estates, the local place plan is the best driver in that respect. I know that we are still in the early stages, and it is quite resource intensive, but the fact is that some settlements are not next to just one large landholding; they could be engaging with a number of them. The way that I saw it was that land management plans, or land management statements, would feed into a local place plan, so that everyone could understand what various parties were bringing to the table and how they could play a part. If you go down to the landholding level, you move away from the place-based approach to that long-term vision for Scotland. I suppose that the local place plans are, for me, the anchor, but they will sit within that regional and national framework.

Mark Ruskell: Thanks for that. Did you want to comment, David?

David Bean: The root of our concern is that, as you alluded to in your question, there is a broad range of quality in the community engagement that goes on. We would like to avoid a situation in which estates that are already doing the right things—things that engaged their communities in a way that the communities approved of and that made them feel valued and listened to—are instead required to transpose a tick-box exercise.

If there was a requirement as part of a land management plan to document what steps a landowner was taking to involve the community, I cannot see there being a problem with that. It might become more difficult if the bill set out in more detail what steps landowners would be required to undergo and tried to bring uniformity across the board because the needs of different communities might not be identical.

Mark Ruskell: Would it come down to guidance, then? Would the detail of the guidance determine whether the approach was too prescriptive or not prescriptive enough?

David Bean: Yes. It would depend on the status of the guidance—whether we are talking about statutory guidance that would be likely to be brought into consideration where penalties were concerned, for example—but the development of the guidance would be important. It might be a case of setting out a menu of options, for example, rather than attempting to shoehorn in a process.

The guidance could involve case studies. The committee referred to seeing examples of good practice. Such examples might form the basis of useful case studies that could be included in guidance.

Mark Ruskell: Gemma Cooper, do you have any comment?

Gemma Cooper: In our consultation response, we referred to some work that we did with the Scottish Land Commission on its self-assessment proposals for landowners. It was an interesting piece of work and our members told us really strongly that they feel like they are engaging with local communities but a lot of that engagement is informal and not recognised. Actually, they do not necessarily want it to be recognised. It involves things such as giving spare tyres to a local school or donating things for a harvest supper. The strong message that we got from our members was that you have to be careful with the requirements for community engagement because, if you push it too far and the balance is not right, you will wreck a lot of the informal engagement that goes on.

I take your point that some landowners are better at engaging than others. There can be various reasons for that. Some of our members do not have positive experiences of engaging with communities. In the bill, a lot of the onus is on the

landowner to make information available, particularly if they own land above the scale that is mentioned in the bill. The principle is obviously that, if communities wish to engage, the information is available. Our members would like it if communities were a bit more proactive so that landowners were clear about what communities looked to do. Local place plans have also been suggested to us as a proactive way for communities to identify things that might be important to them and make those intentions clear to the landowners around them.

It is also worth referring to a previous piece of work that the Scottish Government did, which was called "Guidance on Engaging Communities in Decisions Relating to Land"—I think that that is the longest title of anything on which I have ever worked with the Scottish Government. Our members liked that guidance because it was based on proportionate engagement requirements. It was not a blanket requirement to engage; it depended on the activity type. That seemed to be well recognised at the time—it was a few years ago now—but it seems to have got a bit lost, which is sad, because that principle is sound and would be worth looking at again.

Mark Ruskell: So your members would not have a problem if that guidance was reflected in the guidance for land management plans because it would reinforce what they already do as good practice.

Gemma Cooper: That would be helpful. Our farmers want to know where the lines are. There is a balance to be struck. As David Bean said, this is a framework bill, so there will be a lot of work for the Scottish Government and stakeholders to do at a secondary stage. We do not want to be so prescriptive that we make it difficult to comply with the bill. We should be encouraging collaboration, but that will need us to achieve the right balance.

10:15

Kevin Stewart: As one of the folk who put local place plans into legislation, I am pleased to hear Gemma Cooper mention them and say how they can become a part of all of this. That was the intention behind them, and I hope that her positivity in that regard will continue.

What I am interested in here is penalties, which Mr Bean keeps coming back to. I am sure that we all want to see the best possible engagement without having to force folk into positions that they do not want to be in; after all, it is best if this is all voluntary. However, if some people choose not to do certain things, why should there not be a penalty, Mr Bean?

David Bean: In principle, I do not think that it is wrong to apply a penalty. My concern is that, when you introduce penalties, there is a risk of their being turned into a stick with which to beat people who are disliked for other reasons. That also relates to community engagement and the degree to which we want to be prescriptive about how that should be done.

We have all known situations in which local community activists who have taken a prior position of opposition, whether it be to an estate or a certain type of activity, have been willing to use whatever means at their disposal to frustrate that objective. I worry that it will be possible for such people to engineer a landowner into a technical breach that would give rise to a penalty. In essence, my concern is about there being an unintended consequence.

Kevin Stewart: As somebody who does not like unintended consequences, I think that the picture being painted is extremely negative. You talk about people being engineered into a breach, but guidance and regulation would have to be drafted to ensure that that was not possible. What is immensely frustrating is that community action against certain things often occurs through a lack of communication and consultation, when communication can help resolve and iron out some of the negativity and opposition.

My question is about the way in which this is being presented by all. I do not think that any of us would take the position that there should be no penalty for not following regulation, or we would have a situation in which a large number of folk did not follow the regulations. Do you agree with that?

David Bean: I do. What you have said is absolutely right. The way in which the regulations are framed is what is significant here.

Kevin Stewart: I have a final question, convener.

The Convener: Absolutely, but can I ask that it be slightly shorter? There was quite a lot of statement in the previous question, if I might be so bold as to say.

Kevin Stewart: In that case, I suggest to Mr Bean that he will want consultation to take place on the regulations, which I am sure will happen. I see that Ms Laing wants to come in.

Sarah-Jane Laing: I just want to come back on some of the things that Mr Bean has said. First, we need to be clear about which obligations you can breach. The obligation is to have a land management plan, and if you are required to produce one but you do not, it will be very hard to argue against any kind of sanction that might be imposed. The breaches do not relate to the method by which community engagement is carried out; however, because this is a framework

bill, regulations could be introduced that might impose them.

I am with you, Mr Stewart. If there are statutory obligations that someone has to follow, it stands to reason that breaches and sanctions should be imposed. However, I go back to my comment about being overprescriptive. I would not want community engagement to be prescribed in regulations, if it happened in a way that was overly prescriptive and did not meet a community's needs. I would much prefer it to be driven by the needs of the community than by regulation.

Kevin Stewart: Thank you, Ms Laing.

The Convener: Monica, you wanted to come in.

Monica Lennon: Just on the issue of what currently happens with land management plans, Sarah-Jane, how many of your members routinely produce a plan? How much detail is included at the moment?

Sarah-Jane Laing: Very few of our members produce something that they would tag as a land management plan in line with the provisions in this bill. I cannot put a figure on it, but a large proportion of estates do produce something that might be called a future vision and plan for the estate, or at least part of it. It will be linked to planning applications and forestry plans, and it will feed into the local development plan and main issues reports. Those are all things that members currently contribute to.

Over the past five years, we have seen an increase in more holistic estate plans. That increase has been driven not by the need to have a whole farm plan for the purposes of agricultural funding but by the more integrated land use approach taken by Scottish Land & Estates members. That needs a holistic view to be taken. We have lots of examples of such plans, which I am happy to share, but few of our members have a very prescriptive land management plan, as per this bill.

I would also point out that, about 15 years ago, we developed something that looked very similar to this sort of thing with the Cairngorms national park. Therefore, the holdings in the national park will certainly be more familiar with this format than with the more variable ones that we see across Scotland.

Monica Lennon: Is it fair to say, then, that it is already common practice to have a future plan that looks at the management of the land and its future use and looks at things in a holistic way, as you have described? Are you suggesting that we need to look at consolidating the various plan formats?

Sarah-Jane Laing: Any business will have a future plan. The question is whether that business plan, which they might have for their bank or for the purposes of planning their business, is something that can be shared at a community level, because they come in very different formats.

We think that there is merit in having a higher-level plan, which we have been calling a land management statement. It would say, "This is what we are all about; this is what we have; this is how we manage things; and these are our aspirations and suggestions for the future." There is real merit in having that sort of framework, which can be made more detailed. People can choose to produce a more detailed plan, but there would be enough in a land management statement to allow it to feed into local place plans in order to allow those conversations to happen and to allow communities to understand the situation.

As many of our members are members of the community, too, we are trying to get away from the idea that there is a landowner and, separately, a community. The land management plans are really important, but this is all about how the land and property assets feed into wider community aspirations. I think that that can be done, and a template in that respect would be very helpful.

Monica Lennon: I am trying to understand whether the concern is about the level of detail with regard to the threshold.

Sarah-Jane Laing: If the idea is for plans to be produced that cost individuals £15,000 every five years, as has been suggested in the financial memorandum, I would say that that is disproportionate. Again, we question why things such as deer management and the access code have been picked out, because it will be hard for a land manager of any type or size to say how they comply with something that is a right in Scotland—that is, the right of responsible access. It is confusing that certain things have been prescribed in statute as forming part of a land management plan. We agree with the concept but we do not agree with some of the specific details.

Monica Lennon: Thank you. That was helpful.

When it comes to meaningful community engagement or community consultation—which can mean different things—what are the current barriers? I just want to understand that better. Again, what problem are we trying to fix? A few words from each of you on that might be helpful.

I see you nodding, Gemma.

Gemma Cooper: With regard to barriers, I have mentioned that less-than-positive experiences with local communities can put our members off. Sometimes, local communities are less than engaged; there might have been attempts to engage, but the local community has not been forthcoming.

Moreover, depending on the geographical location, it might be difficult to identify who the community actually is. There might also be multiple communities. Sometimes, we think of individual community groups, but there can be a number of groups in the same area, which can be another challenge. There can be a broad spread.

David Bean: There can, on occasion, be distance between the people who run the estate and the local community, largely when estates are owned not by individuals but by entities such as corporations or charities, or in those cases where estates have been bought up for investment purposes. That can be a potential barrier.

Sarah-Jane Laing: Linking to both of those answers, I think that, for me, the concept at the heart of effective engagement is relationships. In the past—and this has continued—local communities might not have known with whom to engage over a landholding, and a benefit of the land management plan is that you would have to say who to get in touch with to raise an issue or, indeed, to explore opportunities.

On the flip side, as Gemma Cooper has said, landowners are sometimes not sure whom they should engage with in a community, especially if there is a variety of sometimes competing interests within it. Certainly, that is one challenge that has been faced by landowners who have looked to increase planting or to bring forward renewables projects. Sometimes, the engagement becomes all about that one planning application rather than the holistic viewpoint of the estate management plan itself.

Monica Lennon: I have one final, brief question for Sarah-Jane Laing, who talked about consultation or engagement fatigue. I imagine that a landowner, particularly of a large estate, would outsource some of the engagement work to consultants. How do landowners ensure that it is not a box-ticking exercise? How do they make sure that engagement is meaningful and that people feel that they have been listened to? Is there any way of checking that?

Sarah-Jane Laing: Again, it comes back to relationships. Many of the large landowners whom I represent have long-term relationships with the community. Beyond any new plantings or renewables projects, they will want to stay within that community, so they will want to maintain that relationship. They might bring in specialists to assist them with large-scale charrettes or planning applications, but fundamentally, they still want that long-term relationship when it comes to consultation.

It is all about knowing what the elements of good engagement are, and feeding back to people an understanding of the impact of what they have said. That does not mean that landowners will always be able to keep everybody happy or deliver everything for every person, but feeling heard, and understanding what influence you have had or what impact you have made, is really important, and we encourage members to feed back not just through statutory processes but through the other informal ways that Gemma Cooper talked about, such as speaking to local groups, engaging through social media and making sure that there is no vacuum in communication.

Monica Lennon: Thank you.

The Convener: The trouble with having a panel of three very knowledgeable people is that everyone wants to ask each of them the same question, but what that means is that we will never get through all the questions if all three of you answer. I am just making that observation.

Before we leave this section and come to the deputy convener's questions, I note that no one has mentioned the granularity of plans and how that could affect the community. There might be, say, a field on the edge of a village that the community is keen to use to exercise their dogs and take a walk, but it would mean that you could not crop it with vegetables, say, or put it to grazing for young calves all year. I am worried about whether the community feels that it can feed into the farmer's management operations in that type of situation, and whether it would feel ignored if the farmer did not ensure that some of the field was left for those in the community to walk over. I am also thinking about how that might impact on the farmer's business, and how a balance might be achieved. How do we strike that kind of balance through community engagement and the land management plan that follows?

Gemma Cooper, I will come to you on that, because it is about farming and you will know the answer.

10:30

Gemma Cooper: We will see.

It is an important observation, because—and this brings us back to the previous question—a lot of NFU Scotland members do not have the resources to outsource that work. They have to do it themselves, and they are probably less likely to have something ready-made, or some component parts that they can pull together. Some farm businesses will, but they will probably be larger in size.

Your example is interesting. Our members are running a business and their margins are very tight, so it is a challenge for them. The challenge in that respect will be about meeting the aspirations of the community reasonably without

compromising what the farm business can do. That is why it is important for the approach to the land management plans to be as light touch as possible and not too prescriptive. The plan can then be worked up in more detail further down the line, so that farmers can look at individual scenarios.

As Sarah-Jane Laing has said, farmers are often talked about as an abstract concept, and as something apart from the local community. In fact, many NFU Scotland members are fourth or fifth-generation farmers in the same area, so they are an intrinsic part of the community.

The Convener: No doubt some of them will be out this morning, clearing roads of snow in rural communities. I should declare an interest here, as that is what my guys are doing this morning to allow those in the local community to get around.

I will bring in Sarah-Jane Laing.

Sarah-Jane Laing: I will try to keep it short, convener.

You have raised an important point, because we have to balance what certain individuals in the community might want with the requirements, or needs, for the country, or globally. We know of situations in which land managers are being encouraged to plant trees, but some in the local community might not want that to happen. Land management plans, and local place plans, allow those conversations to happen in a way that should allow people to understand why the decisions are being taken, not just when it comes to farmers wanting to do something in a certain field, but at a slightly higher level, too.

I worry about getting into that kind of granular detail and people having to say, "This is what I'm doing in this particular field, and this is the house plot that I plan to bring forward in five years' time." That is not where I see the value in land management plans.

The Convener: We come to questions from the deputy convener, Michael Matheson. Over to you, Michael.

Michael Matheson (Falkirk West) (SNP): Good morning. The good news is that I will stick with land management plans; the bad news is that I want to go back to basics. I put the same question to each of the witnesses. What is your understanding of the purpose of a land management plan?

David Bean: My understanding is that, under the bill, the purpose should be to bring transparency to the plans that the landowner and the land managers have for the future development of the land. It is also intended to serve as a vehicle to promote the objectives of community engagement.

Sarah-Jane Laing: In its most basic form, the plan is a way to raise awareness of land management practices and for communities to influence land-use decision making.

Gemma Cooper: Those are my points, too. The plan is about transparency and understanding. I do not think that I can add much to Sarah-Jane Laing's summing up.

Michael Matheson: Great—thank you.

Do you agree with all those principles—transparency, awareness raising and engagement—being in a land management plan?

The Convener: Sorry—I see that all the witnesses are nodding, but, if you simply nod, it will not go in the *Official Report*.

The deputy convener is asking for just a yes or, if you disagree, a very loud no if it has been drowned out by a yes.

Gemma Cooper: Yes.

Sarah-Jane Laing: Yes.

David Bean: Yes.

Michael Matheson: Is the timeline of around five years for the land management plan correct, or should the period of time be longer?

David Bean: It is probably about right. I think that one of the considerations will be whether a tenancy is involved. Clearly, there might be a need, if there are tenancies on the land that run to a specific schedule, to align the timescale for the land management plan with what is going on locally.

Sarah-Jane Laing: Five years is a short timescale for land management, especially when you look at many of the plans that people have that are for 20, 30 or 40 years. We could perhaps look at a 10-year timescale, but, if there are material differences in a plan, perhaps they should be required to be updated.

Again, let us not think about land management plans in isolation, because if someone wanted to make substantive developments, they would have to submit planning applications, forestry plans and all the other things that happen. Certainly, it feels as though 10 years would be more akin to longer-term land management planning.

Gemma Cooper: We would certainly not support anything more regular than every five years. We have already touched on the cost of providing the plans, and there should be a balance between what you are going to require farmers to do and the needs of the community. We have no massive issue with five years, but we would certainly not want it to be any more frequent than

that. As Sarah-Jane Laing said, there might be reasons why the timescale should be longer.

Michael Matheson: You would be open to the idea of a longer-term plan rather than a five-year plan.

Gemma Cooper: We would not have an issue with that.

Michael Matheson: That is helpful—thank you.

If obligations were set out in a land management plan over a longer period of time—let us say 10 years—should the new owner of the land carry forward those obligations if the land is sold within that period of time?

Sarah-Jane Laing: That is an interesting question. People have different motivations for buying land. An incoming landowner might have very different aspirations to the person who currently owns the estate. They might want to focus more on nature restoration or planting. If a new owner wanted to continue managing the land in line with the land management plan ethos, I could see them wanting to carry it on. However, if they wanted to change it, I would suggest that a new plan might need to be produced. I am not suggesting that for land that changes hands regularly, which is not happening in Scotland at the moment, but, if someone wants to fundamentally change how land is managed, it would seem sensible that a new land management statement or plan is delivered.

Again, however, it goes back to where we are in the cycle. If the local place plan is already in place, how does a new management plan feed into that? Where are we with the development of the local development plan?

It is not a definite yes that every new owner must produce a new land management plan, but they must take cognisance of the existing plan and consider whether a new one is required.

Michael Matheson: My understanding of trying to manage land is that it is done over a long period of time. By its very nature, it is much more efficient and effective to do it that way. For example, forestry plans are for 15 or 20 years, and so on. Long-term plans therefore make more sense.

However, if you commit to the idea of long-term plans, consistency of approach is needed over a long period of time, which means that, if land changes hands or the land use changes, which changes the plan, that undermines the purpose of doing it over a longer period of time.

I hear the concerns about the cost that might be associated with that, which is why I am wondering whether making the plan for a longer period of time, while ensuring that the obligations that are set out in that plan are carried forward by anyone who takes over the land while the plan is being implemented, would help to improve land management in the long term and reduce some of the regulatory burden that it might create.

Sarah-Jane Laing: As it is drafted, the bill does not place obligations to deliver elements of the land management plan. The obligation is only to have a land management plan.

Michael Matheson: I understand that. The point that I am making is that, if you have a plan for the next 10 or 15 years and you are implementing it, the objectives that it is meant to achieve are obligations for which the incoming owner would be responsible.

Sarah-Jane Laing: Perhaps it is a terminology thing, but I do not think that it is about obligations.

Michael Matheson: You might not want obligations, but some people might.

Sarah-Jane Laing: For some, that will be the case. If you have entered into a peatland restoration scheme that comes with liabilities and obligations, they will continue with the land. However, if you are, say, contract farming, you might decide to bring those contract farming arrangements to an end and enter into a woodland scheme instead. I would not see the continuation of contract farming as an obligation, but that would be a material change in how the land is managed.

Michael Matheson: So, if the detail that is set out in the land management plan is not an obligation, what is the purpose of it?

Sarah-Jane Laing: It comes back to transparency, engagement and influence in decision making, and how it plays its part in the wider—

Michael Matheson: I understand the point about transparency. However, what value does that have for the neighbouring community, which might agree with what is set out in the land management plan? They might think, “That has been really helpful. We’ve had a really good consultation exercise, and we agree with what has been set out.” The plan gets published, and people say that it is really good, but what happens if the land gets sold two years later and the new owner just rips the plan up? That is what I am trying to understand. You could go through a consultation exercise, engage with the community and produce a plan, and then you could quite literally just ignore it.

Sarah-Jane Laing: No, it is not about ignoring it. It is about your duty to deliver, because, of course, some of it is not in your gift.

Michael Matheson: What—the obligations that go with it?

Sarah-Jane Laing: Let us say that you are a landowner with an aspiration to develop housing. In your land management plan, you make very clear the areas where you would love to develop affordable housing. You could choose to continue to own that land and enter into the planning system, and your efforts might fail; or you could choose to sell it, and the incoming landowner would know that that was an aspiration for you and the community, but, for whatever reason—whether infrastructure constraints or something else—the affordable housing might not be delivered. I do not see that as a breach of an obligation in a management plan, because you have not been able to deliver on the aspirations that were set out in that plan or in a local place plan.

Michael Matheson: I think that you are confused about what I am trying to get at. Perhaps it is the way in which I have phrased it to you. When I use the term "obligation", you seem to be thinking about it from a legal perspective—that is, being legally liable to ensure that something is implemented. What I am trying to understand is whether you are clear about what a land management plan is, what it is there to achieve, how much value it has in the long term, whether there is a requirement for the plan to be taken forward and, if it is not taken forward, what the implications of that are. After all, the danger is that, if we do not get the four or five criteria correct, it becomes a futile process.

Sarah-Jane Laing: There are two elements to consider in that. If things change drastically—that is, if there is a material change in how land is managed—a new land management plan should be produced. That should absolutely happen. It should not be a case of the plan being produced, and then it sits on the shelf and nothing happens. That said, we have to be careful that we do not hold landowners responsible for the delivery of everything that is in the plan, because they are not the ones who might be able to do it all.

Michael Matheson: But we should hold them responsible for the bits that are in their gift, should we not?

Sarah-Jane Laing: Land should be managed in the way in which the plan is framed. Perhaps, again, it is all about the levels. You are absolutely right. If someone says, "I want to farm in a regenerative way", that would be in the plan, but it might not hold them to doing specific things in specific fields. It brings us back to the point about the level of detail that is in the plan and what somebody would be held responsible for. If, in a few years' time, the Scottish Government decided to completely change its agricultural funding support, the land manager would have to be able to say, "That is no longer viable for me, so I am going to have to change how I farm."

Michael Matheson: I understand that, but, for those things that are not changed, do you think that they should be held responsible for implementing them, if they are responsible for doing so?

Sarah-Jane Laing: I do think that there is a responsibility. Perhaps it is about the phraseology and about having something in statute that obliges you to deliver what is set out in a plan, as opposed to a plan being about what we would like to happen or the concepts by which we manage our land. I think that we might have different viewpoints with regard to what the land management plan is for, as far as the detail is concerned.

Michael Matheson: I take a simple approach to things such as plans: somebody has to be responsible for their implementation. If parts of a plan are not implemented, who is responsible for that? Who is responsible for implementing the bits that are being taken forward? I am trying to understand your view. If a land management plan containing clear obligations is set out and the land manager consults on it, spends £15,000 on it and says that he will take it forward but does not bother doing so, who should be responsible for that?

10:45

Sarah-Jane Laing: It is not that he does not bother doing it; he might not be able to do it. If we take peatland restoration, for example—

Michael Matheson: I understand that material changes might come along that result in a need to have a variation to the plan, but, for areas where that does not happen, who should be responsible? Why should the landowner not be responsible for implementing the things that they set out in their plan?

Sarah-Jane Laing: Peatland restoration is one example. As a landowner, I would like to do that—

Michael Matheson: I am not talking about areas where there is a clear material change. In areas where there is a clear obligation, and landowners have given a commitment to implement measures, why should they not be responsible for implementing them?

The Convener: Sarah-Jane is obviously struggling a bit to understand your question, Michael. If you give an example of where you think such a requirement would be appropriate, that might help us to move on.

Michael Matheson: No, I do not think so. I am trying to understand why a landowner who has given a commitment in a land management plan should not be responsible for implementing the bits that they are responsible for, if there has not

been a material change, such as a change in subsidy for farming.

Sarah-Jane Laing: That is because a land management plan is not a set of statutory requirements for that individual to deliver on.

Michael Matheson: Okay. I turn to the threshold of 3,000 hectares. Do you think that that is the right threshold?

Sarah-Jane Laing: For the production of a land management plan?

Michael Matheson: Yes.

Sarah-Jane Laing: Lots of communities would like to have a say on land use and land management in areas that would fall below that threshold. It is difficult to understand the policy rationale for the figure of 3,000, which means that, conversely, it is hard to suggest an alternative, because we are not looking at why it was chosen. We can understand how the threshold works and how many areas it captures, but, at the moment, it is hard for us to understand why that threshold was arrived at.

Michael Matheson: David Bean, would you like to comment?

David Bean: In relation to the threshold question?

Michael Matheson: Yes, the threshold of 3,000 hectares.

David Bean: To be perfectly honest, we do not have a firm, fixed position on what the threshold ought to be, and we probably do not have the level of expertise that would allow us to give you a firm idea of what we think the threshold should be.

Gemma Cooper: We would be broadly happy with the threshold of 3,000 hectares that is proposed. The scale is always going to be arbitrary, but that threshold will catch some of the larger farms that are owned by our members. It is a fairly sensible level for the Scottish Government to choose.

It is difficult for the Government, which is trying to achieve a balance. My understanding is that the 3,000 hectares threshold will cover about 40 per cent of the land in Scotland. With regard to the impact on our members, we think that 3,000 hectares is a sensible way to start.

Michael Matheson: We have had representation to say that it should be 1,000 or 500 hectares.

David, given that you do not have a specific view on what the threshold should be, are you open to its being reduced?

David Bean: I would not like the threshold to be reduced by too much. Obviously, the more that you reduce the threshold, the more that smaller organisations at the lower end are captured by it. Smaller farms, for example, have less resource to engage in that sort of process because they might have tighter margins. Their ability to deliver for their local communities, for food production and for environmental benefits might be further compromised. I would rather that the threshold does not get pushed down too far, but I would struggle to put an exact number on it for you.

Michael Matheson: My final question is on the fact that it is proposed that the land management plan does not include aggregated corporate holdings. Do you think that it should be extended to include aggregated corporate holdings?

Sarah-Jane Laing: If such holdings are managed as a whole, there could be merit in looking at that.

Michael Matheson: What do you mean by "managed as a whole"?

Sarah-Jane Laing: If you manage them as individual businesses and they are entirely separate but you happen to have them under one large ownership, that is very different from having a consolidated forestry ownership in Scotland that is owned in different elements. That is something to consider.

Again, it is about asking what people in the community are looking for. If they feel that they do not have ways in which they can engage already, the land management plan might be a route for them to do that.

Michael Matheson: What if you were the third-largest landholder or owner in Scotland but each of the individual sites that you owned did not trigger the threshold for a land management plan? Should such a landholder or owner be responsible for bringing forward a land management plan?

Sarah-Jane Laing: I think that it would be good practice to do so—yes.

Michael Matheson: Would it be?

Sarah-Jane Laing: Yes, it would be good practice to do so.

Michael Matheson: Okay. Would you support amending the bill to ensure that that would happen in the case of aggregated corporate holdings?

Sarah-Jane Laing: Again, if they are managed in their entirety, it would be good practice. Indeed, we are aware that some of those large landholders already do that.

Michael Matheson: Yes, but do you think that amending the bill to give clarity to that would be helpful?

Sarah-Jane Laing: If it is required, then, yes, it would.

Michael Matheson: Okay. Thanks.

The Convener: That is an interesting point. It was an issue that was struggled with for the farm payment scheme when there were two different holdings separated by a long distance. Provided that there was commonality of machinery, the people working on the holdings and the management of the holdings, they were considered as one holding. Would there be merit in looking at that example in relation to this, or did the generality of what the deputy convener was saying capture the right way to do this?

Sarah-Jane Laing: It goes back to that concept of connectedness. If the holdings are managed and owned in a connected manner, that would make sense to me.

The Convener: Gemma, would you support the point about connectedness?

Gemma Cooper: To be honest, convener, we would need to consider the issue further. I know that it came up at the previous evidence session, but it is not really something that has come up in our discussions so far.

The Convener: There could be upland farmers, for example, who are doing one thing on that land and then have different land that they move the cattle or sheep to, which might have a completely different management—

Gemma Cooper: You are right—yes.

The Convener: It might be woodland—I do not know.

We will take the next questions, which are from Bob Doris, and then we will have a pause to allow people to stretch their legs momentarily. Bob, over to you.

Bob Doris (Glasgow Maryhill and Springburn) (SNP): Thank you, convener. I apologise for attending the meeting remotely. I have been following the evidence with interest. I hope that the requirement for a break after my line of questioning is not a reflection on me, but there we have it.

To return briefly to the 3,000 hectare threshold, I said last week to witnesses that that is just a number to many people—certainly to someone based in Maryhill, as I am.

Glasgow's botanic gardens and grounds sit in my constituency—in part, anyway—and they would fit 150 times into 3,000 hectares. It would seem remarkable that, if the gardens fitted only 149 times into 3,000 hectares, they would not be required to have a land management plan. Given that comparison, which I made to make the number real, does Mr Bean have any further reflections? How much more, or how much less, than 3,000 hectares should the threshold be?

David Bean: Honestly, I am again struggling to put a figure on it. Our broader concern—the reason why I find it difficult to put a number on it—is that if you push the threshold too low, you risk the viability of smaller businesses. That is, in effect, the basis for that concern.

Bob Doris: I get that. Are there any other reflections? Sarah-Jane Laing, if Glasgow botanic gardens fitted into the required threshold 100 times, would that be reasonable? Is there a case for bringing the threshold below 3,000 hectares, given the comparison that I am drawing?

Sarah-Jane Laing: You have hit on a really important point. It goes back to the statement that I made at the start. An arbitrary threshold based on area may not address the perceived problem, which is about the impact of concentrated land ownership.

Concentrated land ownership can happen at a very small scale in not only urban areas but villages. Part of the land management plan is about prior notification and we need to understand the implications of the threshold for that.

Our view is that you should maybe look at having a provision on land that is of significance to the community—a threshold is not needed. It might be land that is identified as part of the local place plan process. As long as we have an arbitrary threshold, some people will always feel that it should be higher and some will feel that it should be lower. If we stick with scale, will we deliver the workable legislation that we are looking for?

Bob Doris: That is interesting. I need to move on, so I apologise to Gemma Cooper for not bringing her in on that point. It is interesting to hear about the idea of having a backstop of 3,000 hectares, but perhaps with a lower threshold based on other criteria. That is really interesting for members as we scrutinise the bill.

On compliance, we heard that land management plans could be positive for landowners and communities—Sarah-Jane Laing made some positive comments about that. Land management statements might be happening already in some cases, and there are real opportunities there. However, there is a debate around having a high-level strategic document versus specific localised elements and requirements. There seems to be a slight tension in relation to some of that.

Whatever we end up with, if the penalty for not producing a land management plan is a maximum of £5,000 but it costs up to £20,000 every five

years to produce one, would it be easier for people to just not produce one? Do we have to look again at the fines and compliance? Fining is a last resort, but is £5,000 just too low in that context?

Sarah-Jane Laing: You will not find many land managers who feel that the £5,000 fine is low; the issue is about what comes along with that. It goes back to the point about relationships and how people participate in other statutory processes. We know that, to access public funding, you have to comply with statutory obligations. Although there is a fine, there may be much wider implications for landowners and land managers who do not produce a plan.

Bob Doris: There may be and there may not—we have looked at cross-compliance previously, but it is still not clear whether there will be cross-compliance. At face value, if it costs up to £20,000 to produce a plan and the fine for not producing one is £5,000, there seems to be an incentive either to not produce a plan or to produce one that is pretty threadbare. Do you not see any case for increasing the maximum fine from £5,000?

Sarah-Jane Laing: The cost is up to £20,000, so lots of people will not spend anywhere near that. Therefore, £5,000 seems proportionate, and cross-compliance is the other angle to look at.

Bob Doris: I appreciate that. Witnesses have been making a big deal of the fact that the cost could be £15,000 to £20,000 but, when I mention the maximum fine, suddenly, we find that it might not cost that much to produce a land management plan. That leaves MSPs a little bit confused, but thank you for that.

Gemma Cooper, do you have any thoughts on the £5,000 maximum fine?

Gemma Cooper: It goes back to what I said earlier: it is about the environment that you want to create for local businesses to function in. I think that £5,000 is not an inconsequential amount of money. Figures from the Scottish Government's rural and environment science and analytical services division—RESAS—this week said that the average income from farming is £12,800, so £5,000 is not a small amount of money. I do not think that people would choose not to produce a plan because the fine was less than the cost of doing so.

The issue is important because, as I said, it is about the environment that we are providing for businesses to function in, and about the message that the Scottish Government wants to send.

Bob Doris: David Bean, do you have any reflections on that, before we move on to my next question?

David Bean: Yes. I absolutely see your point. It does not make any sense if you have a compliance cost of up to £20,000 and the best alternative to not producing the plan is a fine of £5,000. However, my question would be: why does it cost so much, and why should the production of the plan be seen as solely motivated by a desire to avoid being fined for not doing it? Surely the idea should be that the document is of use to the business, too, and something that it can apply in other contexts.

Bob Doris: Thank you for those comments. It might sound as if I am pushing one specific compliance fine, but I refer back to Sarah-Jane Laing's initial positive comments on the power of a land management plan, and I associate myself with the comments of Mr Bean.

The deputy convener talked about whether compliance should relate to the terms of the land management plan or just to the production of the plan. Sarah-Jane Laing talked about the fact that it would not be a statutory obligation to adhere to every aspect of a land management plan. If it can be proven—of course, it is about how you prove it—that the landowner has not acted in good faith to attempt to implement the provisions of a plan to the best of their ability, should that be a compliance issue?

11:00

Sarah-Jane Laing: We certainly would not want a land management plan to be a meaningless document that anyone can put whatever they want into and that nothing happens with. It is about how the plan would fit in with other things that could take place on the land. Let us not look at the land management plan as the only lever. There is a degree of responsibility that goes along with the production and delivery of such a plan. Until we know exactly what is in a land management plan, it may be difficult for us to say what level of compliance would have to sit alongside it.

Bob Doris: That is quite helpful. I do not want to misinterpret what you are saying. Rather than there being a statutory duty on the landowner to deliver everything in the land management plan, you seem to be saying that, if reasonable, good-faith efforts have not been made to deliver the contents of such a plan, that should be a compliance issue. Have I interpreted that correctly?

Sarah-Jane Laing: Yes. We have all probably been involved with the production of plans, whether that is local development plans or far-reaching local or national strategies, that we have really wanted to deliver on but have not been able to. In those circumstances, I do not think that there should be any sanctions or breaches.

Bob Doris: Would it be correct to say that that is your view, unless the landowner has not acted

in good faith or made reasonable efforts to implement the terms that are in the land management plan?

Sarah-Jane Laing: That is linked to things such as the sustainable development measures that are already in statute. There are levers that could be used if a landowner is not delivering on sustainable development for a local community because they are not delivering on their plans for rural housing, for example. The land management plan would be the proof that the local community could use that those things were not being delivered. It goes back to the point about feeding into other things that we have, rather than looking at the land management plan as a stand-alone document.

Bob Doris: I have a final question and will go to Gemma Cooper first. If you have any reflections on my previous question, please feel free to share them, Gemma.

Who reports compliance issues or breaches of the land management plan? The bill as it stands is relatively restrictive, in that only certain groups are able to do that. Of course, there is a balance to be struck between the obvious bodies that could report on a potential breach or lack of compliance versus what could be malicious reporting.

I will not come back in after this, convener.

Irrespective of who can or cannot report on compliance or on breaches, should the commissioner be able to undertake proactive work on a small scale in order to see what is happening with land management plans, so that we are not reliant on issues being reported?

Gemma Cooper: We would prefer there to be restrictions on who can report a breach. It is important for farmers to be able to farm with some confidence. You mentioned that, if the list of organisations who can report is too broad, farmers will never know where the next complaint will come from. We would like to see community bodies being galvanised and organised and engaging proactively with farmers. We would prefer to restrict to formally constituted community bodies those who can report breaches.

We have a bit of difficulty with the principle of the proposed land and communities commissioner, because it would change the flavour of the Scottish Land Commission—which, so far, has gathered information and evidence and has collaborated with stakeholders—such that it would be more of a regulator. If the proposed commissioner were to be set up, I would suggest that, for that to be a success, there would need to be some proactivity and the commissioner would need to work with farmers and other landowners. The tenant farming commissioner's position has worked so well because he has proactively collaborated with stakeholders, and there is a great level of knowledge, trust and understanding. I would suggest that the proposed land and communities commissioner could follow that footprint if the proposal is to be a success.

Bob Doris: That is really helpful. David Bean, do you have anything to add?

David Bean: I absolutely hope that there would be post-legislative scrutiny to trace what had happened in individual cases in which land management plans had been produced. It would look at the extent to which the plans had been abided by and what positive outcomes there had been as a result of the plans.

Sarah-Jane Laing: I do not have an awful lot to add. We agree with the NFUS's position on the benefits of the tenant farming commissioner's approach. He has been able to mediate in an informal way, share good practice and resolve issues without recourse to breaches and sanctions. Ultimately, that has led to better outcomes for all parties.

Bob Doris: So, a proactive approach would be helpful?

Sarah-Jane Laing: Yes.

Bob Doris: I have no further questions, convener.

The Convener: Before we go to a break, I have a question. I got the impression that £5,000 was considered to be a good starting point for a potential fine. What would happen if the plan was not produced three months later and there was no reason for it not to be? Do you think that there should be a graduated fine? Would that help the legislation to achieve what is intended? Would that make it clear to people that they cannot just deal with a £5,000 fine because it is cheaper than spending the £15,000 that would be required to produce a plan? I do not know; it is just a question.

Sarah-Jane Laing: We have not considered that concept before, but I see what you are getting at. If a breach came with a requirement to produce a plan by a certain date and you continued to breach the obligation, I can see why there would be an argument for the imposition of an additional fine.

The Convener: I almost caught you nodding there, Gemma Cooper. Do you agree?

Gemma Cooper: It is important to make a distinction. If someone is wilfully not undertaking what they need to, there is probably a case for something such as what you are suggesting. However, if there are genuine business reasons for why it is difficult to do what is required, for whatever reason, that may tie in with what we said previously about the proposed land and

communities commissioner working with landowners and farmers.

The Convener: We will now pause until 11:12, which will allow members to have six minutes to stretch their legs.

11:06

Meeting suspended.

11:14

On resuming—

The Convener: Welcome back to the meeting. We go straight to Monica Lennon for the next questions.

Monica Lennon: I want to ask about the community right-to-buy provisions. I hope that I get this right—the proposal is for a 1,000-hectare threshold; we have just heard about the land management plan, for which there is a 3,000-hectare threshold. We have heard different views on the matter, with some stakeholders advocating for a threshold of 500 hectares. I am interested to hear what you think the evidence base is for the proposed 1,000-hectare threshold, and what the relative advantages and disadvantages are.

The Convener: I see Sarah-Jane Laing looking up.

Sarah-Jane Laing: I am happy to start, convener.

As far as prior notification is concerned, we have a number of concerns about how many pieces of land will be caught by this. We do not agree with the figures in the bill's accompanying documents; having talked to our members, we know that the 1,000-hectare threshold will catch, say, the selling of garden ground to somebody who has already bought a cottage from you, the transfer of a single-house plot at Tornagrain and all those other things that I do not think it was designed to capture.

I come back to my earlier point that an arbitrary threshold might not capture the areas of land that I think it would be useful to consider in relation to prior notification—that is, the areas that are of significance to the community. They would be defined during the local plan process—or, perhaps more usefully, through what could be an easier form of registration for communities that wanted to highlight a potential community right to buy in the future, should the areas of land in question ever come on the market. By imposing an arbitrary threshold, we could include areas that I do not think that we should be including, and we could exclude areas that might be useful for a community, should they ever come on the market.

Monica Lennon: So, should there be a threshold? Are you not in favour of there being a threshold?

Sarah-Jane Laing: No. We would much rather use the definition of a site of community significance, or of land that has been identified as part of the local place plan process or, indeed, through some form of light registration for a community right to buy. That will give everybody certainty, and it will stop catching the hundreds of routine sales of small bits of land that are used to facilitate renewables and house building. I do not think that those are the ones that we should be capturing.

Monica Lennon: I will bring in David Bean and Gemma Cooper in a moment, but how should a "site of community significance", which you mentioned, be defined?

Sarah-Jane Laing: That takes us back to Mr Matheson's point. How do we identify what is meaningful in terms of the local place plan and land management plans? I think that such areas would be identified as part of that process. It could be map-based or just a description—say, land around the edge of the town. We could probably find a way of describing those areas. As for how we could define them in statute, I will be honest that we have not come up with exact wording that we can share. However, there is merit in exploring how we identify an area of community significance.

David Bean: I think that this comes back to the same sorts of issues that we were discussing earlier. If the bill is to define requirements based on the size of land, it will be difficult to determine what and where that threshold would be. For that reason, I find myself inclined to agree with Sarah-Jane Laing that, if you had a place-planning process that was capable of identifying types of land that, were they to become available on the market, would be of specific use to that community, and, at that point, were able to impose a right to notify where land was to be sold so that there could be an opportunity for a potential community buy-out, that might end up being more useful to communities in Scotland than simply imposing a blanket threshold requirement based on the size of landholdings.

Gemma Cooper: The points about scale are well made. There will always be arbitrary thresholds. Our members could probably live with that. In our discussions about the community right-to-buy elements of the bill, Sarah-Jane Laing pointed out an unintended consequence, which is that many very small-scale transactions could be snarled up by this process. We have one member who made 180 small transactions over a two-year period. They would all be caught by the proposals and slowed down.

We are concerned about the impact on the land market. We are also concerned about the fact that the Scottish Government is regulating more on community right to buy when, as was said earlier, it is in the very early stages of undertaking a review of the current rights. That is what captured our members' attention, as opposed to the threshold.

Monica Lennon: I am looking at what the Land Commission originally recommended. It talked about ensuring that family farms and small businesses would not fall in scope. Is it reasonable to expect that holdings of more than, for example, 10,000 hectares would always be in scope, while those under 1,000 hectares would always be exempt?

I know that different stakeholders have put forward different figures, so the Government and the Parliament will have to listen to the evidence and work out what is pragmatic and proportionate. Would you like to add anything on that, Gemma?

Gemma Cooper: Family farm is a term that is used quite a lot but is difficult to define. From our point of view, the higher the threshold, the fewer of our farmers are likely to be affected by it. We would not support anything that was a reduction in thresholds because of the various issues that we have already talked about. However, as I said, our members have not focused so much on the scale but on the impact on the land market and the regulation in relation to communities.

Sarah-Jane Laing: Our preference would be to define the area of land in relation to its significance to the community rather than who owns it. A family farm could be fairly small, but might own 100 per cent of the potential development land beside a village. A community might not have registered its right to buy, but it may have identified the land in the local place plan as an area of community significance. It would not seem rational to me that that would be excluded, just because it happened to be owned by something that is defined as a family farm.

The Convener: Douglas Lumsden wants to ask a question on this issue, and I would like to come in as well before we move on to the next subject.

Douglas Lumsden: My question is on community right to buy. What mitigations could be put in place for selling small pockets of land? Could a threshold be put in place if a sale was over a certain percentage of the land? It could then fall into a different process. I am trying to think of ways around it.

Gemma Cooper: We have discussed that with our members. We have discussed whether there should be a lower limit, so that when a sale is below that limit, it does not trigger the process, but we have not developed that thinking further. However, this is a major unintended consequence of the bill, which could cost the Scottish Government an awful lot of money, so it is important to get this one right.

Douglas Lumsden: An unintended consequence of the bill may be that nothing gets sold. It may stop pockets of land from being sold, because they would fall into this process.

Gemma Cooper: I understand that rationale. It goes back to the Scottish Land Commission's previous work on the land market. There was a lot of discussion at that time about off-market sales. It is important to say that it is quite common for landowners to sell small pieces of land to individuals not on the open market, but not for any reason of hiding anything—it is not to deceive. For example, land is commonly sold not on the open market for things such as garden ground, pony paddocks and realigning boundaries. It is not contentious. We have to be very careful that we do not catch everything in this process.

Douglas Lumsden: David Bean, do you have anything to add?

David Bean: Not too much, no. The circumstances that Gemma outlines are exactly the sorts of things that a well-functioning property market ought to promote, particularly the likes of rationalising landholdings between two neighbouring farms. Regardless of their size, it is not relevant to any other party that that is done.

Sarah-Jane Laing: I will add a couple of other things. We are unclear as to how the measure sits alongside other existing legislation, such as that on individual crofters' right to buy and on agricultural tenants' right to buy, or in relation to a farmer wanting to buy more land from an estate, which David Bean mentioned.

There will be land for which planning permission has already been granted, and we do not want the provisions to be used by people to thwart any development. Take Tornagrain, for example. The way that we read the bill, every house completion and sale would be subject to the provisions. I do not think that that was the intention. There is definitely an argument for introducing a de minimis level to capture all the elements that Gemma Cooper mentioned.

Our overarching issue is about the scale that will be captured by the provisions. We should remember that the bill seeks to place a duty on the Scottish Government to notify anyone who has indicated that they want to know about an area of land that is for sale; it is not just about notifying the local community. Many individuals could register their interest, and the Scottish Government would then have to notify them about each of those transactions. The scale of the impact of the

provisions is not adequately set out in the accompanying documents of the bill.

Douglas Lumsden: I guess that it is a balancing act for the Government. It wants to give communities the right to buy, but there could be unintended consequences.

Sarah-Jane Laing: That is because the provisions are not just about communities. It refers to the right of others to be notified—that includes you and me, if we were interested.

Douglas Lumsden: Sarah-Jane Laing, you mentioned that the right-to-buy process is already under review. Is the bill competing with that? Should they be better aligned?

Sarah-Jane Laing: I suppose that there are two elements. As I said, we are not sure how the bill impacts on, or sits alongside the current right-to-buy provisions. However, because the Government is reviewing the wider community right to buy, that could include definitions of what a community is and the trigger point. At the moment, the trigger point is fairly restricted; it is when something is brought to the market. If those change as part of the review of the existing measures, they would be carried over into the pre-notification and lotting as well. Therefore, we have to look at measures in the bill in relation to the other mechanisms that already exist or that are being reviewed.

The Convener: Kevin Stewart wants to come in with a question.

Kevin Stewart: This has been an interesting section. I was interested to hear Ms Cooper talk about one of NFUS's members having sold 180 parcels of land. It would be interesting to get an idea of what all that entailed. If that does not breach commercial confidentiality, it would be useful for the committee to see the aspects of that.

Ms Laing mentioned Tornagrain and individual sales being subject to provisions. Convener, I should say that I visited Tornagrain when I was Minister for Local Government, Housing and Planning. Have any of you thought about maybe putting in place conditions such as having a condition on planning that has already been agreed, to stop some folk thwarting a particular development from proceeding? Have you had anybody speak to you about that particular issue?

Sarah-Jane Laing: Not beyond the concept, no. We have not come up with any firm proposals as to how that could be defined, but, when we talked to members, there seemed to be a commonality in relation to areas where planning permission has already been exercised. I am not referring to those places that have planning permission but nothing is happening in them; I am referring to those places where planning approvals and planning permissions are being exercised.

Kevin Stewart: It would be very useful to hear more about that and maybe to get further thoughts on those issues.

Sarah-Jane Laing: I am happy to do that.

The Convener: Just before we leave this subject, I note what Sarah-Jane Laing mentioned about crofting and the implications of the measures.

I am not clever enough to work out the legislation. If somebody wanted to decroft his or her croft, that would possibly count in the same way as a sale from an estate because a statutory sum would need to be paid. Similarly, an apportionment of common grazings, which we all know is just a dot on a map to represent somebody's share, could trigger the section in question. When it comes to crofting—and it is sad that we do not have a crofting representative on the panel, although I hope that we will have one in the future—I am not sure whether a croft transfer from one member of the family to another would trigger that section. Do you have any views on that point or any concerns that those situations might trigger that section? Should we be looking at that?

11:30

Sarah-Jane Laing: Our reading of the legislation as drafted is that, yes, it does capture those circumstances and those such as a voluntary sale to a sitting agricultural tenant or, indeed, someone who uses relinquishment. We have asked the Scottish Government for clarity on that point on several occasions and I do not think that we have had it yet.

The Convener: Okay. It sort of links into the earlier question around how you can draw up a management plan for a crofting estate if you have no control of the crofting or what the crofters do, except to say, "I want it to be a crofting estate," which is what will happen anyway. I am not sure. It is complex. Gemma, NFUS looks at some crofting issues. Do you have a view on that point?

Gemma Cooper: We have. We have definitely come across the common grazings issue and we are looking at it further. I echo the concern around the impact on agricultural tenants because it is fairly common that land is sold to a sitting agricultural tenant—they might have registered their right to buy, the sale might be by agreement, or, as Sarah-Jane has said, there might be a situation where there is an assignation for value, and there is definitely no clarity on the overlay of that piece of legislation with this one. We need to think about that point more because it is really important for our tenant farmers in particular.

The Convener: I have a quick question before I come back to Monica. Are the two figures that we have—the 3,000 hectares for management plans and the 1,000 hectares for lotting—those that were discussed in the lead-up to the bill, or did they just appear in the bill as introduced? Are they a surprise to you, or are they what you have been discussing with the Government? I do not know who wants to go with that. Gemma, you looked up.

Gemma Cooper: Yes—

The Convener: That might have been a mistake. [*Laughter*.]

Gemma Cooper: I believe that the 3,000 hectare threshold was in the Scottish Government's initial consultation and, as I have said, we can broadly live with it. The 1,000 hectare figure was maybe a bit of a surprise to us and I am not quite so convinced about it. However, we have discussed scale at length, and I know that it has been discussed in the committee's other evidence sessions. The issue is that the figures will always be arbitrary and someone will always fall on the wrong side of them. As far as we are concerned, if you must put numbers on it, we can probably broadly live with these ones.

Sarah-Jane Laing: What was a surprise to us was the Scottish Government's decision to use different definitions of large-scale landholdings in different sections of the bill. That decision had not really been discussed at length. Obviously, the Scottish Land Commission had been looking at a different definition of large landholdings, and so many different definitions were floating about that it was impossible to predict which one would be used.

The Convener: Monica, do you want to ask anything about that? I cannot remember.

Monica Lennon: I have questions about section 4, on lotting.

The Convener: Okay. I will bring in the deputy convener first.

Michael Matheson: Sarah-Jane Laing, on the difference in definitions, do you have a preferred one? I am working on the basis that the one in the bill is not the one that you prefer—unless it is.

Sarah-Jane Laing: Do you mean the definition of a large-scale landholding? Three thousand hectares is a large-scale landholding in Scotland. That seems to be an accurate definition of what constitutes "large". Whether it then follows that people whose landholdings meet that definition should all be required to do the same things is probably a different conversation. However, 3,000 hectares is definitely an adequate definition of what constitutes a large-scale landholding in Scotland.

Michael Matheson: You made specific reference to the Land Commission having a definition—

Sarah-Jane Laing: Yes, its definition was 10,000 hectares.

Michael Matheson: Do you think that that was too high?

Sarah-Jane Laing: It is also a definition. If you look at the average landholdings in Scotland, 3,000 hectares is large; 1,000 hectares is another number and a large upland sheep farm falls within that. If you were to think about what constitutes a large-scale landholding in Scotland, 3,000 hectares would be an adequate definition.

The Convener: Douglas, do you have a brief comment?

Douglas Lumsden: Yes. When landowners are looking to borrow money and go to the banks, would this provide uncertainty, because, in effect, things might be taken from them later on?

Sarah-Jane Laing: Lotting provides uncertainty. Any intervention in the land market that places obligations on you or reduces your ability to liquidate your assets—which is what we are talking about here—will impact on your ability to borrow from the banks.

When we talk about lotting, any lack of timescale on that Government decision that means that you cannot dispose of your land would be seen as a risk to lenders. That might impact on your ability to borrow, because the lotting provisions will not just affect those people who bring their land to the market voluntarily; as you say, lotting will have an impact on the wider land market and the attitude to land value and risk in Scotland.

Douglas Lumsden: Thanks, convener.

The Convener: Thank you. I thought that I was going to ask that question, but there you go.

Monica, you have the next question.

Monica Lennon: Lotting is a significant part of the bill. Again, there are a range of views, but there is quite a lot of concern and uncertainty around this part of the bill. I would be interested to hear how you think lotting decisions could work in the best interests of both landowners and local communities. I will start with David Bean—you made eye contact first.

David Bean: One thought that occurred to me when I looked into the issue is that we are not entirely sure as to the basis on which a lotting decision is going to be made. We have this somewhat nebulous concept of the public interest, but there are clearly countervailing concerns that

need to be weighed up in making a such determinations.

On your question as to how the process could best be made to work, I wonder whether some degree of distinction might be applied as to whether a business is being sold as a going concern. If it is being sold as a going concern, that ought to weigh against a lotting decision, because the business has grown up around the land that is available to it. Therefore, if the idea is to transfer it to another landholder who will continue managing it in roughly the same way, lotting could be particularly injurious to their ability to do that, versus a scenario where someone was merely selling land as land, in which case, provided that they could find a buyer, they would be less disadvantaged in the sense that they were not trying to sell a business that was going to be reduced in scale.

However, I think that that tends to open up questions over the ability of businesses to continue onwards as going concerns. Clearly, there is an advantage to making it more feasible for people to acquire smaller parcels of land—there is a community benefit there, do not get me wrong; that is clearly true—but we know that certain rural land activities can only be commercially viable at a certain scale. There are also the communities that have grown up around those businesses, often including people who are working directly for them; indeed, if the business has an impact on tourism, as businesses often do, there is the indirect employment that is associated with that. There is a risk of disruption to all of that with lotting. Again, on how it could be made to work better, there should be a presumption in favour of the retention of land when sold as a business or as a going concern.

Monica Lennon: Thank you for that helpful answer. I just want to probe this a little bit more. Under the bill as drafted, ministers will take into account whether there is a positive impact on local community sustainability. You might have a view on whether that has been sufficiently defined, but is it your view that the definition should take in, for example, just transition, the impact on the local economy and the impact on workers and supply chains? Are those the kinds of things that you are thinking of when you talk about the business impacts?

David Bean: Yes. As Mr Stewart alluded to earlier, such matters would clearly need to be aired subsequent to the passage of the bill, during the consultation on the detail of the regulations.

I am thinking of absolutely all the issues that you mentioned. It is about the sustainability of communities and the maintenance of populations that have grown up around the ability to work for a business or in jobs enabled by that business's existence.

Sarah-Jane Laing: I want to pick up on the point about the decision-making process. You are absolutely right: the basis for the decision on lotting is whether it makes a community more sustainable, which can be different from what is deemed to be in the wider public interest. That is an interesting balance for the commissioner and for ministers who will make that final decision.

The lotting of land for sale is not new; in fact, sellers do it now on a voluntary basis. However, they sometimes do it to increase the marketability of properties and to bring together parcels that make sense. For instance, you would be unlikely to sell productive forestry without ensuring that people had access rights for timber harvesting, and you would not sell areas that would impact on your farming activity. For example, you would not sell a steading that meant that you could not access your fields. Lots of lotting decisions are based on land use and productivity.

How would lotting take place in relation to community sustainability? Some of that could be really straightforward—it would be possible to think about, say, land for housing, or land for community interest. However, can you do that in the abstract? That takes us back to the local place plan model. If you had a clear local place plan, any decisions by the seller could be shaped and steered by it. They would not have to rely on some statutory measure.

What would be the impact of a decision made by the land and communities commissioner? After all, it might be the right thing for that local community, but it might not deliver the best outcome for the land from a net zero point of view, or it might impact on the ability to bring forward a renewable project, tree planting or whatever. It is really difficult to see how you can make a decision that balances all those interests.

Monica Lennon: I think that you have raised some important points. However, given that, as you have said, lotting happens anyway, it sounds like we need more clarity on what will be taken into account with regard to community sustainability.

You have rightly talked about national outcomes and national objectives, but what would need to be changed in the bill to ensure that decision makers were striking the right balance between, say, the environmental impact in terms of biodiversity or net zero and other things such as housing needs or local access? Do you think that it would be right to address that in the bill itself, or would it be more appropriate to put that in guidance?

Sarah-Jane Laing: That is a difficult question, because you can see that a concept might be underlying all this that could be beneficial when it

came to the things that you have to take into consideration when you bring a property to market—which would include not advertising it. This is about any decision to voluntarily bring a property to market, and that will be tied to your land management plans and everything else.

My worry is that we are creating a bureaucratic, unworkable process that could drag on and, ultimately, dissuade people from bringing properties to market. We want to continue to see a land market in Scotland that creates investment and opportunities. However, the fact is that as soon as there is any kind of uncertain market intervention, people back off, and I do not think that that is where we want to be.

We want to see something that provides certainty, in terms of a timescale, the basis of decision making and a backstop. If some lots are not sold, are we all clear as to what happens to them, and to the sale of other lots?

There is lots of work to be done to create a workable lotting provision, and I do not believe that what is in the bill at the moment is workable.

11:45

Monica Lennon: Before I move on to Gemma Cooper, I note that you mentioned timescales. Do you have a view of what a reasonable timescale would look like?

Sarah-Jane Laing: Just having a timescale for the Scottish ministers would be a starting point for us. That backstop is required. The bill has requirements for communities and landowners, but we really need that backstop for ministers in terms of decision making.

Gemma Cooper: Our members were not very positive about lotting as a concept. They found it worrying for all the reasons that have already been talked about, in relation to business planning, business certainty and the impact on the land market. I am not sure that I can give the committee any silver bullets to make that better for landowners. I can say that it is really important that we get this right, because the bill provides for the Scottish Government to cover compensation if people lose out as a result, so it could get very expensive if we do not get it right.

I also agree with Sarah-Jane Laing about the need to have specific timescales. There can be various reasons why a farmer might want to dispose of land, but to allow the process to go on indefinitely would be really problematic. The timescale would need to be quite prescriptive so that there is assurance for them.

Monica Lennon: I am looking at some of the written evidence. Am I correct that NFU Scotland's position is that

"communities should be proactive in noting their"

interests

"for their local area",

and that local place plans provide an opportunity for them to do that? Is it your position that the onus should sit with the community?

Gemma Cooper: Yes, absolutely. That view came in strongly from our members when we spoke to them. It probably links back to land management plans, which we have discussed at length. I do not think that all these provisions sit in isolation, but our members think that, on balance, it should be up to communities to be proactive in being clear about what their aspirations are and in dealing with landowners. Ultimately, this would be a backstop, because they would have the opportunity anyway if something came up, and that relationship would be there.

Monica Lennon: Are you confident that communities will always have the knowledge, the tools and the resources to do that?

Gemma Cooper: I think that that has really come on, even in the last decade. Communities have a lot more information and staff available to them and are a lot more professional and more au fait with the law. I can see that there might be situations where that is not the case, but I think that, for the most part, they are pretty well informed.

The Convener: Thanks, Monica. Michael, we are back to you for a question.

Michael Matheson: I turn to what is proposed in the bill around the transfer test and the way in which the bill intends it to be applied to the seller prior to a sale being undertaken. Do you think that what the Government proposes in the bill is the right way to go about that? My question is for David Bean.

David Bean: I think that in any decision there is a balance to be struck between the interests of the existing landowner and those of would-be buyers. We are not entirely convinced that the interests of the landowners are fully being taken into account under the bill.

There are a couple of items that my fellow witnesses mentioned that we also picked up on. For example, in the case of a lotting decision being made that does not result in the sale of all the lots, there would be a question about what happens to the unsold lots and whether they can reasonably be reabsorbed back into the estate and then sold on together. What proportion of the land was lotted in the first place, and how does that affect any potential future decisions about how to market the land?

I also note that what we have here is, in essence, a transfer test with a public interest test sitting on top of it. Given that the bill makes reference to the opportunity for landowners who are affected by negative decisions to claim compensation, it needs to be borne in mind that there is then a clear public interest in the public purse not having to fund compensation because poor decisions have been made.

It is reasonable to say that we have some concerns over that, which may be partly about the design of how it is to be done. Although the reference is to "Scottish ministers", I suspect that arm's-length bodies will be doing most of the work. It would therefore be about the guidance around the system and how efficiently it is set up. Again, those may turn out to be matters that should be examined more thoroughly at a post-legislative stage.

Sarah-Jane Laing: Taking a step back and thinking about what premise underpins the provisions, we fundamentally still have an issue with the fact that there seems to be this idea that scale is bad. Scale is often advantageous when we consider the delivery of quite a lot of the national outcomes, such as the wellbeing economy outcomes. We then have the cross-subsidisation of nature restoration, amenity woodland and all the things that the productive parts of an estate might do. I worry that lotting will not take those into consideration.

We then come back to the question of the basis of the lotting decision. We have to be really clear about what the end goal is. An end goal of diversity for diversity's sake is not the right one that we should be pushing for. If the end goal is about delivering benefits for a local community, again, it is about how that sits with the ability to deliver large-scale nature restoration projects.

When we talked about the issue with the Scottish Government, the discussion was always about how we wanted people who will own land in the future in Scotland to manage land, and how we wanted to encourage responsible investment and responsible land ownership. I will be honest and say that it was therefore a little bit of a surprise when we saw that the proposals were kind of flipped on their head and that the provisions would affect and were about people who were selling land in Scotland.

When we have tried to take a scenario and work it through, there seem to be many steps in the process where how it would work is not clear. That really causes concern not only for people who want to buy but for people who want to retain land in Scotland but are using their land as standard security for future investment. We are still really concerned about that lack of clarity in relation to many of the steps in the lotting process. If we impose any conditions in relation to the incoming buyer, we would be looking at the entities that they are buying and, indeed, at how we impose any restrictions on ownership in Scotland. Those are, of course, very big issues to start considering.

Gemma Cooper: To reiterate what I said earlier, our members simply do not like this provision, mainly because of what I said about the impact on the land market, the speed of transactions and so on. I cannot really think of an easy way to make it better, to be honest. I note simply that they do not really like it very much.

Michael Matheson: Okay. That is very clear.

Sarah-Jane, I want to go back to your comment that you were surprised that the Scottish Government had—I think that I am paraphrasing—flipped the process and placed the obligation on the seller. Had it been considering that the process should be based on the purchaser?

Sarah-Jane Laing: That was certainly the discussion that we were having with the Government and the Scottish Land Commission. The policy memorandum explains why the Government has gone down a different route, but when we, as stakeholders, were looking at whether there was a provision that landowners could buy into, we were looking at whether we could put in place restrictions on buyers of land in Scotland that would not dissuade investment and would deliver the best outcomes for people, jobs and nature from Scotland's land.

Michael Matheson: The Scottish Land Commission originally proposed that there should be an explicit public interest test in the bill. Would you prefer the approach of having that test as opposed to having the transfer test, as is currently in the bill?

Sarah-Jane Laing: Again, the issue relates to on whom the test is imposed and who makes the decision. In relation to how land was managed, the overarching decision would seem to be about the public interest rather than about what might be needed for sustainable communities. That goes back to how we balance the national interest with local community needs, especially in areas where there are no local place plans.

Our organisation does not agree with market intervention, but we want there to be levers and other things that encourage responsible land ownership and responsible buyers to come to Scotland. Most of that is governed by how land is used rather than by restricting who owns it.

Michael Matheson: Gemma Cooper, would the inclusion of a public interest test in the bill help to address the concerns of your members? I suspect that it would not, but I will ask the question anyway.

Gemma Cooper: We have discussed the matter at length, and our members found the concept to be problematic—it is fair to say that they were uncomfortable. If we had to go ahead with the provision and had to make a choice, we would probably want a process that provided clarity rather than a stand-alone public interest test.

David Bean: I suspect that there will be a need to consider elements relating to the public interest when any decision on lotting is taken. The question is at what stage in the process such considerations come in, but that might be more of a technical question, which I do not want to get into too deeply.

Michael Matheson: Yes, we are getting into the weeds of how the system would operate, rather than considering the principle of whether there should be a transfer test or a public interest test. There would be greater transparency in being up front in saying that there will be a public interest test, rather than a transfer test, which is a bit non-specific.

David Bean: I can certainly see that argument.

Michael Matheson: Thanks.

Mark Ruskell: I appreciate that the witnesses are here to represent their members and that their members have significant private property interests, but the bill is seeking to balance those interests with the wider public interest.

We have heard evidence that suggests that there is much more stringent regulation of land and land ownership across Europe and that Scotland is somewhat of an anomaly in that regard, with much less stringent regulation. The fact that those countries have managed to put into their domestic law regulations that have not been successfully legally challenged on the basis of private property rights suggests to me that they are not impacting on those rights.

I am interested in your views on whether the proposals in the bill, including those that we have just discussed, could interfere with private property rights. If so, why would that be the case here when it is clearly not the case in the vast majority of European countries, which have more stringent regulations that remain unchallenged and in operation on the statute books?

Sarah-Jane Laing: You touched on the reason right at the start of your question: Scotland's land ownership pattern is very different from that of other countries. When new measures are introduced, there is consideration of the context of the country in which they will be introduced. Lifting land intervention measures from one country and imposing them on another must be considered alongside the current pattern of land ownership, the current policy drivers and the current public interest.

As you are probably aware, in some areas of Europe, steps are being taken to address the fragmentation of ownership by consolidating ownership in order to try to meet some of the really ambitious nature targets. That is not all happening through ownership—it is happening through collaboration—but it is a recognition of the longer-term impact of fragmentation because of intervention in property rights. We have to look at the Scottish context and what that would mean. My view is that there are some measures in the bill that, when applied in a Scottish context, infringe on property rights, especially the ability, as a willing seller, to bring your property to the market and dispose of that asset.

12:00

Mark Ruskell: So you are suggesting that the application of private property rights is very different in Scotland because of the scale of private property ownership—it is weighted towards the scale of ownership. That is not my understanding of it. Property rights are property rights, regardless of where you are. That is certainly the case in the European Union and in this country.

Sarah-Jane Laing: Yes, you are absolutely right. The European convention on human rights is Europe-wide, but when looking at whether there is compliance, different factors are taken into consideration. One is proportionality—the number of people who would be affected—and the others are policy rationale and the public interest. Individual interventions are considered in line with the proportionality, the policy rationale and the public interest of that situation, not in the wider European context.

Mark Ruskell: If land ownership in Scotland is more concentrated, an intervention will impact a much smaller number of people than, say, an intervention in Denmark, which would impact a much greater number of people. If a small number of people would be affected, what weighting is that given when considering the impact on the private property interest?

Sarah-Jane Laing: For something to breach the ECHR, it must hit one or more of the tests. Judges who look at it might deem it proportionate, but it might not meet the tests on policy rationale and the public interest. You are absolutely right that it could be deemed proportionate, but it might fail ECHR tests on other aspects.

Mark Ruskell: Presumably, you work with other bodies across Europe that represent landowners.

Sarah-Jane Laing: Yes.

Mark Ruskell: I will come to the other witnesses later, but do you have any evidence of how the public interest regulations that put more regulation on land and land ownership have been successfully challenged across Europe?

Sarah-Jane Laing: We have some, and I am happy to share that. We are part of the European Landowners' Organization and part of Wildlife Estates Scotland, which is a Europe-wide accreditation scheme. As well as the evidence of those that have been successfully challenged, we have evidence that intervention measures might well be delivering the policy rationale in question, such as the continuation of a particular land use. The SAFER system is being used for the continuation of a land use, rather than it being about land ownership per se. It is a land ownership tool that is used to ensure the continuation of family farming.

Mark Ruskell: Do you have evidence of how the courts have seen private property rights as having been diminished as a result of regulation across Europe? That would be of interest, because the evidence that we have is that Scotland is an anomaly because it is the least regulated.

Gemma, do you want to come in on this?

Gemma Cooper: I do not have a huge amount to add to what Sarah-Jane Laing said. Our members were very concerned about the balance of rights, particularly in relation to the land market regulation aspect of the bill, but they have not given us examples of where the situation is different abroad and where regulation has successfully occurred.

I do not have anything helpful to add just now.

Mark Ruskell: So there are no other farming unions across Europe that have successfully challenged regulation on the basis of private property rights?

Gemma Cooper: Not that I am aware of, but we would be happy to come back to the committee.

Mark Ruskell: That would be useful. David, do you have anything to add?

David Bean: The Scottish Countryside Alliance does not directly represent the interests of landowners, so I would prefer not to comment too much on their legal position.

Mark Ruskell: I was just drawing on your comments at the beginning of the session, when you seemed to imply that you were leaning towards larger landowners, but maybe not.

David Bean: Well, not necessarily directly from a legal standpoint in relation to the ECHR.

The Convener: You will be pleased to hear that we now come to the final questions, which are on the land and communities commissioner. It seems that he or she will be given a specific role—a role as distinct as that of the tenant farming commissioner—in the Land Commission. Is that a good idea?

Gemma Cooper: We are not in support of another commissioner for the Scottish Land Commission. As I said earlier, the commission has worked successfully because it has taken a collaborative approach and has worked with stakeholders. There are commissioners in place who are separate from the tenant farming commissioner. As I said earlier, the tenant farming commissioner role has functioned well. The tenant farming commissioner has powers, albeit limited ones, on which I am sure that the committee will have had evidence. The role has worked well because of the collaborative way in which the commissioner has gone about exercising it.

The land and communities commissioner is quite different. For us, the creation of that role moves the Scottish Land Commission to being more of a regulator. From a farming point of view—given that we are a highly regulated sector—that is quite uncomfortable. In principle, we find the proposal problematic.

The Convener: Is there a solution—other than simply not having a land and communities commissioner? Who would become the adjudicator of good taste?

Gemma Cooper: The commission could probably do that in-house. I do not think that it necessarily needs another commissioner. The commission has limited resources, and I think that the proposed new commissioner and the back-office staff who would be needed could be expensive for the commission. If the commission continues to work in the spirit in which it has worked with us to date, I think that the role in question could probably be performed in-house.

David Bean: I entirely agree with Gemma on that. We would argue that the Scottish Land Commission could probably successfully absorb the functions in question as a corporate entity.

The Convener: Sarah-Jane, are you going to be the odd one out, or do you agree?

Sarah-Jane Laing: I agree. I highlight the point that Gemma Cooper made about the synergies with the other aspects of the Land Commission—the good practice, the mediation and the work that we are doing to understand the impact of wider land and land use policies. We also have concerns about the establishment of another land commissioner in relation to how that commissioner would interact with the wider Land Commission and the cost of the functions.

The Convener: Who would be responsible for the arbitration of community engagement? Would that sit with the Land Commission as a whole?

Sarah-Jane Laing: I think that the Land Commission has the skills, the expertise and the staff to do that. We come back to the question of what decisions and obligations will be placed on people in relation to which the commissioner will have to be the arbiter. Until we are clear on exactly what those will be, it is hard to say exactly how that role should function.

The issue is not only about the Land Commission; it is also partly about where the Scottish ministers sit in the process. We need to be clear about the relationship between the Land Commission and the Scottish ministers when it comes to some of the decisions on lotting.

We would say that the land commission, as an entity, should be responsible for that.

The Convener: To be clear, the lotting would not sit with that person; it would go to a specialist, who would advise the Scottish Government. That is my understanding. Is that correct?

Sarah-Jane Laing: No. The report would go from the land and communities commissioner to ministers. The land and communities commissioner can take advice, but—unless I have read the bill wrongly—they would provide the recommendation report.

The Convener: If the land and communities commissioner were appointed, as per the bill, would he or she have to have specialist skills to enable them to do lotting? You should be careful about how you answer that. You might offend lots of people who do the job that I used to do, who thought that they were experts in lotting. If the Government pushes on with the land and communities commissioner, should he or she have specialist skills?

Sarah-Jane Laing: If the individual does not have that expertise, they should be required to access it. The bill includes wider requirements in relation to experience of community development. If someone is to make decisions based on land, it makes sense for that person to have expertise on land valuation, land management and all aspects of lotting. It is very technical—that is why trained professionals carry it out. If the individual does not have that expertise, they must be required to access it.

The Convener: You all nodded. I do not want to put words in your mouths, but I take it that you all agree with Sarah-Jane Laing.

David Bean: Yes.

Gemma Cooper: Yes, I agree. If the commissioner does not have the skills, they must be able to access them because, as Sarah-Jane said, valuation of land is highly technical.

David Bean: Furthermore, I do not think that it is a job for one person anyway. It is clear that whoever did that job would need to be backed up by a professional service. The expertise of rural surveyors and land agents would need to be involved in the process of doing the valuation and figuring out the exact areas of land that would be concerned.

Sarah-Jane Laing: It seems a bit strange that the only disqualification from holding the role is that someone has been a large landholder in the previous 12 months, which brings us back to the definition of what a large landholder is. If someone has the necessary expertise to perform the role, we would question their being disqualified from doing so simply because they happen to have had ownership of land.

The Convener: My next question was going to be whether only large landowners should be prevented from performing the role or whether all landowners should be prevented from doing so. Can you see why the definition of a large landowner has been used, or do you think that that approach is based on a perception? Should we simply look for the best person to do the job?

Sarah-Jane Laing: Yes. I did not understand the basis for that. The issue should be about the skills and the expertise that are required for the decision-making process, wherever the role is embedded in the commission.

The Convener: Does anyone want to add to that? Gemma, were you about to jump in?

Gemma Cooper: I agree—it seems strange to single out one specific interest type.

The Convener: That brings us to the end of the session. As we will continue to look at land reform for some time yet, if you would like to follow up on anything that you have said, or if there is anything that you missed, you can get in touch with the committee clerks and let them know.

Thank you for attending this morning's meeting. There was one member who might have been joining us, but they have not done so. That brings us to the end of the public part of the meeting, and we now move into private.

12:12

Meeting continued in private until 12:37.

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