OFFICIAL REPORT
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Net Zero, Energy and Transport Committee

Tuesday 3 December 2024

Session 6

The Scottish Parliament
Pàrlamaid na h-Alba

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NET ZERO, ENERGY AND TRANSPORT COMMITTEE
36th 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:

Rhoda Grant (Highlands and Islands) (Lab)
Magnus Linklater
Laurie Macfarlane
Peter Peacock
Andy Wightman

CLERK TO THE COMMITTEE

Peter McGrath

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Net Zero, Energy and Transport Committee

Tuesday 3 December 2024

[The Convener opened the meeting at 09:15]

Decision on Taking Business in Private

The Convener (Edward Mountain): Good morning, and welcome to the 36th meeting in 2024 of the Net Zero, Energy and Transport Committee. The first item of business this morning is a decision on whether to take items 3 and 4 in private. Item 3 is consideration of the committee's approach to the Environmental Authorisations (Scotland) (Amendment) Regulations 2025, which is quite a weighty tome. Item 4 is consideration of the evidence on the Land Reform (Scotland) Bill that we are about to hear.

Do we agree to take those items in private?

Members *indicated agreement.*

Land Reform (Scotland) Bill: Stage 1

09:15

The Convener: Our second item of business is an evidence session on the Land Reform (Scotland) Bill. Today, the committee will hear from a panel of commentators and researchers with an interest in land reform. The main focus today is on part 1 of the bill.

I am pleased to welcome Magnus Linklater, a journalist, who is joining us online; Laurie Macfarlane, co-director of the think tank Future Economy Scotland; Peter Peacock, formerly an MSP and minister here, former leader of the Highland Council and also formerly a policy director at Community Land Scotland; and Andy Wightman, formerly an MSP and now a researcher—I think that you are more than a researcher—for the Who Owns Scotland project. Thanks for accepting the invitation to be here.

I am pleased to also welcome Rhoda Grant, who will have a chance to ask some questions at the end.

As I have done in every session, before I start, I remind members that I have an interest in a family farming partnership in Moray, as set out in my entry in the register of members' interests. Specifically, I declare an interest in approximately 500 acres of farmland, of which 50 acres are woodland. I am also a tenant of approximately 500 acres in Moray under a non-agricultural tenancy arrangement, and I have another farming tenancy under the Agricultural Holdings (Scotland) Act 1991. I also occasionally take on annual grass lets.

We will move straight to questions. My first question is a warm-up question for all the witnesses. We seem to go through land reform bills every 10 years or so. Is this bill needed, and will it achieve what it sets out to achieve? We will start with Andy Wightman.

Andy Wightman: You are right that we have a land reform bill every 10 years or so, but it is worth reminding the committee that land reform is a very broad topic—non-domestic rates, housing, rent controls, wildlife control and deer management are all land reform. In fact, Parliament deals with quite a lot of land reform legislation, although it might not badge it as such.

No, this bill will not achieve what it sets out to do, other than the part 2 provisions, which expressly make changes to the 1991 tenancy agreements for farmers and introduce a refreshed tenancy regime for smallholders. My main concern is that the Government appears to wish to

introduce a bill that it says will greatly empower communities and diversify land ownership—that language has been around for 25 years of devolution—but the bill will expressly not do that.

The Convener: I will work along the table, so I will come to you last, Magnus.

Peter Peacock: The short answer to your question is yes, the bill is needed, but no, it will not meet the objectives that are being set out for it.

I will try to give that some context. You said that this is a warm-up question, so I will limber up for a moment or two, if I can.

The Convener: Not on the whole bill, and not for the whole session.

Peter Peacock: No, I will just try to put this into context. I will go back to the lead-up to devolution and the debates about land reform, and then quickly go through devolution.

The assembly referendum was in 1979, and, later that year, John McEwen published "Who Owns Scotland", the result of a lifetime of work. That was the first time that we had seen a systematic appraisal of the subject. It was a very dramatic moment in waking up the country to the ownership patterns that exist in Scotland. Those are highly unusual to most people, and we are probably largely unaware of them in Scotland. They are very unusual internationally; we have more concentrated land ownership than is the norm in most places.

The book also revealed the economic and social consequences that flow from ownership being concentrated in very few hands—concentrated wealth, concentrated power, concentrated influence and a power imbalance in society. That is contested territory, but that was the view that emerged from that piece of work.

There then followed, in the 1990s, the McEwen lectures, which was a series of lectures by a number of professors and other eminent people that led up to devolution in 1999. They talked bout the impact of the concentration of land ownership in Scotland and a variety of questions around economics, rural development and so on.

In 1998, Donald Dewar gave what I think was the last of those lectures, as the then secretary of state when he was about to become the First Minister of Scotland. In that lecture, he set out his enthusiasm for land reform and said that it was a great early opportunity for the Scottish Parliament, because it would have the time to legislate for the first time and it would have the inclination to legislate. Under his leadership, the then Labour Government in Scotland was preparing some work on that. He also alluded to the Parliament not being subject to the will of the House of Lords, which many held would have helped to maintain the then current land ownership patterns.

In those years, the Assynt crofters buyout happened and that was really inspirational. It inspired a lot of people in Scotland and it drew a huge amount of interest, and it was quickly followed by the Eigg land buyout, which also inspired people and drove debate about the issues. The Laggan community also did the first of the big forestry leasing schemes to get more local control.

In that final year before devolution started, we had the land reform policy group, chaired by the then rural affairs minister in the Scottish Office. I will quickly quote from the paper that came out. The third sentence of the final document says:

> "We need to put in place new and innovative means of properly securing the public interest in land use and land ownership."

I stress the phrase:

"the public interest in land use and land ownership".

That was right up-front from the beginning. The first major recommendation that the group made for achieving that public interest was

> "increased diversity in the way land is owned and used ... which will lead to less concentration of ownership and management in a limited number of hands".

Much land use is determined by ownership in the first instance.

That is the deep background. We come to the current bill, and the Government's policy memorandum states that the Scottish Government defines land reform as

> "the ongoing process by which the ownership of land, its distribution and the law which governs it is modified"

and so on.

Right at the heart of the thinking during that 25-year period and through different Administrations is the concept that the public interest in land is important and that the concentration of land ownership is an issue that Scotland needs to tackle. That policy has been consistent for 25 years, but here we are, 25 years later, and virtually nothing has changed with the concentration and patterns of land ownership. That is what the bill sets out to begin to take the next step on.

In that lecture that I mentioned, Donald Dewar said that he saw land reform as a long-term project, that it is not a single, one-off event and that Parliaments in the future would return to it until it made the progress that he wanted it to make. The bill purports to deal with questions of ownership, public interest and land use, but as it is drafted, I would argue that it does not materially affect any of that. I can go into detail on that when you want me to.

Laurie Macfarlane: I thank the committee for inviting me today. I certainly think that Scotland needs more land reform. As Peter Peacock has pointed out, the Scottish Government's definition of land reform is that it is an "ongoing process" and it focuses on the ownership of land and the distribution of that ownership, and on reforming and modernising the governance around it. On that basis, it is clear that we still have some distance to go.

Despite multiple rounds of land reform legislation in Scotland that have seen some progress, many of the core issues that we have in Scotland remain stubbornly in place, including: the highly concentrated pattern of land ownership, which has not really shifted and, indeed, on some measures, has got worse over the past decade; the fact that Scotland's rural land market remains largely unregulated, in that anyone can buy large amounts of the country with few questions asked and little consideration given to the public interest; the fact that we have an acute urban and rural housing crisis in Scotland, a large driver of which is a highly dysfunctional land market; and our ambition to deliver a just transition to net zero and to meet our climate, nature and biodiversity targets, all of which land is absolutely critical for.

Does the bill meet the scale of the challenges? As currently drafted, I do not think that it does. For me, this is, without doubt, the weakest land reform bill that has been brought to this Parliament.

We can get into the elements of the bill that are welcome, such as land management plans and deeper community engagement. Some changes are needed, but they are certainly the right principles. However, those measures are tinkering around the edges and will not make a significant material change to the core issues that I have just outlined.

I echo what Peter Peacock said about the public interest. What has really been lost from the bill is any notion of the public interest. In the consultation, we had the idea of a public interest test, which had the seeds of being quite useful. That has been watered down completely and turned into the transfer and lotting mechanism, which was only ever intended to be one potential outcome of a public interest test.

Fundamentally, the issue is that the bill has ended up being very narrow in scope, and large things are completely missing. For example, there is very little or nothing on urban land reform or housing. Strengthening the land rights and responsibilities statement or putting that on a statutory footing is missing, as are conditions for public funding for land-based activity.

The elephant in the room in land reform continues to be tax and fiscal policy, which has a crucial role to play in all of that, but the bill and the Scottish Government have been fairly silent on that.

As currently drafted, the bill is a bit of a missed opportunity. I do not think that it will materially advance any of the Scottish Government's core objectives, whether they are in relation to land reform or wider objectives, such as economic growth, tackling the housing crisis, delivering a just transition or building community wealth.

The Convener: Magnus Linklater, now is your moment.

Magnus Linklater: I have only two qualifications. First, as a journalist, I feel that I have been covering land reform since the beginning of time, because I was sitting in the Parliament watching the first bill as it progressed in 2003.

Secondly, I will very much declare an interest, in that I am a trustee of my late wife's family estate in Perthshire, which is 6,000 acres of heather and rock on which there are a few sheep and a hydro scheme.

Convener, you asked whether the bill is needed, but the answer depends on what you mean. If the need is the political imperative of breaking up large acres of land and distributing it to local communities, then, of course, it is needed. That has always been the driving force behind land reform. However, that runs into the barrier of what seems to me much more important, which is land use. Ironically, land use, when it comes to delivering jobs and economic improvement, is often better done by large estates rather than small, broken-up estates.

There is an inherent contradiction. Convener, you chair the Net Zero, Energy and Transport Committee, which, presumably, aims to ensure that large areas of rural Scotland do their best with carbon capture and the mitigation of climate change. Right across Scotland, the message is that the larger the areas of land, the better equipped they are to achieve that. The RSPB says:

> "nature does better in these larger more ecologically joined-up places".

This morning, in *The Times*—my own newspaper—I read that four landowners in the western Highlands have formed a group to create a huge area of land where they think that they can achieve rewilding. I am not a great believer in rewilding, but everybody seems to subscribe to it. Scotland largest landowner, Anders Povlsen, who gets very little criticism from this Government, is a rewilder, as I understand it. The local community group that has been formed includes Forestry and Land Scotland, which is a Government agency,

and the Woodland Trust Scotland, which is a nature conservation charity. We, on our Perthshire estate, have been encouraged by NatureScot, the RSPB and all the other agencies that we consult to join up with other estates to achieve greater biodiversity and conservation.

It seems to me that there is an inherent contradiction right at the heart of the bill. What are we trying to achieve in terms of land use? If we are trying to achieve a balance between agriculture and conservation, then actually—ironically—bigger is best.

09:30

The Convener: Thank you. We have a whole heap of questions. The first question was a soft introductory question and I allowed lengthy contributions, but I cannot do that for every question. I encourage short questions and short answers, and we will see how we go. Mark Ruskell is first.

Mark Ruskell (Mid Scotland and Fife) (Green): I found those introductory comments on the context very useful. What specifically is missing from the bill? Andy, do you want to answer that first?

Andy Wightman: I have been arguing for land reform since 1993 and I have set out an extensive range of things that the Scottish Parliament needs to do but has never done. My basic position is that we need to get the fundamentals right. In the words of the current Labour Administration, we need to fix the foundations, which means getting the structural elements of ownership right. It means having proper fiscal policy, reforming inheritance law, having a properly functioning and transparent market and all the rest of it. I believe in fixing the fundamentals and then allowing landowners as much freedom as possible within that. In this Parliament, however, land reform has been characterised as involving what I call tactical interventions, such as tweaking things when people choose to sell land. That has not achieved a great deal.

As Laurie Macfarlane said, provisions on tax are missing from the bill. That is a massive gaping hole. Also missing are provisions on inheritance law reform and common good land. I drafted an outline land reform bill last December, which is on my blog, and it has about 30 sections. All those are missing.

More specifically, the Government's consultation talked about a public interest test. There is none. It talked about strengthening the land rights and responsibilities statement. That has not been done. It talked about new conditions on those in receipt of public funding. That has not been done. It talked about a new land use tenancy. That has not been done. It talked about restricting ownership to legal entities that are registered in the United Kingdom. That is not in the bill. There are no proposals on tax reform. There is heaps of stuff that we all spent a considerable time thinking about and responding to the Government on, but nothing has happened. There is a process problem here.

The 2001 land reform draft bill, which was called a white paper then, was launched by Jim Wallace at Aberfoyle in your constituency, Mr Ruskell. It was a pre-legislative consultation, so half of it was policy stuff, and at the back there was a draft bill on the right and explanatory notes on the left. That meant that the Government could test its proposals and we could politely say to it, "Look, this isn't going to work." You are finding us saying that in the pressured environment of a parliamentary committee, which is inevitably taken by the Government to be hostile.

The bill is poorly thought out and it does not deliver many of the things that the Government asked us for our views on. I would be happy to follow up with a list of 50 things that the bill does not do but which it could do.

Mark Ruskell: That would be useful.

Andy Wightman: I could start with the recommendations of the land reform review group. Only a tiny fraction of those have been delivered, and a lot of the ones that the Government attempted to deliver have been dropped. The 1 million acres target has gone. There was a recommendation that the land register be completed, but that never happened. There was a recommendation to have a Scottish land information system by 2017—John Swinney announced that in 2015—but it never happened. The Government has a record of making grand statements about things that it is going to do and then not delivering.

Mark Ruskell: Okay. Peter, will you comment?

Peter Peacock: I will answer in two ways, as there are omissions in the bill and there are omissions in the whole agenda.

In the bill, there is the omission of a public interest test. That was a political commitment not only of the governing party but of your party, Mr Ruskell, and of the Labour Party. It was warmly supported in the consultation that the Government conducted but has mysteriously disappeared and been replaced with something that I do not think would stand up legally in the context of the European convention on human rights.

Far too much is left to regulation in the bill, and not enough is included in the bill with regard to the definition of things such as the public interest and the details of enforcement proceedings for land

management plans. I could go on, as the bill could be strengthened in relation to issues around lotting, notification and so on—too much has been left to regulation in that regard. There are also some relatively simple ways in which to strengthen the bill in relation to the important points of principle that exist within it.

Beyond that, the fact that urban Scotland is not included in the bill is a major retrograde step. If I remember correctly, the Land Reform (Scotland) Act 2003 was confined to communities with a population of under 10,000. In practice, that was widely seen to be far too limiting in scope, so, in the Community Empowerment (Scotland) Act 2015, similar rights were extended to all communities in Scotland. However, with this bill, we are now again dividing rural Scotland—and only parts of rural Scotland—from the rest of Scotland. As I said, that is a major retrograde step but, again, there are comparatively simple mechanisms that you could use to include the other areas.

The question of the regulation of the market in Scotland is another point to mention, as the land market is completely absent from the bill. Currently—and this would still be the position after the bill is passed—if your chequebook is big enough, you can come to Scotland and buy whatever land you want, regardless of who you are or where you are from, no questions asked. Allowing that to happen makes us pretty unique in a European context and, in fact, internationally. At some point, we have to get to the point at which we can consider the public interest aspect in land transactions. This bill could give us a route into that, but we are not quite there yet.

The question of land market regulation might also include things such as the valuation principles for compensation when land is sold to public bodies in the public interest. At the moment, we are paying vast fortunes to people who might simply have been speculating on the land, and it might be time to start influencing that to a far greater extent.

The question of taxation and tax incentives requires to be looked at in relation to land, too. Laurie Macfarlane is much more of an expert on that than I am, but I would say that changing behaviours and diversifying ownership are essential to creating more economic opportunity for people across Scotland, releasing enterprise and flair and good will across Scotland, contributing to the development of community wealth and contributing to a just transition to net zero—goals that, to touch on what Magnus Linklater said, have consistently been shared by political parties for 25 years. You cannot have a just transition to net zero if all the funding that is being pumped into the necessary changes ends up in very few pockets—there is nothing just about that, but it happens as a consequence of our land ownership patterns. To address that issue, you have to get into those kinds of taxation and fiscal measures.

I am quite happy to comment on those issues later, but those are the kind of things that could be addressed if you want to broaden the agenda. However, there are also omissions that you could deal with in the bill itself.

Laurie Macfarlane: Like Peter Peacock, I will break down my answer into two areas: what is missing from the bill; and what is missing from the approach to the bill.

As I said in my opening remarks, the bill omits any sort of notion of the public interest. The consultation included mention of a public interest test, which contained the seeds of something useful, although it was far from perfect. It is important to point out that, when it comes to land reform, the public interest with regard to property rights is a well-understood and defined concept in terms of the ECHR, Scots law and United Kingdom law. However, under the transfer and lotting proposals, it appears to be based on the ill-defined concept of community sustainability, which is a relatively new and not well-defined term.

One specific proposal that we would make is that there should be a move away from the transfer and lotting proposal in the bill, which, at least in the consultation, was intended to be one possible outcome of a wider public interest test. We seem to have chopped off the top bit and left the second bit, which could be quite confusing.

Some other things are missing. As I said in my opening remarks, urban land reform is missing, as is land for housing. We have an acute housing crisis in both urban and rural Scotland at the moment and must recognise that the land market is a key part of that. Some changes that could have been in the bill would have helped that.

Somewhat confusingly, a number of other things—including the review of community right to buy—are happening in parallel with the bill, which I find slightly strange. There is also a parallel review of compulsory purchase rules, which I find slightly confusing because it could easily have fed into the bill.

I already mentioned conditions for public funding and the elephant in the room, which is tax. Whether that goes specifically into this bill or is dealt with somewhere else, it must be front and centre in the debate about land reform. If we do not go there, we will not be able to achieve the objectives that the Scottish Government has set itself.

Mark Ruskell: Magnus Linklater, does the bill have the correct scope, or is it too broad?

Magnus Linklater: The question is what is missing. The one area where I agree with both Peter Peacock and Laurie Macfarlane is on the definition of "public interest", but I would approach that differently. I would need to see how far the bill succeeds in enhancing the public interest, with my definition of that being whether the land is better used to produce myriad things, including housing, jobs and ecologically balanced land use. That is completely missing from the bill and there is no real test of whether community ownership provides that.

Peter said that we have had a long period of community buyouts, but, to my knowledge, there has never been an audit of how much that has cost the state, what buyouts have done to produce jobs and housing and whether that has been an economically valid move. What is missing from the bill is a test of whether land will be better used, in a way that is more consistent with all the aims that everyone has for rural Scotland when those aims are very difficult to achieve on unproductive land. There is a presumption at the heart of the bill that it is good to proceed with more distribution of land, but there is no real test of what that is going to achieve.

The Convener: Monica Lennon has the next set of questions, and a follow-up to that one.

Monica Lennon (Central Scotland) (Lab): Good morning and thank you for all the contributions so far. Community wealth building has been mentioned a couple of times by Laurie Macfarlane and Peter Peacock. What could be done with this bill? Given that the Scottish Government has also committed to a parallel but separate bill on community wealth building, is enough being done to join up Government work in this area or should we think about amendments at a later stage of the bill? I mentioned Laurie and Peter, but if others have a view, I am happy to hear it. Peter caught my eye first.

Peter Peacock: Regrettably, one leg of my specs has fallen off, so I will have to hold them to my head to be able to see anything. Those are the perils of having to carry reading glasses all the time.

Community wealth building is a really important concept that has developed in the past few years and is shared across political parties. There is an idea that communities themselves—not just the individuals in or around them—can be wealthy and that that wealth can be shared and an inclusive economy can be created. Those are all important questions about social and economic justice. The bill as it is framed does not really allude to that at all, so I will emphasise Laurie Macfarlane's point. It is also Magnus Linklater's point to some extent, so I will happily send Magnus the excellent evaluations of the benefits of community ownership when I get the opportunity to do so.

However, within the bill, you could start to use the phrase "community wealth building" as a function that ministers have to think about in making lotting decisions. You could make the question, "Will the lotting decision do anything to enhance the likely development of community wealth?", part of a public interest test.

09:45

Equally, the land and communities commissioner, in their work as envisaged, will make recommendations to ministers about potential lotting decisions. You could frame the way that the commissioner has to operate so that they would have to seek to further community wealth building through their actions.

The terms of reference for the Scottish Land Commission itself also need to be broader. The terms are of their time—from a decade ago—and community wealth building was not part of our vocabulary at that stage, nor was a just transition to net zero. You could change the terms of the Land Commission's responsibilities to state that its work must be exercised in a way that furthers just transition and community wealth building.

I am sure that we will come on to management planning in more detail later. The concept of having a management plan is good, in principle, but I think that the bill is weak in the way that it does that. Again, you could make sure that a management plan would need to address the outcomes within the land rights and responsibilities statement—which, in turn, would need to embrace such concepts as community wealth building and a just transition to net zero.

I can see technical ways in which you can include community wealth building in the bill with relative ease, provided that you cast it in the frame of, "Let's look at the public interest." There are a number of dimensions to the public interest and it is ill defined in the bill.

The significant thing, too, about the public interest question is that the only way in which you can interfere with people's private property rights, which are protected under article 1, protocol 1 of the ECHR, is if you are acting in the public interest. If you want to involve yourself in lotting—if you want to get into diversification of ownership—you are inevitably going to rub against the ECHR and in order to do that successfully it is crucial to define what the public interest is in relation to that.

If Parliament takes care to legislate for that—and the Land Commission has commissioned

work from a King's counsel to look at how you can do that—you can achieve that. That is the context in which I would put it. It is entirely possible to advance it in those sorts of ways.

Monica Lennon: Thank you, Peter, that is helpful. Laurie, what are your views on community wealth building?

Laurie Macfarlane: The Scottish Government is commendably committed to promoting community wealth building principles and, as you say, to introducing a bill. One of the five key pillars of community wealth building is in relation to land and property, so I think that it is absolutely right that we are talking about this.

There are two things to mention: first, as Peter Peacock said, principles of community wealth building are currently missing but could be incorporated into various things in the bill as a key consideration. By community wealth building, we are really talking about ensuring or promoting the creation and retention of wealth locally in communities rather than having systems where wealth is often extracted from local communities, which can include systems of absentee land ownership, for example. It could be in relation to a consideration of the broader public interest and a public interest test or in relation to land management plans, for example.

There are also specific policy measures that are missing from the bill, which would absolutely support community wealth building if they were included—be that in this bill or in the proposed community wealth building bill. One of those measures is compulsory sale orders, which is something that has been discussed for quite a while. The Scottish Land Commission has done a fairly large amount of work on bringing vacant and derelict land that has been sitting for a long time idle and unproductive back into use, potentially even into community ownership, and promoting that community wealth building model, but we have another bill where that proposal is not there and it is not really clear to me why that is.

Monica Lennon: Thank you, that is helpful. I have questions on land management plans. Can I move on to those, convener?

The Convener: Kevin Stewart wants to come in with a follow-up question, so I will bring him in and then come back to you, Monica.

Kevin Stewart (Aberdeen Central) (SNP): I appreciate that, convener. I want to play devil's advocate a little bit here. The bill mentions community sustainability, and Laurie Macfarlane said that there is not a perfect definition of that. Could community wealth building be added into community sustainability? In my view, sustainability includes wealth building. Do you agree that that is the case and that what is required is better definition of those terminologies?

Peter Peacock: Community sustainability appears in the policy memorandum in relation to questions of lotting in particular. It is a new term that does not really have any legal definition. However, one way of handling it might be to make it one dimension of a public interest test, alongside a range of other considerations.

A variety of technical routes can be taken to community wealth building. The way that you have suggested could be one such route. However, my preference would be for the public interest to be defined in such a way that, in aggregate, it would become community sustainability. It would have a whole range of dimensions to it, including housing, biodiversity and environmental access. In aggregate, you might argue, those help with community sustainability. It is important to define community wealth as one of the clear attributes that you must have.

Laurie Macfarlane: The term "community sustainability" is new and is not very well defined in the memorandum. I suggest that the committee looks into that and tries to understand it a bit better.

I agree with Peter Peacock that a better option would be, instead, to frame the issue around the very well understood concept of the public interest, which is context-specific in different places with different challenges. I suggest that community wealth building should absolutely be part of that as one consideration among many in that wider public interest.

The issue with community sustainability—at least, as I interpret it—is that there are cases in which, for example, the sustainability of the community is not necessarily in question but there might be a strong public interest justification. It seems to me that that community sustainability point is very narrowly focused on specific circumstances. It is absolutely the case that community wealth building should be ingrained much more in the detail of the bill, but I agree with Peter that it should be framed within the wider context of the public interest, if that makes sense.

Kevin Stewart: I do not know whether Andy Wightman or Magnus Linklater wants to come in, convener.

The Convener: We will go to Andy first, and then Magnus.

Andy Wightman: Terms such as "community wealth building" are just words. I do not care what you call it. The mechanisms in part 1 will not achieve anything, so you can put in whatever words you like—they will not change the fundamentals.

I will pick up Monica Lennon's point about being joined up. One of the weaknesses of the process of land reform for a quarter of a century in this place has been that although, as I understand it, the Scottish Government has a sub-committee on climate, and one of the responsibilities of the Minister for Climate Action is to achieve cross-cutting policy across Government—from justice through transport and environment to health, social care and all the rest of it—that has never happened with land reform. When I was in the Parliament, we had a non-domestic rates bill, on which the land reform review group made major recommendations and the Scottish Land Commission made recommendations, but that was never looked at through the lens of land reform. Lots of bits of legislation that go through the Parliament are about land reform but are not subject to any cross-cutting Government policy. That has been a major weakness.

As I said, "community wealth building" is simply words. However, historically, we have been building community wealth since the royal burghs were established in Scotland in the 10th century. I was in the Borders recently. Berwick has about £3 million or £4 million of assets, on which it receives an annual income of more than £500,000. That is more than all eight Scottish Borders burghs—Jedburgh, Hawick, Galashiels, Peebles and so on—combined. Therefore, the best way to build community wealth in Scotland is to become part of England. That is the experience of Berwick. It became part of England and has retained its wealth. The big Scottish Borders towns—the burghs—have lost all their wealth.

This is not a new thing. It is a really old thing. I am fed up with new terms being bandied about as if the use of a word will somehow magically transform anything. Look at the substance of the bill. What outcomes is it intended to achieve and over what timescale? Will it achieve them? How will that be audited?

The Convener: One of the problems of having ex-politicians in is that they expand the answer to the question to fill the time. Andy, I read your article on royal burghs and community wealth, most of which has been sold off, so the wealth did not stay in the communities. You cannot blame anyone for that, apart, perhaps, from the communities that had it.

Magnus, do you want to come in?

Magnus Linklater: Well, I never thought that I would agree with Andy Wightman, but I endorse pretty well everything that he said. At some stage, I will quote his point that the best thing that Scotland could do is to join up with England. I may use that in a column one of these days, Andy.

If the issue is about wealth distribution, that is a different ball game altogether. The easiest way to do that is to take any estate that has a wind farm on it and lot it—the community will want to take the bit of the land that has the wind farm and will have no interest in the rest of it.

To give a personal perspective, we have a hydro scheme, which runs from the very top of a hill right down to the bottom. If that estate was lotted, one bit would contain the turbine, and the other would contain all the water that makes the turbine work. The only way that that bit of land can produce wealth for the community is if the whole estate stays together.

That is another irony and contradiction in the bill, and it brings me back to the essential test, which is about what will benefit the community. We are talking about the community having an opportunity to create wealth but, actually, it will not benefit particularly from chopping up that estate. Every estate is different, and there will be different aspects, but inherent in the bill is the presumption that, by dividing up and lotting an estate, you will be able to distribute wealth to the local community. It just does not work like that.

The Convener: We will go back to Monica Lennon for the rest of her questions.

Monica Lennon: The bill includes provisions for land management plans, which have been mentioned. Those are required to set out how the land is being managed in a way that contributes to achieving net zero, adapting to climate change and increasing or sustaining biodiversity. I am keen to understand whether that level of detail is sufficient, or whether other criteria should be included.

I will go to Andy Wightman first.

Andy Wightman: That is the only part of part 1 that is worth pursuing, because it will bring a little more transparency by making owners accountable for what they plan to do with very large areas of land.

We can talk about the threshold, although that is a detail. However, the threshold is far too high. I would set it at 100 hectares, with exemptions where there are existing plans, such as whole-farm plans and long-term forest management plans, which would be caught by default. The key thing about the proposed plans is that community engagement is built in, there will be some transparency and they will be public. That is all terribly helpful and is not there at the moment, so it is a step forward.

If you are going to do this seriously, however, and if it is to be focused on achieving net zero and is about accountability, the plans need to commit to and describe how land will be managed in a

way that achieves public policy objectives on climate and net zero. Generally speaking, those objectives are met over a 20, 30, 40 or 50-year timeframe, as are, for example, long-term forest management plans, which are for 25, 30 or 40 years. That is what the proposed plans need to be.

The plans also need to be binding on successors. There is no point in having only a five-year plan, because someone will be able to come in and buy the land and produce another five-year plan. That is the thing that really frustrates me. If you are going to do something, do it properly. Under the community right to buy, 0.25 per cent of Scotland has transferred ownership. Back in 1999, the Government said that the community right to buy would achieve a rapid change in the pattern of land ownership in Scotland.

Just do this properly, and if you are not going to do it properly, do not do it. Do not mess around with little mechanisms here and little duties there that are purely performative, in my view, and will not achieve significant change. However, the part about land management plans is the one bit of part 1 of the bill that is worth pursuing and could be significantly strengthened along the lines that I have suggested.

10:00

Peter Peacock: I agree that there is something in land management plans. When I went back to the land reform policy group work in 1998 and 1999, I saw that it talked about land ownership on the one hand and land use on the other. Management plans are essentially about land use; they are not about land ownership or diversification of ownership, and they are not a substitute for diversification of ownership. Nevertheless, there is something in them.

I think that the question that you are asking is about the public interest considerations that need to be taken into account when developing a management plan, and whether what is currently in the bill is sufficient. The bill itself says nothing about that; the detail will be left to regulations. The policy memorandum alludes to the points that you have touched on, but they are not set out in the bill, and I think that there is a risk with regard to what will be achieved in leaving it open to regulations. I hope that the committee will either look for amendments from the Government at stage 2 to make those points explicit in the bill or ask to see the draft regulations so that it is satisfied that they are covered.

My feeling is that the land management plans need to be designed to meet landowners' responsibilities with regard to the public interest, and that that sort of thing should be defined in the terms that have already been talked about. You could encapsulate that by talking about, say, economic, social and cultural rights, which are established human rights; indeed, they are already mentioned in some land reform legislation, so you would not be breaking new ground. I would also include community wealth building and the issue of a just transition to net zero, and an explicit reference to biodiversity will be very important, too, given our climate challenges.

The bill could also say that land management plans should address the issue of housing supply locally, how they will improve land for housing, how they will permit the repopulation of land and so on. Those are just illustrative examples. It is relatively simple to define such things, but at the minute, they are not defined at all, and I strongly encourage the committee—and, indeed, the Government—to look at the matter in much more detail. There is plenty of precedent in other bits of legislation that one can draw on to help to define the public interest considerations that a management plan would be designed to address.

Laurie Macfarlane: I am definitely supportive of the principle of requiring large landowners to prepare and consult on land management plans. However, there are a couple of issues to consider, one of which is the threshold, which Andy Wightman, I think, has already touched on. To some extent, any threshold is somewhat arbitrary, but at the moment, the threshold for land management plans and that for the transfer test and lotting stuff are different, which I am not sure makes a great deal of sense. Both are too high, and there is scope to bring them down quite a bit.

You would hope that most landowners who are covered here would be producing some sort of plan anyway, but the opportunity to provide more transparency and consistency in that respect is certainly welcome. There are also issues with regard to breaches and whether the penalties that are set out in the bill are much of an incentive, as they will, for some landowners, amount to relatively small amounts of money.

I echo what Peter Peacock and Andy Wightman have said about the scope of the plans. First, I welcome the focus on climate and nature biodiversity, but I think that that could be broadened out a little bit and framed around a wider public interest. After all, we should bear in mind the fact that each site will be very different, and I think that there needs to be a broader concept of the public interest that covers not only climate, nature and net zero stuff, but broader issues including, as Peter mentioned, housing, community wealth building et cetera. It will, of course, be site specific, but I think that that is a way of giving landowners the opportunity to set out how their plans will deliver those long-term objectives.

Aside from the issues of thresholds, breaches and the scope of what the plans are seeking to achieve, I think that Andy Wightman's point about accountability with regard to their delivery is really important. At the end of the day, what we do not want is for plans to be set out, only for nothing to happen, and then, when the land changes hands, more plans are set out and, again, nothing happens. We need to make sure that the plans are in place and that there are mechanisms of accountability as well as some process for ensuring that they are happening, and that they are not just nice words.

Monica Lennon: I am keen to hear from Magnus Linklater on this issue. We have heard that larger estates tend to do land management plans anyway. What is your view on the bill's provisions with regard to net zero, nature and climate? Should that sort of detail be included? Do you agree that we might need more detail at this stage?

Magnus Linklater: The elephant in the room is what the Scottish Government's agriculture policy will be. We do not know what the balance will be between increasing food production on the one hand and encouraging biodiversity and nature conservation on the other. Most estate or farm owners that I know are already well advanced in that. For example, the Scottish Government has hugely encouraged forestry—its ambition is for there to be much more planting—and a large number of farms in the Borders have gone over to tree planting rather than farming, although that is not necessarily a good thing, in my view.

Most people are planning ahead for all sorts of things. Peatland restoration, wetlands and tree planting for carbon capture are all what is called natural capital, which is quite an amorphous idea, but it is about the balance of biodiversity, which everybody is getting excited by. A lot of work has already been done. However, as Andy Wightman said, of their nature, such plans are for the long term. A peatland restoration scheme cannot be a two-year or three-year thing; it is a 20 to 30-year thing.

Landowners are being encouraged to explore and invest in conservation and biodiversity, and they are being scrutinised by every agency, from the Scottish Environment Protection Agency to NatureScot and all sorts of others. There is internal transparency, if you like, in the way in which those plans are pursued, but nobody will invest in that kind of thing if they are confronted with the prospect of having to sell off the land or lot it at some future stage.

In a way, there is a parallel here with the farmers who are protesting against inheritance tax. They see the long-term management of the land as being central to everything that they do, and the same thing applies to people who own land in Scotland.

The Convener: Monica, there are lots of follow-up questions. If you want to stay on the subject, please do, but if not, I am tempted to bring in other members.

Monica Lennon: I was going to go on to ask about the role of community consultation, but if you want to bring in—

The Convener: No. Do community consultation, then I will bring other members in.

Monica Lennon: Perhaps we could have brief responses. If the land management plans make it into the bill, how will we ensure that consultation of communities is meaningful? What should it look like and how do we manage public expectations around it? Andy Wightman has looked at me first.

Andy Wightman: Communities are consulted to death—

The Convener: Before you answer that, you have experience of forestry and how community consultation on forestry plans goes, so it would be helpful if you could explain the differences or similarities that you see between the two.

Andy Wightman: With respect, convener, I do not propose to get into the detail of that. I want to respond in general terms. There are new duties in the bill.

It is virtually impossible to expect communities in many parts of Scotland to be meaningfully engaged in drafting of management plans by the owners of large estates. It is just very difficult—although I am not saying that it is impossible. Some of the existing relationships are difficult and some of the motivations are hidden.

Communities are also consulted to death. I was just speaking to someone who was trying to do a local place plan, who has been consulted on planning and all the rest of it. Communities have very little capacity to do this stuff. People do it in their spare time in a voluntary capacity, while sitting in a room with a land agent who is being paid £50 an hour, or whatever. It is really problematic.

You need to make sure that consultation is as powerful as it can be, but I do not have any great hopes that it will be a particularly meaningful exercise, mainly because of the power dynamics that are in play. A community being engaged and consulted on a public body's local plan for a planning authority, or on a forest plan or proposal from Scottish Forestry or whatever, is a different beast from its being consulted by the owner of the estate on which they live. It is just going to be very difficult.

Peter Peacock: Andy is right, in the sense that communities are consulted a huge amount and it takes an awful lot of effort, but that is not a reason for not doing it.

I am in sympathy with Monica Lennon's question in the sense that, if consultation is going to happen, it has to happen effectively. In considering land management plans and how they will be signed off, I guess that one way to do it would be for the bill to require the Land Commission to issue guidance on the management plans, given that it has responsibilities for the land rights and responsibilities statement and its implementation. You could find a way in which Government guidance could be given. There is existing Government guidance on how to do effective consultation, which is reasonably good, as I understand it, and there is loads of experience out there about how to do that. I am sure that it can be done, provided that there are imperatives in the bill. When guidance is issued on the development of management plans, part of it must be about how there will be engagement in that.

However, more important than that is the fact that communities will get very hacked off if they are consulted on a management plan, but it then sits on a shelf and nothing happens with it. The weakness of the bill is not the principle of there being a management plan; rather it is about how to make sure that something actually happens. There are quite minimal requirements in relation to fines if people do not develop a plan—the fine level is pretty low.

I would like to look at things such as cross-compliance, whereby someone who has not produced a plan will not get their subsidies until they do so. I would be quite tough on that. I would give the land and communities commissioner a power to issue an order that a plan be produced if somebody is not doing it and, if they fail to do so, that would be an offence. If you are going to take the creation of plans seriously, you should really treat it seriously.

Under the bill, someone could create the plan and fulfil all the requirements, but then do absolutely nothing about it and there would be no consequences. That is a major weakness in the bill. Communities will get really hacked off if nothing happens. However, it is possible to build in provisions to deal with that. You could create a requirement for the plan to be registered in some way with the Land Commission in order to give it some status. If the Land Commission saw that a plan did not comply with the guidance that it had issued, it could refuse to register the plan until it did comply.

Once the plan is registered, if that is the procedure, the land and communities commissioner must be able to monitor it and there has to be open representation from communities and others who have concerns about implementation. Again, you could ratchet up the powers to make it clear that this is a serious business. For someone who owns a lot of land in Scotland, one of the responsibilities that comes with that is that they must have a management plan that takes account of the public interest. We, including the Parliament and the Government, are serious about the matter as a set of institutions, but you have to put those enforcement mechanisms in the bill. I do not think that that would be complicated or difficult.

Monica Lennon: We have heard about some challenges with implementation of the plans and what will happen if they are not acted on properly, but there are clearly also barriers, which Andy Wightman touched on, at the front end, given the power dynamics and the fact that communities do not have the time, resources or know-how. Will you touch on that, Laurie? Peter Peacock mentioned that more guidance will be required for communities, which goes back to the point about community wealth building. How do we resource communities to be actively engaged?

Laurie Macfarlane: There is the immediate stuff, the medium-term stuff and the long-term stuff. In the immediate term, it is very difficult, because communities are time constrained, busy and occupied with lots of other forms of engagement. In our context, in which we have a pattern of highly concentrated land ownership and some difficult power dynamics, it is going to be challenging. For me, any form of community engagement with a large landowner is always going to be a poor substitute for direct community involvement, with people having a stake and a say in decision making over the land that they live on. In the immediate term, are there ways that we can—whether through Land Commission guidance and support or in other ways—try to ensure that there is meaningful participation and enforcement?

One reason why we need more fundamental land reform is precisely this issue. Taking a community wealth-building approach is about seeking a situation in which communities are more actively engaged and have a stake and a say in the ownership and use of the land. In many cases, that is not possible, at the moment. We have the community right to buy, but there are many barriers to that—not the least of which is the need for the funding and resources to do it, never mind engaging on a land management plan.

10:15

Some things that Peter Peacock and Andy Wightman have outlined could probably help in that, but it will be difficult and there is no

immediate silver-bullet solution for getting meaningful community engagement that is acted on then delivered.

The Convener: I ask Magnus Linklater whether he wants to come in on that, because he is the only witness who has not been given that opportunity.

Magnus Linklater: Peter Peacock raised a really important point about the powers of the land and communities commissioner. When I researched the bill, I talked to a couple of lawyers, who described the powers that are conferred by the bill on the commissioner as being unprecedented not only in Scotland but in the United Kingdom. For example, as I understand it, if a community does not have the resources to put together a bid or to decide how best to use the land, the commissioner will have a huge role in stepping in, particularly when it comes to lotting. He will be the person who decides—as I understand it, down to which members of a family are entitled to succeed, as an estate is lotted up.

I suggest to Peter Peacock that, far from the powers of the commissioner needing to be built up, they need to be very closely looked at, to see how accountable and transparent that commissioner will be, because that person will have enormous powers.

Peter Peacock: I—

The Convener: No. In fairness, Peter, we will come back to the land and communities commissioner in some questions at the end, so you will get a chance.

I will make an observation to Peter, Andy, Laurie and Magnus. We are about an eighth of the way through the questions and about an hour through our time. Having ex-politicians on a panel always involves a danger that they might expand their answers. I ask you to cut those down, and I will carefully signal to you to keep them short. It is all very well just nodding at me, but you will have to pay me a bit of mind because, if I do not get all these guys' questions in, I will be in trouble at the end—and I have to live with them every day. Please, therefore, keep your answers short. Of course, if you agree with another panel member, there is no problem with saying, "I agree", and leaving it at that.

I will move on to the next questions.

Michael Matheson (Falkirk West) (SNP): Good morning. I will stick with land management plans. Andy Wightman made reference to the fact that, often, a lot of key aspects of land management are in long-term plans. The period that is intended by the Government for a land management plan is five years. Is that too short? Should it be a longer period, which would make more sense in respect of ability to implement the plan's proposals?

Andy Wightman: Yes.

Michael Matheson: What sort of time frame would be more suitable?

Andy Wightman: Most management plans include a variety of timescales. For example, a long-term forest management plan is for 40 or 50 years but, within that, there might be five and 10-year periods. It is not about a fixed term but about how far you are looking ahead. You have to look a reasonable distance ahead—50 or 60 years—but have steps in the meantime. That is how it should be looked at. It is not difficult; it is already done with long-term forest management plans.

Michael Matheson: What about you, Peter Peacock?

Peter Peacock: Similarly, I think that it is less important that it is a short period of five or 10 years. I can see the arguments for a long-term plan but, to me, the important things are that it should be monitored, and that it is flexible and can be adapted through the monitoring process, apart from anything else. You do not have to stick rigidly to every letter, because circumstances change. A wide variety of things change in the environment. I am therefore less worried about whether it is a 10-year plan or a 15 or 20-year plan than I am about having proper monitoring, whatever the length of time.

Michael Matheson: So, clearly, implementation is a key part of the effectiveness of any land management plan process, and of its credibility and whether there is value in it.

On that point, do you think that, if a piece of land changes hands after a land management plan has been put in place, the new owner should inherit the original plan's intentions?

Andy Wightman: Yes, of course. It is up to the Government what it is trying to do with the bill, but I note that, in its consultation, it talked about land reform in a net zero Scotland. A major part of the bill is about the contribution that land can make to delivering net zero, and that is a long-term business. In fact, a recent paper in *Nature* said that the timescales for carbon offsetting by trees and all the rest of it need to be the same as the geological timescales for the fossil fuels that we are burning. In other words, we need to be able to guarantee that the offsets will work for 1,000 years. That is what the science is saying.

Of course, the plans have to be binding, and the way to make them binding is to make them registrable. I dug out the old forestry dedication scheme, which was introduced, I think, in 1952. I can pass the committee all the literature on it. You will see such things regularly in the titles of

Scottish estates. Clause 1 of the scheme talks about

"'the Owner', which expression includes, where the context so admits or requires, his successors in title."

In other words, such plans are binding. For as long as they exist—such plans often exist for 50 or 60 years—that land shall be used for forestry.

Of course, the detail could be changed by a new owner, who could come in and have a slightly different plan of operations and decide to change objectives slightly and so on. All that could be changed by the new owner—you should not bind them to the detail.

However, if you are going to have a plan with a long-term objective of delivering net zero, its basics should be binding on successors, and you will do that by making it registrable against the title, as forestry dedication agreements did. We have done this sort of thing before—we did it in the 1950s under a Conservative Government, and I do not see why there is any difficulty in doing it now.

Michael Matheson: Peter?

Peter Peacock: I think that you have taken us into really complex territory. I can see, on the face of it, the argument that somebody who buys an asset should have the right to determine what they do with it. On the other hand, as Andy Wightman has said, if this is about the public interest in land, and if the land management plan has been created and agreed in the public interest, there must be a strong case for changing it. I am therefore attracted to what Andy Wightman has said, in that regard.

However, I am also thinking of land that is currently badly managed under land management plans. There is the great historical example of Glen Feshie, which I am sure you will know from having walked there. When I used to walk there 30 years ago, the landscape was devastated: it was overgrazed by deer and managed as a shooting estate. Along came Anders Povlsen—very controversially, in some eyes—who, over the course of those 30 years, has utterly transformed that estate through natural regeneration. You would not have wanted the old management plan, if it meant keeping and continuing the estate in the old way. You would want the new way. Therefore, there is a bit of complexity that one has to think about.

However, this brings us back to the public interest. If you are agreeing a plan in the pursuit of the public interest, such matters have to be considered. If there is an extant management plan for a piece of land—I am not talking about the Glen Feshie circumstances—a person will not buy it if they do not agree with what it must be used for, if that has been agreed in the public interest.

Your question also highlights a major omission in the whole land reform agenda. The current bill has moved away from the Land Commission's original concept of focusing on the land sale, rather than on the land purchaser. I feel that there ought to be a look at who is purchasing the land and what their plans are, because that is really important. Arguably, with a good land management planning system that operates in the public interest, that concern would fade away somewhat, because plans would, by definition, have been agreed in the public interest and, as a result, the new purchaser would have to go along with them or just not purchase the land at all. This just highlights that we are not looking at the purchaser of land and what their intentions for that land are. As matters stand, anybody can come in, buy any land and do what they want with it.

Michael Matheson: Why do you think that the focus is on the seller rather than on the purchaser?

Peter Peacock: I am perplexed by that—I do not actually know. I am probably—I do not know—more radical on this than a lot of people, but, personally, I would have a presumption in Scotland that a person could not buy more than 500 hectares of land unless they could demonstrate that doing so was in the public interest. You can argue whether that 500-hectare threshold is the right one, although it is still quite high: 500 hectares is a lot of land in Scotland, in my book.

I would tackle the question from the other end by having some sort of presumption against owning more than 500 hectares, unless you can show that that is in the public interest. I simply do not know why the Government did not go for that. A potential purchaser does not enjoy the existing property rights, so that would not rub up against ECHR in quite the same way. You should pursue the Government about that.

Michael Matheson: Magnus Linklater, should land management plans be for five years or should they be longer term? Should the content of such plans be inherited by any new landowner?

Magnus Linklater: In passing, I find it ironic that Peter Peacock commends the work of Anders Povlsen, who is now the biggest landowner in Scotland and can do all that because he brings great wealth from outside and invests it in regeneration.

People who do not have that wealth face another challenge with long-term planning. If they are going to introduce peatland restoration, forest planting or hydroelectricity schemes, they have to borrow money, which is a long-term commitment

of 15 or 20 years if they borrow from a bank. That is another planning consideration if achieving regeneration or biodiversity means being exposed to big loans from the banks.

Michael Matheson: I take from that that you would favour longer-term land management plans. Is that correct?

Magnus Linklater: Yes.

Michael Matheson: Do you think that the conditions that are set out in an agreed land management plan should be inherited by any new owner of that land?

Magnus Linklater: I agree with Andy Wightman on that.

The Convener: The next question comes from Mark Ruskell.

Mark Ruskell: I am interested in the link between local place plans and the public consultation process in the planning system on one side, and land management plans on the other. Andy Wightman, you have already said that those will be controlled and steered by private interests and that land agents will be involved. Should those two things work together and how would we get them to do so?

I am thinking of the example of Taymouth castle, where the estate would currently not even fall within the provisions for land management plans but where some people in Kenmore and Aberfeldy are concerned that the estate has in effect aggregated a range of assets—some urban and some in the wider estate—and there is a lack of transparency about long-term plans for housing and land management. There is a mixture of issues, some of which might be part of a land management plan if the estate were eligible for that while others would be in the local place plan. I am interested in how, from the community perspective, we join up those two things.

Andy Wightman: You cannot get them to join up because the local place plan is part of the town and country planning system and rural land was left out of that system in 1947. The management plans in this bill are designed to address issues that are outwith the planning process. If you want to bring rural land management into the planning process, I would welcome that, because I do not think that that should have been left out in 1947, but it is out.

I do not think that you can try to join up those two very different systems. One is a compulsory land management plan, which must be published but does not come with any implementation obligations or monitoring. It was principally designed to achieve a little more transparency. The other system, the local place plan, is a voluntary thing. Although it is not part of the local plan, it is part of the democratic local planning system and many of the issues with Taymouth castle are about the effectiveness of the local planning system.

I would not link the two things unless you want to bring rural land use into the planning system, which I would welcome.

Peter Peacock: To be candid, I have not thought about that at all; I am thinking about this on my feet.

There is only one thing that immediately occurs to me. It is an immensely complicated point, for the reasons that Andy Wightman has given, but it would seem entirely possible for guidance issued by the Land Commission about the creation of land management plans to say that the plan "must have regard to the local place plan", which would at least create a connection between the consideration of a land management plan and the local place plan that may be in development or which may have been created. That would be a relatively simple mechanism. I have not thought beyond that, however.

10:30

Laurie Macfarlane: I do not have much to add to that, other than to say that, as Andy Wightman mentioned, rural land lies outwith the planning system, so the bigger question is whether there should be an ambition to bring it into the planning system at some point. Are land management plans a less good substitute? That is a bigger, longer-term consideration.

Magnus Linklater: There is one thing that I would like to raise. Mark, it is interesting that you raise the example of Taymouth castle. The situation there is of course hugely controversial, with an American owner ploughing millions into it. That raises the question of what the community is and how it has a voice. Part of the community is dead against the development, as it sees it on principle as somebody turning the place into a leisure park, which it does not want. The other part of the community sees jobs, sees the hotel being restored in a way that it has not been restored for the past 50 years and welcomes the injection of funds. It becomes a tussle between principle and ideology, on the one hand, and effective ownership, on the other.

As Andy Wightman rightly says, that comes within planning laws, rather than what we are talking about. It raises the interesting question of the voice that the community has. It is also interesting that the local MSP, who happens to be the First Minister, backs the plan.

Mark Ruskell: I recognise that there are different views within the community. Perhaps

what unites them is the need for transparency and, at the moment, there is not a clear vision of what a long-term management plan for the village, for the estate and for Glen Lyon will look like. Do you acknowledge that it would benefit both sides of the debate to understand what the estate will achieve in 30, 40 or 50 years' time?

Magnus Linklater: I think there has been quite a lot of transparency, certainly in the local media. Everybody there talks about nothing else, and there are very strong views both ways.

The Convener: Before we go on, with Kevin Stewart asking a question next—

Kevin Stewart: My question has been answered, convener.

The Convener: Ah—perfect.

Some of the consultation and visits that the committee has undertaken have come down to local issues around settlements, housing and what communities want by way of amenities. I was taken by the map that Andy Wightman submitted showing the areas where there is big land ownership and those where there is lesser land ownership.

I think that local place plans are important, as they will drive the community forward, and they give landowners a way to respond to the local community's needs. I am trying to understand why I have got that wrong. Have I got that wrong?

Andy Wightman: Have you got what wrong?

The Convener: What?

Andy Wightman: What is it that you have got wrong?

The Convener: That local place plans are fundamental as far as management plans are concerned. If the community say that they want to build additional houses next to their village, that should be included within the management plan, and perhaps the management plan for what happens upstream, 10 miles away, is not really that relevant.

Andy Wightman: I was giving a rather literal response to Mr Ruskell's question, in that management plans are not in the planning system, whereas local place plans are. You could make that linkage, with wording such as "have regard to" and so on, but there is one thing that you must do first. I tried to do this analysis, but my technical skills were not quite there for the time that I had available. The map demonstrates that probably less than 10 per cent of Scotland's population live within 5km of an estate that will be within the scope of any of the proposed measures. The bill does absolutely nothing for the overwhelming needs, desires and aspirations of people who live in small settlements, villages and towns in Scotland. If anything demonstrates the need to bring the threshold down, that does. That illustrates the arbitrary nature of the threshold.

The Convener: So what should the threshold be?

Andy Wightman: I am not going to pluck a figure out of thin air. That is the problem. The rationale for the Government's figure of 1,000 hectares in the consultation is, as far as I can see—

The Convener: It is 3,000 hectares for the management.

Andy Wightman: I know—it is 3,000 hectares for the management, and 1,000 hectares.

The only rationale that I could see was for the figure of 1,000 hectares, which was to leave out most family farms. I thought, "Well, what about family estates, or family forests?" What is it about families? It is completely arbitrary.

If the Government wants to do that, I would agree that every owner with over 100 hectares, as I mentioned earlier, should, unless they have a whole-farm management plan, a nature reserve agreement or a long-term forest plan, have a plan for what they are going to do with their landholding. That plan should have regard not to the local place plan, which in many cases will not exist, but to the local plan. If it is agreed that Killin or wherever needs more housing, that should be reflected in the management of land or forestry.

The Convener: I am trying to work this out. You are not prepared to give a figure for what the threshold should be for the management plan. Does anyone want to offer—

Andy Wightman: I said 100 hectares.

The Convener: One hundred hectares. Sorry—

Andy Wightman: With exemptions for whole-farm management plans or long-term forest management plans.

The Convener: I think, in fairness, that you were quoting £50 an hour for a land agent. That is what it was 20 years ago, when I was working; I think that you will find that it is more than four times that now. It probably keeps pace with the mechanic in the garage, who is charging around £140 an hour.

Peter, do you have a figure?

Peter Peacock: On thresholds, there is a tension between simplicity in understanding the legislation in the round and having different thresholds for different purposes, which I do not think is very clever. A threshold of 3,000 hectares for the management plan is far too high.

My preference, to be pragmatic, would be to come down to 500 hectares for all purposes: for lotting, management plans and prior notification. That would give us consistency across the legislation and make it more understandable. It is imperfect, in the way that Andy Wightman would describe it.

The Convener: Laurie, do you have a view on the figure, and on why the Government has settled on 3,000 hectares?

Laurie Macfarlane: I do not know why the Government settled on that figure. It has mentioned family farms, so I can only imagine that that is part of it.

I definitely think that a threshold of 3,000 hectares is too high—that is point A. Point B is that there should be uniformity between the land management plans and the transfer test for lotting. A threshold of 500 hectares would be much better. As far as I understand it, that would mean that it would cover 2,025 landowners, rather than 420 as would currently be the case.

The key point is that we need better justification from the Scottish Government in this area; we need to look into different options and make a decision on that basis.

Magnus Linklater: I am amazed to hear Andy Wightman come up with that figure, which seems to be just as arbitrary as 3,000 hectares or 1,000 hectares. It is plucked out of thin air.

Andy Wightman himself says that the bill is a potential nightmare of bureaucracy. I completely agree, and if we start bringing the threshold right down to 100 hectares, that involves such a complexity and scale of bureaucratic intervention that I am baffled as to why anybody would think that it was a good idea. It is going to land the land and communities commissioner—I hope that we come back to the commissioner—with the most massive job. They will need a huge staff to deal with all those estates across Scotland. We have not even talked about the cost of all that at a time when the Government is trying to cut back. That really has to be confronted.

The Convener: We can probably take that up shortly.

I am also interested in land management plans being tied in. There is an estate in the Highlands that has a land management plan tied in that is currently for sale at more than £10 million; it has not found a buyer, because the land management plan is undeliverable.

On that note, I will pause the meeting for five minutes. Before I suspend the meeting, I ask everyone to stay seated for a minute, as I want to say something before we continue with the next session.

10:39

Meeting suspended.

10:46

On resuming—

The Convener: Welcome back, everyone, to the second part of our evidence-taking session with the same panel. Monica Lennon will ask some questions on land management plans.

Monica Lennon: Yes—we are still on land management plans. We have had written evidence that highlights broad concerns about the framework for alleging breaches of the requirement to produce and consult on a land management plan, because, as we know, the list of those who are allowed to report an alleged breach of community engagement obligations is relatively narrow.

I will go to Peter Peacock and Andy Wightman, because I do not think that we have Magnus Linklater at the moment.

The Convener: We are just sorting that out—and I see that Magnus Linklater is now back.

Monica Lennon: Hello. The question is really for Peter Peacock and Andy Wightman anyway. Is the list of those who can report an alleged breach about right? What are the benefits and disadvantages of its being so narrow?

Peter Peacock: I think that the list is too narrow. All sorts of people with an interest in the issue are not listed. The statutory bodies tend to be in there, but local development trusts will have an interest, too, as will all sorts of properly constituted bodies.

In other parts of the public sector, anybody can complain to the Office of the Scottish Charity Regulator about a charity that they think is breaching the rules. Indeed, anybody can complain to any regulator about anything. I do not know why we are trying to restrict things in this way—I would have this as open and unrestricted as one could have it.

Under the bill, representations about breaches relate to the creation of a plan, which is distinct from its implementation. If we are talking about toughening measures in relation to implementing a plan, I would make the process as open as possible and let anybody make representations.

Andy Wightman: The provisions in the bill are only about having a plan; there is nothing that says that the plan must be implemented or followed up and all the rest of it. I agree with what Peter Peacock said, but that is not in the bill.

This is one of the details that relate to plans not being produced or the regulations not being

followed. Yes, I would expand the list; basically, it consists of bodies such as Historic Environment Scotland and Scottish Natural Heritage, when it could bring in anyone who could legitimately be part of the community engagement process. If I am invited to a meeting to discuss a management plan with my local estate—I have a massive one in the north and a massive one in the south—and if the estate has not produced anything, I should be able to phone the Scottish Land Commission to ask, "Where is the plan?"

Monica Lennon: Is it bizarre to have a situation in which communities can be involved in and consulted on the formulation of a plan but then have no say if that plan does not materialise?

Andy Wightman: Yes. Scottish Natural Heritage and SEPA will not know whether a plan has been produced—it has very little to do with them.

Monica Lennon: Should there be more of a role for the land and communities commissioner in monitoring that?

Andy Wightman: When the bill is passed, I will publish a map of all the estates that are meant to produce a management plan. I will colour them green if one has been produced and red if not. Citizens can do that.

We do not need to get too bogged down in the minutiae. As the bill is currently constituted, we are talking about only a few hundred owners who will be required to produce a plan. Finding out who has done it will be a straightforward exercise, because the information is meant to be publicly available.

Monica Lennon: Should we have to rely on Andy Wightman to do that?

Andy Wightman: No—the bill absolutely should be fixed, but this is a detail.

Monica Lennon: This is the final question from me; I know that there is a lot to get through, convener. Peter Peacock, I note that you suggested further sanctions in your written evidence, and I am keen to hear you expand on that. One suggestion was about using powers under the Agriculture and Rural Communities (Scotland) Act 2024 to apply cross-compliance measures.

Peter Peacock: As I have said already, if Parliament is not seen to be serious by having proper enforcement regulations, people will not take the measures seriously. That is why sanctions are important.

Interventions can be staged. First, you need to have a monitoring system. Once the situation gets to a point where you believe that a plan is not being implemented in the way that you thought, you can begin to move to the land and communities commissioner, who might be able to name and shame, while allowing reporting on all of that.

An order-making authority could tell an estate that it had not fulfilled its obligation and it was now required to do so. Cross-compliance could be used in advance of that to say, for example, that the authority was not satisfied that the estate was implementing something and it was now considering whether the estate should not receive public subsidy for other purposes, because it was not implementing the plan. There can be a staged series of interventions with the ratcheting up of consequences at each stage.

Monica Lennon: Would Magnus Linklater like to add anything?

Magnus Linklater: A huge amount of consultation is already going on with various bodies. From my personal point of view, our hydro scheme has to go through the whole planning system, and we are responsible to various bodies such as NatureScot and SEPA.

If someone is going to embark on tree planting or development, for example, they are almost forced to produce a management plan. When Andy Wightman draws up his map, he will find that there are not many—I do not remember which colour they are going to be—that have not produced management plans. They will be few and far between, because the requirements of planning authorities and various other agencies, as well as things such as the grouse licensing scheme, involve a huge level of accountability. All that I am saying is that that is already happening.

The Convener: Before I go to Bob Doris's question on this, I will note that I do not know who said that £5,000 is not much money, but it is an awful lot of money if someone has not got much money. The question is whether fines should be on a sliding scale. If someone holds a huge tranche of land, should they be fined more than a farmer who has 200 acres or 200 hectares—if we are going to hectares, or whatever it should be? Does Andy Wightman want to come in on that?

Andy Wightman: I think that we will find that that is all tied to the standard scales in the justice system. The maximum that a sheriff can impose is something like £5,000—do not quote me on that.

The Convener: You do not think that it is right that every—

Andy Wightman: The bill gives the power to a civilian—to a member of the Scottish Land Commission. In law, I do not think that they are allowed to give a fine of more than £5,000, or they certainly cannot give more than a sheriff could give.

The critical thing is to make sure that the fine can be recurring. If an estate fails to do a very modest thing such as produce a plan, never mind implement it, it will be fined. There should be the ability to do that on a recurring basis, so that the fine should be able to be imposed again in a year's time.

In the regulations on controlled persons that were introduced in the previous parliamentary session, there is no such thing—the fine is a one-off. If someone wants to conceal their ownership in the British Virgin Islands, they just pay the £5,000 to conceal it, and that is the last they will ever get fined. All that I would say is that the bill should make sure that the sanction is recurring.

I know that £5,000 is a lot, and I hope that that will incentivise most people to comply. However, if a person owns more than 3,000 hectares and is not interested in doing a plan, £5,000 is simply the cost of deciding not to comply. I might pay that; it is not a lot of money. If I were paying £10 million for an estate and I did not want to produce a plan for the Government, I would pay it £5,000 not to do so.

The Convener: That is very generous of you.

Does Magnus Linklater want to come in?

Magnus Linklater: I simply make the point, which has not been mentioned, that drawing up a management plan is not cost free. It is an expensive thing, and someone might find themselves investing far more than £5,000. Believe you me, getting an environmental impact assessment of an estate, for instance, is £10,000 before you even begin. Such management plans are not cost free.

The Convener: I go briefly to Monica Lennon.

Monica Lennon: I note that we heard evidence on cost. Given that large estate owners are doing the plans anyway, it does not feel as if there will be too much of an additional cost.

I have a final question for Andy Wightman. Earlier, you mentioned that the dynamic between those who live on the land and those who own the land can be difficult at times. If there are breaches, how can the process be balanced to ensure anonymity and be as transparent as possible? If there is going to be a mechanism to allege breaches, which you want to widen out to practically anyone, what about the individuals who are maybe nervous about the process?

Andy Wightman: It is impossible to answer that question, because the obligations in proposed new section 44A of the 2016 act will be imposed by regulations. We have no idea what those obligations are going to be; they will come some time down the line. It is therefore impossible to answer that.

As I said, I think that probably less than 5 per cent of the Scottish population will have anything to do with this, because of the thresholds. Even so, we are talking about tens or hundreds of people who are engaged in communities, so there will be at least one person who is quite free—someone who is independent, such as a doctor or minister—and who can make an allegation. However, we do not know, because we have no idea what obligations will be placed on owners with regard to management plans, because they are all going to be developed by regulation.

Monica Lennon: That is another area that we perhaps need to hear more about from the Government.

Andy Wightman: Yes. For example, will the regulations be a very light-touch imposition? There are some things that they must do, and dealing with management plans is one thing. If they are very onerous, that will change the dynamic quite a lot.

Mark Ruskell: Has the £5,000 sanction in relation to the register of persons holding a controlled interest in land been effective, or is it too early to tell?

Andy Wightman: The sanction has not been effective, as far as I can tell. From an analysis that I did, I think that there are 60 landowners in Scotland who should have registered but have not. I know that one person has complained to the police. I will not entertain you with the merry-go-round.

Magnus Linklater said that management plans cost a lot of money. That is precisely why, as I said, there is an incentive for people simply to say, "Well, I'm not paying £10,000, £20,000 or £30,000—I'll pay £5,000."

The Convener: Bob Doris is next with some follow-up questions.

Bob Doris (Glasgow Maryhill and Springburn) (SNP): Convener, after the follow-up question, do you want me to go on to my next line of questions?

The Convener: Yes.

Bob Doris: Okay. I have one question in this area. I will put slightly to one side the question whether there are powers in the bill to ensure that landowners are following the land management plans—the committee will have to weigh that up when we deliberate—as I want to consider the idea of a proactive role for the land and communities commissioner.

I asked witnesses last week whether the commissioner should work with landowners to share best practice and do research to identify trends in weak practice. Given that there are

restrictions on who can report breaches, I also asked whether it would be desirable for the commissioner to have a proactive investigatory role, irrespective of whether they received a formal complaint—maybe they could take a small sample to get a taste of what was actually happening out there in rural Scotland.

I know that we are short of time, so I invite brief considerations of whether that would be in the public interest. I will go to Mr Peacock first.

Peter Peacock: I am with you on that. I think that I said in my submission that the land and communities commissioner should have the power to instigate an investigation, whether or not there was a formal complaint—under the bill, a complaint would have to be formal for the commissioner to act on it.

All sorts of informal mechanisms exist for such things. If the commissioner got wind that there was some discontent in the community but that nobody was prepared to voice it—for the reasons that Monica Lennon hinted at—they should have the power to investigate at their own will. I am clear about that.

11:00

Bob Doris: That was helpful. If SEPA were aware of environmental damage, it would not wait for a formal complaint to investigate that—it would just get on and do that. There are precedents in that respect across the public sector.

Does Laurie Macfarlane have any thoughts on that?

Laurie Macfarlane: I have nothing to add.

Bob Doris: Does that mean that you do or do not agree with my suggestion?

Laurie Macfarlane: I agree with the broad principle that there is a more proactive role for the commissioner to play.

Andy Wightman: I agree.

Magnus Linklater: I have one extra comment. The position will depend on the make-up of the body that the land and communities commissioner is in charge of. Will he have the expertise, the knowledge and the ability to look at land management plans and question them, investigate them or even challenge them, if necessary? That is a question of his powers and the expertise that he will bring to bear.

Bob Doris: That was very helpful.

Section 2 relates to the community right to buy and registration of interest in large landholdings. Some of my initial questions have partly been answered in the earlier questioning, when we were wrestling with whether 1,000 hectares was a sufficient threshold in this area. The only thing that I would state as an urban MSP is that, in that context, the concept of hectares becomes a little bit meaningless. For example, in my constituency, Glasgow botanic gardens cover 20 hectares, so 1,000 hectares is 50 times the size of the gardens and, to be fair, seems huge when put in that context.

Do you have any other brief additional comments about whether 1,000 hectares is an appropriate threshold? If you just want to restate your position and what the threshold should be, as arbitrary as it all is, that would be helpful. Otherwise, I will move on to my next line of questioning.

Andy Wightman: This is about the prior notification for late registrations.

Bob Doris: Yes.

Andy Wightman: I do not think that that is something that the Government should be introducing. Late registrations are meant to be an in extremis power under the Land Reform (Scotland) Act 2003. Obviously, this provision has been designed to capture off-market sales, where a community would not have the opportunity to put in a late registration, because it would not know about them. If that is what you want to do—and I stress the word “if” here—you should just create the sort of notification system that you have with a planning list. Then, someone can just put a notification in the local paper or whatever, saying that they intend to sell X. If that is what you want to do, do it.

However, what if I have been living in a farm cottage on a landed estate in Morayshire for 30 years, and after five years of tricky negotiations, I have just managed to agree with the factor and the owner that I can buy my cottage? What the hell happens if some community body then comes along, because it was notified by the Government after the Government was notified by the landowners, and the body becomes the landlord?

Bob Doris: I think that you have made your point pretty well, Mr Wightman, and I am cutting you off only for brevity. I get the point that you are making. I think that there are pre-notification requirements as well as late notification requirements.

Andy Wightman: My point about that is, if you bring down the threshold, what you get is a job creation scheme for civil servants. At the moment, large estates such as Roxburghe, Seafield and all the rest of them are doing dozens of transactions every year. All of those will go to the Scottish Government. If you bring the threshold down to 500 hectares, you are talking about thousands of transactions every year going to the Scottish Government for no purpose.

Bob Doris: So your view is that there should be no threshold.

Andy Wightman: The whole point of community right to buy is this: I am an owner of a piece of land; a community registers an interest in it; and I know that, because it is registered. Everyone can see it—there is a line on the map. If I want to sell that land, I know what the consequences are. As for the rest of it, I am free to do what I want.

Now, however, I am not free to do what I want; I have to notify the Government. I actually have more obligations than someone who has a community interest registered. That is nonsense, and it was never what late registration was designed for.

Bob Doris: I think that it goes beyond late registration, Mr Wightman, but I might need to reread that section of the bill myself. That was very helpful, and the committee will go back and look at the issue.

Peter Peacock: I do not know whether you are going to look at prior notification in the round, but on your specific question about the threshold, I have already said that, if you are going to reduce it to 500 hectares, then that should be a universal threshold.

As Andy Wightman has said, this provision looks as if it has been designed to stop off-market sales, which are becoming a real issue. However, there will be other ways of tackling that problem. The difficulty of linking it to late registration, in particular, is that it is already well known that late registration provisions do not work, so doing that will be a complete waste of time.

However, no matter what the threshold will be, it does not deal with the other point, which is that none of this would affect your constituency, Mr Doris. Your constituents would have no rights here, and that is the point that needs to be addressed. There is a mechanism that could be used. I know that you have had previous evidence about the notion that communities should be able to record their interest in some way in a piece of land as being of community significance. That is a fairly light-touch mechanism that would open up rights for communities in urban areas to have prior notification, if that existed, and to have a management plan for particular areas of land and so on. I think that separate consideration is required on how to bring urban communities into this, and there are ways of doing that.

Bob Doris: I thank Mr Peacock for saving us time, because that was my only other question in this section.

I will just check with Andy Wightman before I go on to Laurie Macfarlane—do you agree with Mr Peacock's suggestion?

Andy Wightman: Do I agree with—

Peter Peacock: On urban communities—

Andy Wightman: Not if you are going to tie it to late notification.

Bob Doris: Do you agree with sites of community significance being caught within this, irrespective of size?

Andy Wightman: We already have the community right to buy. That identifies sites of community significance that any community body can register an interest in, anywhere in Scotland. We have had that for 20 years for rural Scotland, and we have had it for over a decade for urban Scotland. Anyone can do that, and that is the mechanism to do it.

Bob Doris: So we should just leave that alone, then, and be silent on it in this piece of legislation?

Andy Wightman: This is just a job-creation scheme for civil servants, who will be processing large, pointless, administrative—

Bob Doris: Right, okay, that view is very clear, Mr Wightman.

Laurie Macfarlane, I am not sure whether this is a job creation scheme or not, but perhaps you can give your views on that suggestion from Mr Peacock, and about the threshold.

Laurie Macfarlane: As I said, any threshold is a very blunt instrument, and 1,000 hectares is, I think, too high. Even in a world where that is brought down to 500 hectares or even 100 hectares, it still would not address the point that you raised.

If this particular mechanism is to go ahead—and I recognise Andy Wightman's concerns about it—it will be important to have a mechanism to capture the exact point that you are talking about. Whether that is identifying a site of community significance, or whatever the criteria are, I think that that point is important to look at. However, in my view, that is a glaring gap in the proposals at the moment.

Bob Doris: All right, thank you.

Finally, Magnus Linklater, you have mentioned the word "bureaucracy" a few times in relation to a lot of this. The more I hear from Mr Wightman about his views, the more I wonder whether there is a meeting of minds, perhaps unintentionally, about some of this. What are your thoughts?

Magnus Linklater: The more this goes on, the more I find that I am agreeing with Andy Wightman. I think that the thresholds are arbitrary, but I would not be in favour of lowering them to the

levels that have been suggested, for the very reasons that Andy has spelled out.

Just one quick word about communities and identifying communities—as I understand it, under the bill, the Land Commission will have a list of communities that have already expressed an interest and are standing by, waiting, in case there is a proposed sale, at which point they will be brought into play.

Who are those communities, how are they identified, what do they have to do to demonstrate that they have a legitimate interest in a community buyout and to show how they would improve the use of the land over its present use? That is a very interesting question that has not really been addressed.

Bob Doris: Mr Linklater, I know that I said that that was my final question, but this one is just for you. Does that maybe provide a rationale for land management plans and community consultation? If they are done properly, ethically, appropriately and professionally, the landowner will work collegiately to build up relationships with those communities and build capacity. Is that potentially a positive outcome of a good-quality land management plan?

Magnus Linklater: I do not know whether a land management plan is on the public record and therefore accessible to the local community. I am not particularly in favour of working collegiately, as you put it, with the local community, because every local community has a divergence of interest. You will find six different people have six different views as to what to do.

A land management plan, presumably, is published—

Bob Doris: I would presume so. We can clarify that, but I think that it is self-evident from the legislation that the community should be involved in the consultation process.

I will leave it there. Perhaps that is something that the committee will have to return to.

The Convener: Douglas Lumsden has waited patiently and quietly. Now is your moment, Douglas.

Douglas Lumsden (North East Scotland) (Con): Yes—I am sticking to the community right to buy process. I am keen to know whether the Government has found the right balance between public and private interests, particularly in relation to the timescales for how long a transfer is prohibited. I will come to you first, Magnus. Do you have views on that situation, in which landowners will not be able to sell land and will give some time to communities to almost have first refusal?

Magnus Linklater: The one case that I know about is the purchase of the island of Ulva. That was originally planned as a private sale and then, when the local community heard about that, it registered an interest. At that stage, any private sale was stopped. The community was given quite a generous timescale within which to come forward with a plan and was helped by civil servants in the Scottish Government to prepare that plan.

Considerable leeway is already given to local communities to come forward with a proposal to get it right and to be given the information that they need to get it right. I am not quite sure whether the bill reinforces that or expands it, but I would have said that communities already have considerable powers to prepare a bid.

Peter Peacock: To pick up on Magnus Linklater's point, the reason why the provision is there is to deal with land that never comes on the market because it is sold privately—it is to bring visibility to that.

On your question about timescales, the evidence that I have heard and read in what the committee has already received is that the timescales are simply impractical for communities and just would not work, and therefore they require to be extended. I do not see the extension of those timescales as particularly problematic. As I have stressed throughout my evidence, if the measure is all about achieving the public interest, we should allow a bit of time to work out what the public interest is and to make proper decisions, as that takes a bit of time. I do not think that the timescales are achievable as they stand and they require to be extended.

Douglas Lumsden: What would be an adequate timescale for communities to get their act together?

Peter Peacock: I am not sufficiently expert on that to offer you a figure, but I know that those who are dealing with these things day in and day out have already advised the committee on that, and I would go with what they have said.

The Convener: To clarify, I think that communities are given 70 days in the bill and that there is an argument that that is insufficient. Sorry, Douglas, but I just wanted to put that on the record.

Douglas Lumsden: Laurie or Andy, do you have any comments on that?

Laurie Macfarlane: The 30 and 40-day window is very tight and, outwith very specific conditions where a pre-existing eligible community body is ready to go—which will probably not be the case with land that has not been sold for a very long time—I do not think that that is long enough. There

is also a question about the definition of "community" in the early-stage process and perhaps broadening that out.

Taking a step back, I think that, fundamentally, if the goal is to promote more community ownership, those changes in particular will not make a great deal of difference overall.

Andy Wightman: If you want longer timescales, use the existing mechanism that has been there for 20 years, which is the community right to buy. Register an interest, and then you get long timescales of six months or something. I just would not have this provision in the bill at all. If you want to capture off-market sales of large estates, make a public notification system—that is all that you need to do.

As I say, if you reduce the threshold to 500 hectares, you will literally bring in thousands and thousands of bits of garden of 100m^2. Someone might want to expand the vehicle entrance for a builder's yard, or there will be situations like mine, where I have been living in my cottage for 30 years and want to buy it. You will have thousands of such things going to the Scottish Government, going up to the land commissioner, going round and about and achieving precisely nothing. This is a really stupid policy.

Douglas Lumsden: Okay. We have heard you loud and clear.

Obviously, the Government is making the process overcomplex. The existing right to buy process is already under review. Should we just get that right?

Andy Wightman: Yes. There is no way that the Government should be introducing a bill that introduces new, unprecedented, legalistic and bureaucratic processes in an existing act that has been there for 20 years when, at the same time, it intends to review that act. That makes no sense at all. There have been calls in Parliament since 2006—that is the first that I can remember—to review the community right to buy. It has delivered 0.24 per cent of Scotland into community hands in 20 years, so it will deliver 1.4 per cent by the end of the century and 5 per cent—or 10 per cent or whatever—by the end of the millennium.

Belatedly, we are to have a review done internally by civil servants, which is not good enough, because, internally, civil servants are not—well, we are getting off topic there.

The Convener: Yes, you are getting off topic. I think that you were saying that the changes have been very small.

Kevin Stewart wants to come in with a supplementary when Douglas Lumsden has finished.

Kevin Stewart: I am going to go a bit off topic as well, and go back to comments that Laurie Macfarlane made earlier. I think that we can have very brief answers here, convener.

Is the bill an appropriate vehicle for introducing compulsory sale orders?

Laurie Macfarlane: I do not see any reason why not.

Peter Peacock: I would support that, absolutely.

Andy Wightman: Yes.

Magnus Linklater: No.

11:15

Kevin Stewart: There we go. That was quick, convener.

The Convener: And without explanation, Kevin. Douglas, I was not sure whether you had finished.

Douglas Lumsden: I am done, convener.

The Convener: Okay. We come to the deputy convener.

Michael Matheson: We touched on this issue to some degree in earlier answers, but I would like to dig a wee bit deeper. I would like to get your view on the provisions around lotting in the bill. Do you think that they are right and are workable, and what do you think their potential impact would be in helping to diversify land ownership in the future?

Andy Wightman: I do not think that they will have any impact at all. In my written evidence, I present to you my assessment of qualifying sales over the past three years, showing how the provisions will have a very limited impact. I have been looking at land sales since 1993—I have a collection of more than 4,000 sales particulars that are currently on their way to the National Library of Scotland. Many parcels of land in Scotland are lotted when they are sold. If I own a 2,000-hectare estate and my advisers tell me that I will get more money in aggregate if I sell the houses, the farm and some development land separately, generally speaking, I will do that. I might not do it—I might have some bizarre wish to make sure that it always stays in one lot, but I am selling it so I will have no control, which means that that is a pretty pointless wish.

Therefore, land is being lotted already, and land that, if lotted, would probably reduce in value, will not be lotted. There are only about eight qualifying sales a year, out of which you will be lucky if there is one every five years that it would be appropriate to lot. If the Government is going to step in and lot them, it will have to pay compensation if that lotting results in a lower aggregate sales value to the owner. That will not diversify ownership

because there is no public interest test on the buyer.

Scotland's land is getting more concentrated. My recently republished book shows that we now have 421 owners owning 50 per cent of Scotland's privately owned land, down from 440 in 2012. We have 2,589 owning 70 per cent, down from 3,161 in 2012.

If you lot the land, anyone—Gresham House or any other investor—can come in and buy the lot. They will just increase the concentration, because they are the ones who are concentrating land ownership. If it is prohibited for one person to buy more than one lot, that is fine, because six months later, they can sell it to each other anyway. There is no control over that because the land is under the 1,000-hectare threshold by that time.

On lotting land, look at, for example, the sale of a French investment company, on which I did a blog recently. The company is called Woodland Invest, a significant share of which is owned by the French state investment bank, which was set up by Louis XVIII, I think. Woodland Invest owns a 2,500-hectare portfolio of property in Scotland—there are 16 separate properties from Aberdeenshire to Argyll and the Borders. There is one in your constituency, Mr Matheson—Slamannan. It might not be in your constituency, but it is close by. That is the land that you want to lot, because the folk in Slamannan might like a community woodland, the farmers in Aberdeenshire might like some woodland for a bit of shelter, and a community in Argyll might want a community woodland. We should lot that, but that land would be sold as one job lot because it does not meet the threshold. It is more than 1,000 hectares, but it is completely disaggregated. That is precisely where you could step in and say, "Wait a minute." If someone is selling 16 properties—there are some portfolios of about 30 or 40 properties for sale in Scotland—that is where you step in and lot.

I think that the impact on ownership will be very minimal, because investors will be able to sell to one other afterwards. I can make a backroom deal with you so that you buy that lot, I buy this lot, and in a year, I sell my lot to you.

Peter Peacock: This is a very important point of principle, which the bill opens up for the very first time. In the present day, it seems absurd, but it is the case that the Scottish ministers, in the public interest, cannot ask any questions about land sales of scale. There is no power to do that. The bill gives the Scottish ministers, for the very first time, powers to intervene in land sales of scale. From that point of view, as a point of principle, it is mightily significant that it is in the bill. To that extent, the bill makes useful ground, and I support it. It also opens up the potential for greater diversity of land. However, as drafted, it will not deliver very much at all. It is too timid and makes no real material difference—first, because the threshold is too high, and secondly, because the way in which decisions about lotting will be made is not clear in the bill. There are hints in the policy memorandum, but it is not clear on the face of the bill.

It comes to the question of the lotting decision being the result of a transfer test. Why have we chosen a transfer test rather than a wider public interest test? I have previously made points about the public interest test and its significance for ECHR questions. That would require attention, and it is potentially capable of being done in the ways that I have previously hinted at about how to define a public interest test and the considerations within that.

I agree with Andy Wightman to the extent that it does not address the question of the purchaser. I made comments on that earlier, and I will not repeat them.

Again, the timescales are too short. Practical things could be done to make the provision more effective. However, as it stands, it will not make much difference, notwithstanding the fact that it is an important principle to have established that, for the first time ever, there will be ministerial say-so over land sales of scale.

Laurie Macfarlane: I agree that, as currently drafted, the proposals in the bill on lotting will have a very small impact—if any at all. Lotting might have a role to play overall if, as we said earlier, it is tied to a much broader concept of the public interest and a public interest test—as was outlined in the consultation—of which one possible outcome could be lotting.

The issues of aggregated land holdings that Andy Wightman talked about are important, and there is a risk that we are not capturing some of the main drivers of the growing concentration of land ownership in Scotland. My understanding is that, under the proposals, there is no regulation over who can buy the land, apart from one person's not being able to buy more than one piece, which is a big issue.

As mentioned earlier, the concept of community sustainability, which seems to be the driving factor, is ill defined. The big change for me, therefore, should be a move away from the transfer test for lotting towards a public interest test at the point of transfer or sale, guided by the well understood concept of the public interest and, again, considering the aggregate land holding issues that Andy Wightman mentioned.

Just to put it on the record, it is worth mentioning that, even if we went down the route of a public interest test at the point of sale or transfer,

that might in and of itself help to stop the future growing concentration of land ownership, but it would not tackle the existing pattern of land ownership, because most land never comes on to the market for sale. Again, if the Scottish Government is serious about tackling the issue, those actions alone will not do that. They might stop things getting worse, but they will not make them better.

It is also worth at least considering the principle of having a mechanism with the sufficiently high threshold of a public interest test on existing landholdings, where there is clear evidence that land is not being managed in the public interest—again, with suitable mechanisms in place. An important point to mention is that the benefit of a public interest test lies not just in its actual application—people just going around doing lots of public interest tests; the very existence of such a mechanism would be enough to drive behavioural change in the market. Landowners would know that there was the possibility of a public interest test, would not want one and therefore would ensure that they managed land in the public interest. It is a key point that the existence of such a mechanism—rather than authorities using it lots, if that makes sense—will drive behavioural change.

Michael Matheson: Thanks. Magnus Linklater, do you want to comment on the issue of lotting?

Magnus Linklater: I do. Laurie Macfarlane has put great emphasis on public interest, but what about the private interest? That is where the ECHR comes into play. There has been a suggestion that lotting improves the value of the land; however, my experience suggests the opposite. Lotting gives a community the opportunity to purchase a bit of land rather than having to raise the funds to buy the whole lot. Inevitably, their eye falls on the productive bit of land. That excites interest; that is what they will raise the funds for; and that is what they will want to buy. That leaves the landowner—who needs to sell, presumably; otherwise he would not have put the land on the market—with unproductive land, whose value, deprived of that bit, falls considerably.

As I understand the bill, at that stage, the Government would step in and compensate. I am amazed that that is being proposed, because it would be an extra cost for the Government. It raises many different questions.

I have already mentioned an estate such as ours, which has a hydro scheme that works on only the whole piece of land. If you were to lot that land, half of it would be chopped off. I am sure that that would also apply to many other large estates, as they would have productive bits and non-productive bits. The community would want to get their hands on the productive bits. Already, you are setting up the possibility of a challenge under the ECHR of undermining property rights and devaluing land, which must be considered.

Michael Matheson: I will turn briefly to the idea of the public interest test, which a number of you have mentioned, given that the bill proposes a transfer test. The original consultation proposed the idea of a public interest test, which the Scottish Land Commission recommended. Do you understand why the Scottish Government chose to introduce a transfer test, rather than a public interest test?

Peter Peacock: Speaking for myself, I do not understand that. Frankly, I am perplexed by the decision, and I think that it is a misstep. For the reasons that I and others have set out, it is very important to frame it as a public interest test, which the land commission has recommended. I do not understand why the Scottish Government has reached that position. It weakens the provision pretty dramatically, in my view. Maybe that is the reason; advice might have been given to ministers about that, but I just do not think that it is the right position. As Laurie Macfarlane said, a public interest test is a well established routine in law, and it can be defined in the ways that many of us have rehearsed.

Michael Matheson: My second question is whether any of you, from your different perspectives, can see merit in a transfer test as opposed to a public interest test.

Peter Peacock: My short answer is no.

Andy Wightman: No.

Laurie Macfarlane: No.

Magnus Linklater: No.

Michael Matheson: Would you prefer a public interest test, rather than a transfer test, to be in the bill as it is currently drafted, in order to provide greater transparency on what the intention of the test is?

Magnus Linklater: I am beginning to sound like a stuck record, but it depends on your definition of public interest. I think that my test would be very different from that of Peter Peacock or Laurie Macfarlane. My test of public interest relates to the use of the land, whether it is to fight climate change or foster biodiversity, for example. On the other hand, if it is farmland, the test would be whether the land is being farmed sustainably and productively. All those things seem to me to be a definition of public interest and are far more important than the idea of simply distributing land and wealth.

Michael Matheson: Magnus, you have suggested that the best way to attract investment

in woodland and peatland restoration programmes would be on larger estates, because of their ability to attract investment, particularly from the private sector. Could you expand on why you believe that that is the case? Do the other panel members agree with that view?

Magnus Linklater: Interestingly, the case is not being made in terms of private investment, but those who are arguing for it, such as the Scottish Woodland Trust, NatureScot and RSPB Scotland, believe that the totality of a biodiversity scheme would be greatly enhanced if estates joined up and produced a composite plan. It is not me who is arguing for that but bodies that are cited as authorities and are called into play by the Scottish Government.

It is a very interesting argument. As Peter Peacock has said, Anders Povlsen is rewilding all across Scotland, and nobody is criticising him for that; indeed, they are applauding him. Yet, he is now the largest landowner in Scotland. I am not necessarily complaining about that, but I do think that there is an inherent contradiction in that respect.

11:30

Michael Matheson: Andy?

Andy Wightman: It is a statement of the obvious that if you want to manage land at scale for whatever purpose, you still need to manage land at scale. The ownership does not really matter. If you want to manage land at the scale of 10,000 hectares, there might—and I stress the word “might”—be a benefit in that 10,000 hectares having only one owner, but only if they agree. If they do not, you are stuffed. If Mr Povlsen had had different motives, things would be very different, and that precisely is a good example of why there should be a public interest test.

Glen Feshie had a management plan. A nature reserve agreement had been in place since, I think, 1955; in fact, when I campaigned at the Rio earth summit on the glen’s deforestation, I had a copy of the agreement in my hand. However, it was routinely ignored, and it took Mr Povlsen to come in and restore the place. The point, though, is that there was no public interest test, and there should have been. We would have looked at Mr Povlsen’s plans and his money, and we would probably have said, “Yes, fine, great.” The argument that he has come in and done that is actually an argument for there being a liberal free market in land, with no constraints at all. You just happen to get lucky with him, if you believe that Glen Feshie needs to be restored.

The point is that you can do this sort of thing by co-operation, too. Magnus Linklater has answered his own question. There are landowners operating at scale in continental Europe. In Finland, you have 125,000 members of one of the biggest forest products companies in the world—these are small family forest farms. In southern Sweden, you have the 57,000 members of Södra. You have all the Brittany farmers, who still control 55 per cent of Brittany Ferries. What that means is that, when you go on holiday to France, you give French farmers money.

You co-operate. It is easier to co-operate with four people, yes, but the risks are that, if three of them do not co-operate, it does not happen. It is difficult to co-operate with 10,000, yes, but that is where you have to strike a balance, with the Government saying, “Look, we need to restore peatlands of over 10,000 hectares. It doesn’t really matter how many landowners there are. We are going to do it, and these are your obligations.” This idea that you need scale of ownership to achieve scale of management is a complete red herring.

Peter Peacock: I concur with that last summation that this is a red herring. If you compare Scotland with most of the rest of Europe and, indeed, the rest of the world—and this is why I made my opening remarks in the way that I did—you will see that we are the aberrant nation. We are the nation that sticks out as being very odd indeed. Does this mean that rural France, rural Sweden, rural Finland or rural Norway is lacking in investment and is failing to meet its environmental obligations? Absolutely not. They are excelling in some of these matters.

Therefore, it is not a question of scale of ownership. The arguments for leaving scale of ownership alone are basically economic ones, which are about leaving the status quo, the accumulation of wealth and the accumulation of power in the current hands. That is why Governments of all persuasions in the Scottish context since devolution have argued for more diversification of ownership—it is precisely to address these broader societal questions.

If you go to Africa and other parts of the world, you will see literally thousands of smallholders co-operating to recreate some of the biggest forests on the planet at the present time. It is not a question of who owns the land, but what is in the public interest and how you drive that progress. That is just a diversion from the need to look at diversification of ownership, and it is all about arguing for the status quo.

Laurie Macfarlane: I concur with the previous speakers. The argument that having a very concentrated pattern of land ownership is somehow of some benefit in attracting investment in nature restoration is fairly thin. If that were the case, we would potentially be at a significant advantage to European neighbours in delivering

nature restoration, and that particular view is not borne out by the evidence.

I have one brief final comment, and it comes back to the point about Anders Povlsen. Ultimately, landowners who manage land well in the public interest should not have anything to fear from a public interest test, because they are already doing that. Indeed, we often hear from that sector that they are already doing this sort of thing. If that is the case, they should have nothing to fear from having this mechanism.

Michael Matheson: Thanks.

The Convener: Before we leave this issue, I want to go back to something that was questioned earlier. Lotting is triggered if you have an estate of a certain size, and you want to sell something off.

On one of our visits, we heard that there are often numerous different sales going on—houses or little bits of ground for a pony paddock or an extension to the garden—but, under the bill, if somebody came along and asked an estate whether it would sell them their house, the estate has to say absolutely nothing, pull the shutters down and contact the Scottish ministers. Is that progressive or is that overkill?

Peter Peacock: You make the same point that Andy Wightman made earlier, and it is a fair point. There would be merit in looking at having a de minimis level. You are talking about a threshold, but there is also a case for looking at having a de minimis level at the other end. Nobody wants to clutter up the system; it is in nobody's interest to do that. However, that is not to say that there are not arguments in favour of lotting.

The Convener: I struggle when we talk about natural capital in relation to, for example, Gresham House. It has relatively small landholdings scattered across Scotland, but it becomes quite a big landowner when you put all the holdings together. I am not sure that I have heard how you would deal with that in relating to lotting.

Andy Wightman: I mentioned the example of Woodland Invest, which is currently on the market. If you are going to have a threshold, you apply that threshold to land that is not contiguous. There are 1,000-hectare holdings that are not contiguous because there is a railway running through them. I have one locally. Just because there is a railway running through them, they are out of scope.

The test for whether people have a common interest is whether the holdings touch. The easiest way to get around that is to sell land to somebody for a house or something to make sure that the parcels of land do not touch, and then you are out of scope. Avoidance is really easy here. You just set up a holding company, hold your estate in subsidiary company A, and when you want to transfer any land, you transfer it to company B, which is an exempt transfer under the community right to buy, and then you sell the shares in company B. It is really easy to do that.

That is the problem—if you want to do something, make sure that it will have decent outcomes and that it will work. If it will not work, the default position is to not do it, because otherwise you will have judicial reviews, legal challenges, highly bureaucratic job-creation schemes in the civil service, and a lot of people getting incredibly frustrated.

The Convener: The problem with lotting—having done it when I was a surveyor—is that there is quite an art to getting it right.

Andy Wightman: There is.

The Convener: It is usually done based on the information that you have about who wants what. There might be an argument for selling the whole estate, so that you have one buyer and it is easier, and then you can let that person break it up and sell it on at a profit, or carry the risk if they get left with it.

The question of costs is the never-ending question. We have a financial memorandum that will say that the costs are relatively small. If there is compensation for lotting, surely the cost could be massive. Do you want to come in on that, Magnus?

Magnus Linklater: Do you mean compensation for land that is lotted but not sold?

The Convener: No, I mean if it is lotted in a way that does not achieve the best possible price, and the Government has to compensate the landowner. The compensation could be massive, could it not?

Magnus Linklater: It could. I hope that you will come back to the issue of the powers of the land and communities commissioner, because that is where the power to make such decisions will lie. Laurie Macfarlane said that those who manage their land well will have nothing to fear. There are those of us who feel a wee chill going down the spine when we hear that phrase, because there are people who will say that we have everything to fear, if they decide that we are not using the land properly.

The Convener: Andy, I do not know if you were leaning forward to comment on the compensation issue and the question whether there could be a huge bill if lotting was done in a certain way.

Andy Wightman: In my written evidence, I look at the qualifying sales over the past three years, and I make an assessment of how many would be lotted. I can give the committee details of each

estate and their sales particulars, and you can have a look at it yourselves.

In my recollection, of the eight qualifying sales a year over the past three years—24—only three or four were lotted, and those lots were really just a couple of houses plus the rest. I do not think that ministers will lot stuff if they are advised by the land and communities commissioner or whoever that doing so might devalue the estate, because they will open themselves up to paying compensation. That would be a decision that ministers make at the time. Potentially, in theory, the bill could be huge, but if the bill is huge, the ministers will not lot.

Peter Peacock: I would need to go back and check, but if I am correct—and I am pretty certain that I am—existing land reform legislation on the statute book contains provisions for compensating owners in certain circumstances. So, this is not new territory.

I am not rehearsing the merits or demerits of this proposal, but if you want a more diversified land ownership pattern in Scotland—which has been the consistent policy of the majority of parties for all these years—I would point out that, relative to the scale of the value of the land and the market for land in Scotland, the sums that we are talking about are minuscule. Therefore, I think that it is well worth the price.

The Convener: I am just concerned that if some areas are designated as being suitable only for community purchase, it blights the value of the land. However, as an ex-surveyor, I would say that.

Peter Peacock: I should say, convener—and Magnus Linklater misunderstands my position on this, too—that one of the weaknesses of the bill, and the weakness of the argument about land reform in the round, is the equating of such reform with community ownership. I do not see it that way. I want to see hundreds more private owners as well as community owners. It is a question of how you diversify ownership and widen opportunity in land, and I do not see that as purely a community thing. I am a huge advocate and fan of community ownership, and I want to see much more of it, but it is not the only dimension to land reform.

The Convener: I want to move on to the next part of our discussion—the proposal for a land and communities commissioner, which seems to be non-controversial, this morning. Should it be a stand-alone role, or should it be incorporated in the work of existing commissioners? What are your views on the way in which the role is laid out in the bill? Magnus—as you have expressed opinions on this, I will let you go first.

Magnus Linklater: As it is laid out in the bill, the land and communities commissioner is going to have huge powers—indeed, powers that could be challenged under the ECHR, if he were to go too far. Therefore, the first step is, I suggest, that there should be maximum accountability in the first place, with a very well-debated and open process about how the appointment is to be made and what powers the commissioner will have. As I have said, some lawyers think that the powers are extraordinary. If that is the case, the powers need to be well laid out, well questioned and well challenged, if necessary.

The other point, which I have made before, is about the expertise of the team under the land and communities commissioner. They must be people who are close to the land—they must not be civil servants looking into laptops. They need to understand how the land is used and what the best use of the land is, and to be able to judge why a land management plan is not working, if it is not working. It should not simply be a box-ticking exercise—those people should really understand farming and use of land.

It is a big proposal in the bill. The post will come with enormous powers, so it needs to be properly scrutinised before it is put in place.

The Convener: Peter, I know that you have some doubts, so I will let you voice them now.

Peter Peacock: I want to take this very rare opportunity to almost agree with Magnus Linklater. I have to say that I have very major concerns about the way in which the role is being established, the status of the position and the relationship between the land and communities commissioner and the Land Commission. Moreover, there is, on the face of the bill, no guidance for the commissioner on how to exercise their role. They will, in exercising their functions, be wholly detached from the commission. It is almost as if they will be at the commission only to receive their pay and rations—as would have been said at one time. For the rest, the commissioner will have entire discretion over what they do.

I just do not think that that can be appropriate. It is not, it seems to me, conducive to good governance, and it is not conducive to good accountability, as Magnus Linklater has said. I do not think that there is any of the necessary alignment between the land and communities commissioner and the policies of the commission, and it just seems to be bizarre that the commissioner would be part of a corporate entity yet not be required to give consideration to that entity's policies. I think that there is a case for vesting the powers of the commissioner in the entire commission, rather than in a single individual.

I think that there is a strong need to amend the provision, and I do not think that it would be difficult to do so. Parliament could oblige the commissioner to consult the wider commission on any guidance that they are going to issue, any decisions or recommendations that they are proposing to make or any codes of practice that they are intending to issue. The commissioner should have to exercise powers with regard to the commission's policies.

The commissioner should probably formally report to the commission chair in some way, and their actions as commissioner should be designed to advance the public interest in a variety of ways.

There are major concerns, but I think that the provision can be amended, and I hope that the committee will recommend doing so.

11:45

The Convener: It is the balance that is the issue—it is about ensuring that the land and communities commissioner has the same free spirit as the tenant farming commissioner, and not making the commissioner a regulatory body. Andy Wightman has some concerns, as well.

Andy Wightman: The proposal is to establish a land and communities commissioner by modifying section 4 of the 2016 act, so they would be part of the Scottish Land Commission and all the rest of it. However, as you say, it follows on from the tenant farming commissioner role. In 2016, the view was taken that there should be one individual who was responsible for tenant farming issues. My understanding is that that was partly to enable an individual, who hitherto has been Bob McIntosh, to develop a relationship with landowners and tenants whereby they were trusted, rather than having a corporate commission, which is a kind of faceless organisation. That was the theory behind it and I think that, broadly speaking, it has worked. Bob McIntosh has done a very good job of building trust in a historically difficult environment.

The new commissioner has some bespoke powers, but I agree with Peter Peacock that those functions should be given to the commission corporately. I do not think that it needs to be a specific commissioner who has those obligations.

My other worry and concern is that the Land Commission is a relatively new body that picked up its powers only in April 2017. It is an advisory body: it is a statutory advisor to ministers and it produces guidance, good practice, general good works and all the rest of it. Its duties were set out in the 2016 act. However, we are now giving it regulatory powers, which it has never had before. The Scottish Environment Protection Agency is a regulatory body, so we all know that, if you pollute, it might come and get you. Another example is Scottish Natural Heritage—NatureScot—which has long been a statutory advisor to ministers, but also has some regulatory powers. However, it has been around since 1992.

I think that giving a relatively new body that is still developing trust a new member who has regulatory powers—and the power to issue fines—needs to be thought about. I ask the committee to invite the Land Commission to tell it how much consultation was held with it on whether it wanted that. My understanding is that the commission got the bill the day before its publication.

This is a governance question. We need to maintain the integrity and trust that have been built up by the Scottish Land Commission to ensure that the powers that are delivered are delivered effectively. Potentially, the Scottish land and communities commissioner could fine somebody that they are also working with on a best practice scheme. That does not stack up. Therefore, my recommendation would be to give the powers to the commission as a whole.

The Convener: Okay. Laurie, do you have anything to add to that?

Laurie Macfarlane: Not much. I think that there is a pretty broad consensus among all of us here. This is an area that needs to be looked at in quite a bit more detail, including the role of the commissioner vis-à-vis the commission and the tension that Andy Wightman mentioned about the commission's role in providing advice to the Scottish Government and executing a new regulatory function. Based on what we are seeing in the bill, we need to look at this in a bit more detail before going ahead.

The Convener: Okay. I think that the bill does not mention specific skills and expertise for the new commissioner, but it does say that the commissioner cannot be a large landowner—they are automatically disqualified. I am not quite sure that I understand that, and I am not quite sure that I understand why specific skills are not listed. The tenant farming commissioner has to have specific skills; I remember his first interview when he came to the Environment, Climate Change and Land Reform Committee.

Andy Wightman: Section 6 of the bill says that

"the Scottish Ministers must ensure that the person appointed has expertise or experience in—

(a) land management, and

(b) community empowerment."

That is broad, but there are qualifications there.

There is a reason why large landowners would be prohibited from being the commissioner. It is rather like the wider point about the Scottish ministers owning 10 per cent of Scotland. If they

want to sell an old forestry store, they have to notify themselves. Scottish ministers can inform somebody else if they want to buy it or lot it; they also have to inform themselves that they might want it. That is a massive conflict of interests for Scottish ministers that needs to be dealt with, but it is not being dealt with. The first Scottish minister sale is going to be judicially reviewed, because the person making a regulatory decision about notifying communities or doing lotting cannot be the same person who owns the land.

If that principle holds for Scottish ministers, which I think it does, it also holds for the commissioner. If, after his term in office, the convener were to choose to retire from being an MSP and took up a position on the commission, and he owned more than 1,000 hectares and had to investigate himself, no court in the land would uphold the integrity of the investigation. My understanding is that that is why the provision is included. It is perfectly sensible.

The Convener: That is hypothetical, of course, because I do not own more than 1,000 hectares of land, and I do not think that I am likely to, as I have a small family farm. Magnus, do you have a view?

Magnus Linklater: On what?

The Convener: On whether the skills that have been specified for the land and communities commissioner are sufficient, and on whether large landowners should be excluded from being appointed as commissioner?

Magnus Linklater: On the surface, I can see that there would be a huge conflict of interests if a large landowner were to take up that job. As Andy Wightman has said, the bill specifies that they must have skills and, I emphasise again, the body as a whole should have those skills. If it is to be corporate, as is the Scottish Land Commission as presently constituted, I presume that they would bring that expertise to bear.

The proposed commissioner would also have the power to impose fines, which we have talked about, which could be challenged in court. The bill is very intricately drafted—we have not really talked about the complexity of it. I have sat up with a wet towel around my head reading it, and some of it is nightmarish in the convoluted way in which it is expressed. All that suggests that the bill is not confident about what it is being asked to deliver. It is trying to ensure that it does not end up in the Supreme Court, which is a high risk, because there is so much in the bill that can be challenged. The powers of the proposed land and communities commissioner will be at the heart of it, because if he or she has the ability to impose fines, they will be accountable in the courts and will be challenged if they have not got it right.

The Convener: That is interesting. Lotting is a specific skill that not everybody has. After 15 years of being a land agent, I would not say that I am confident that I could do it correctly.

Peter Peacock: I have a brief additional point. I also think that there is a need for the bill to update the Scottish Land Commission's functions, because it is now a decade old. For one thing, it will have to reflect new responsibilities, which is not addressed in the bill, as I see it.

The bill also does not address whether the commissioner is to help to facilitate or advance community wealth building or the just transition, which Monica Lennon and other members have asked about. Its functions need some refreshment in order to complement the bill.

The Convener: Rhoda Grant will get her moment now. She has waited very patiently.

Rhoda Grant (Highlands and Islands) (Lab): My questions will go back over some issues and address one other thing that is more substantive.

You all talked about urban land reform and the way that that could be incorporated in the bill by categorising land as being of community significance. Does that need to go in the bill separately, or could the categorisation be used for rural land as well?

Andy Wightman: If you wish to make new designations about land that is of community significance, be my guest. I suggest that now is not the time to be introducing new designations. The community right to buy exists, and we have added the right to buy neglected and abandoned land, and land to further sustainable development. The Duke of Buccleuch has redistributed more than 31,000 hectares in the past 10 years. All the bits of legislation that have been passed by the Parliament have redistributed less than 30,00 hectares. My inclination would not be to introduce new designations, but if you want to, you should make sure that you know what they are designed to achieve, and all the rest of it.

On the urban context, I was giving a talk in Peebles the other week, which has about 300 or 400 acres of community-owned land. The problem is not that there is no community wealth: the problem is that the common good of the Royal Burgh of Peebles is controlled by four councillors, only one of whom lives there. The simple way to address that would be to amend the Common Good Act 1491 and the Local Government (Scotland) Act 1973 to give back to the people of Peebles control and ownership of their land.

There are things that we can do in urban Scotland that would be hugely empowering. We could, for example, give the people of Aberdeen and Inverness proper control of their common

good funds. Those are multimillion-pound funds. There is lots that we could be doing in urban Scotland. I would not bring the late registration provisions and lotting into urban Scotland, because you would then be talking about bringing the threshold down to something like a hectare, if you wanted it to have any meaningful effect. I have already mentioned that, through the bill as drafted, you are talking about thousands and thousands of notifications coming to Scottish ministers. They would be drowning in them if you were to introduce those provisions into urban Scotland.

Peter Peacock: Part of the dilemma is that the bill does not deal with the community right to buy. As Andy said, back when I was a member of this Parliament in 2011, the Rural Affairs and Environment Committee commissioned work on that and demonstrated that it did not work. It is 13 years later, and we have still not dealt with the matter.

Taking a lighter-touch approach to areas of community significance is a necessary innovation. It would build on the experience south of the border, where there is a lighter-touch mechanism. That is required because, for many urban communities—in fact, for almost any community in Scotland—using the community right to buy provisions in the 2003 act has become cumbersome, bureaucratic, difficult and almost impossible to maintain over time. That is why there is a call for a different mechanism for urban Scotland—although I do not know how that would be done, technically.

I think that it would be a missed opportunity not to use the bill to establish that urban communities have community rights as well and not to depart from that. There is merit in considering areas of community significance quite closely. Others have done quite detailed work on that, which I am sure would illuminate how it could be done.

Laurie Macfarlane: In the context of having a public interest test rather than the existing transfer test, and in the context of the discussion about thresholds being lower, looking at the issue of community significance to bring in some of the urban stuff is useful. However, if we are talking about the existing plans in the bill on the transfer test and lotting, I do not think that that is worth pursuing—it would really be useful only if the test were to evolve into a public interest test.

More widely on the urban land point, we have already talked about the fact that community right to buy will not be materially strengthened through the bill and that there is separate work on that going on. We have brought up compulsory sale orders, and Andy mentioned common good, which, again, is not covered in the bill, although I do not see why it should not be. That all pertains to the urban aspect.

I mentioned at the beginning of the meeting that it would be good to see provisions relating to land for housing in the bill, but they are not in there. Again, there is a separate thing happening in parallel on compulsory purchase, which also confuses matters.

Rhoda Grant: My other question is around natural capital, which we have not really tackled. We know that people invest in planting trees and so on, and they use that to offset bad behaviour elsewhere. Those people can buy leases or control of the land for quite a long period of time—they might not own the land, but they control it. Therefore, should the bill cover how the land is controlled? It is certainly not in the public interest for people to control land to offset polluting behaviour elsewhere. Is the bill an opportunity to tackle that and, if so, how should it do so?

The Convener: Magnus's hand is up, as is Andy's. Rhoda, if you do not mind, we will go to Magnus first and then to Andy.

Magnus Linklater: The use of natural capital is still in a formative stage and not many people fully understand it. Basically, it involves taking an area of land and deciding what it contributes to tackling climate change and biodiversity loss. It includes tree planting for its carbon capture potential, as well as peatland restoration and water replenishment. In totality, those amount to natural capital.

The argument is that you might find private investors who are prepared to invest in natural capital to burnish their own carbon credentials. Private investment is encouraged by organisations such as NatureScot, because they quite like the idea of getting private capital involved in such things.

12:00

However, it is early stages, and I am not aware of any major investment projects having come across yet. As I said, a lot will depend on whether the Scottish Government encourages biodiversity and nature restoration as part of its farmland policy. Therefore, the jury is out on natural capital. That is my view.

Andy Wightman: The question was whether the bill can tackle some of the issues raised by that whole debate. The answer is clearly no. We are at stage 1 of the bill process, and no thinking has been done on that.

I come back to the fundamental point that I made at the beginning. We have had 25 years to build a detailed, strategic and measured programme of land reform that we could build on

every five years. Instead of that, we get sudden, random tactical interventions in the status quo that will achieve nothing. That takes me back to the point that I made to Ms Lennon about the need for land reform to be a cross-cutting theme in the Government, as climate is at the moment.

I have a good example. The First Minister attended the City of London Corporation's Mansion House dinner. People are being encouraged to invest, protocols are being developed, and there is talk of finance to be found and all the rest of it. In taking that approach, the Government is completely oblivious to the impact that that will have on land markets, on communities, on opportunities for others and all the rest of it. It is also completely oblivious to the fact that much of that activity is wholly speculative.

I do not think that the bill can address that issue, because we need to do a lot of thinking. In fact, this evidence session is an example of the amount of thinking that ought, as I hinted earlier, to have been done in pre-legislative scrutiny. We should not be arguing about the detail and about why something would not work. We should have been doing that with the Government at an earlier stage. If that had been done, the bill would have been clear when it came to the committee, we would have known what it was trying to do and we would have been able to assess fairly clearly whether it was going to achieve what it set out to do.

My recommendation would be that what we need is a programme of land reform that is medium to long term, that fixes the foundations, that deals with the detail and that moves forward in a steady, measured way, building on previous reforms, rather than an approach of, "Oh—we'd better do something on land reform. What can we do? We'll have a public interest test," or whatever it might be. That approach is too random.

Peter Peacock: Rhoda Grant raises a really significant question, for the reasons that Magnus Linklater identified. Again, I am in broad agreement with Magnus on the issue. I am deeply sceptical about the natural capital market and the impact that private investment in that market is going to have on land management and the land market in Scotland.

It is interesting that, despite all the rhetoric and all the talk about attracting billions of pounds into Scotland to do that, virtually no private finance at all has been raised. All the things that are being done are being done by the public purse, mostly through the normal conventional ways of investing. Therefore, I am deeply sceptical about that.

Rhoda Grant makes a powerful point about the practical impact on communities and places across Scotland of such long-term agreements on the use of land—some of them are being sought for a period of up to 100 years. That is partly why they are not happening. Private and community owners are rightly sceptical about the benefit of entering such agreements.

How we can have an impact on that is a huge issue. It is partly a matter of regulation of that marketplace and of the way in which the forestry scheme and the peatland schemes operate, and of how we condition the credits that are earned on the back of such activity. The answer is partly a regulatory one, which I do not think is a matter for this bill.

A lot of work is being done in communities and by community organisations to consider the community benefits that should come from any such investment. That involves saying that someone from a Swiss bank cannot simply turn up here, invest a few millions in an estate and, thereafter, take all the proceeds out of Scotland, leaving the community with nothing. We must factor in community benefit. That is part of the Scottish Government's thinking in the recent market framework that it published. However, that framework is pretty weak at the present time, and the problem is that, as soon as you talk about community benefit, you scare off the private investors. There is a real bind in that.

If there is a way in which that issue can be in any way connected with the bill, that will involve making sure that the land management plans that are created for the pieces of land that we are talking about say how the community can benefit. The issue of how the community can benefit also needs to be discussed as part of the engagement process.

There is a marginal way in which that issue can be attached to consideration of the bill, but natural capital would require a long inquiry of its own.

The Convener: We tried to get to the bottom of the £20 billion that NatureScot was talking about but I am not sure where we got to on that. I am not sure that I fully understand it, and I do not think that anyone else does. Perhaps that is why Far Ralia is back on the market with no decision on how it is to be done.

Rhoda Grant: I have a very brief question—and it will probably get brief answers. We talked about land management plans and how communities engage with them. How do we empower communities to engage? We have heard about the costs for landowners but how can the many individuals who live in communities on that land engage properly, given that they will be beholden to the landowner at some point?

Andy Wightman: We addressed some of that earlier in response to Monica Lennon's questions. It is a difficult concept to introduce. Another complicating factor, which I raised in my written

evidence, and which has not been addressed in the bill, is what we do with land under crofting tenure or estates where 75 per cent of the land is occupied by tenant farmers. Those people have substantial control—under crofting law, they have almost complete control—of the land, and if we want to do something different with the land, they need to be on board. By and large, crofting communities are not particularly interested in speaking to their landlord because the landowners live hundreds of miles away and do not have much to do with the estate, except at the margins. I cannot see why crofting communities, for example, would engage, given that the landowner does not control the land any way and no account is taken of crofters' interests in the bill. There are all sorts of reasons to be concerned about how that would happen, and those concerns have not been addressed.

Peter Peacock: There is a real challenge for communities to keep up with all this stuff. Highlands and Islands Enterprise can give assistance through a unit that supports natural capital. I do not know much detail about this, but a couple of weeks ago, Community Land Scotland announced that it is leading a project that is being funded by the Esmée Fairbairn Foundation and others to try to support communities to navigate their way through the natural capital market and how it impacts them, and explore how they can get a slice of the action.

However, that is all being done voluntarily—communities are not regularly supported in a statutory way, other than through the likes of Highlands and Islands Enterprise.

The Convener: Laurie Macfarlane, do you want to come in on that?

Laurie Macfarlane: I do not have anything to add.

The Convener: Magnus Linklater, do you want to come in briefly?

Magnus Linklater: No.

The Convener: Mark Ruskell, is your question very succinct?

Mark Ruskell: It is, convener.

I have been writing a lot of notes this morning and thinking about the various suggestions for amendments and ways in which the bill could be improved. I am wondering where we are with the bill now that we have had several hours of criticism and proposals for some pretty fundamental changes to it. What are your thoughts on the bill? Should the bill as it stands pass? Is it fixable?

The Convener: I will push you to answer that in one sentence.

Peter Peacock: As it stands, no, the bill should not pass, but with amendment, yes, it should.

Mark Ruskell: Is the bill in the same position as the Crofting Reform (Scotland) Bill was in 2005? Does the Government need to reflect on it?

Peter Peacock: The Government has a lot of work to do. I am perplexed that that work has not been done already—I do not understand how we have got to this point.

Laurie Macfarlane: As the bill is currently drafted, it should not pass. However, with some fairly significant amendments, it could be worth while, although it would probably still not cover everything that it needs to cover.

Magnus Linklater: I do not think that the bill is workable in its present form, for all the reasons that we have heard this morning. The Government should withdraw the bill and reconsider it from a different perspective, which is that of land use, rather than the distribution of land.

Andy Wightman: As I said in my written evidence, the committee should not recommend that Parliament pass sections 2 to 6. Although, as Mr Ruskell knows, anything can be amended, the bill has already been drafted. My point is that more pre-legislative work should have been done. The fundamental principle behind lotting, prior notification and all the rest of it will not deliver the outcomes that ministers are seeking. However much the bill is amended, if they stick with that principle and those mechanisms, it will not deliver the right outcomes. It would be irresponsible of Parliament to impose new, complex, legalistic and bureaucratic mechanisms on the people of Scotland that will not deliver the outcomes that ministers say that they will. That is just making bad law.

Mark Ruskell: Thank you.

The Convener: I had some niche questions for Andy Wightman on part 2 of the bill but given that we have all agreed where we are at this stage of the bill and what should happen to it, I will end the evidence on that note of consensus.

I thank all the witnesses for their time this morning and for being succinct in some of their answers and not in others, which has given us a fuller understanding.

12:10

Meeting continued in private until 12:41.

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