OFFICIAL REPORT
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Net Zero, Energy and Transport Committee

Tuesday 10 December 2024

Session 6

The Scottish Parliament
Pàrlamaid na h-Alba

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NET ZERO, ENERGY AND TRANSPORT COMMITTEE
37th 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:

Gary Campbell (Crofting Commission)
Tim Ellis (Scottish Government)
Rhoda Grant (Highlands and Islands) (Lab)
Gillian Martin (Acting Cabinet Secretary for Net Zero and Energy)
Donna Smith (Scottish Crofting Federation)
Andrew Thin (Crofting Commission)

CLERK TO THE COMMITTEE

Peter McGrath

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Net Zero, Energy and Transport Committee

Tuesday 10 December 2024

[The Convener opened the meeting at 09:16]

Decision on Taking Business in Private

The Deputy Convener (Michael Matheson): Good morning, and welcome to the 37th meeting in 2024 of the Net Zero, Energy and Transport Committee. The convener has sent his apologies, and I will convene the meeting in his absence.

Agenda item 1 is a decision on taking business in private. Do members agree to take in private item 4, which is consideration of the evidence heard on environmental governance, and item 5, which is consideration of the evidence heard on the Land Reform (Scotland) Bill?

Members *indicated agreement.*

Environmental Governance

09:17

The Deputy Convener: Agenda item 2 is an evidence-taking session on environmental governance. The committee has previously taken evidence on this matter in relation to the Scottish Government's environmental governance arrangements report, which was published back in June 2023. The Scottish Government has now consulted on those arrangements, and it submitted a statement to Parliament on 19 November, outlining the consultation process, summarising the responses and presenting ministers' recommendations. In our evidence session today, we will explore environmental governance further in light of that statement.

I am pleased to welcome to the meeting Gillian Martin, Acting Cabinet Secretary for Net Zero and Energy, and, from the Scottish Government, Tim Ellis, deputy director of future environment, and Charles Stewart Roper, head of environment strategy and governance unit. We will move straight to questions from the committee, and I will get us started.

The Government's statement on environmental governance in November recognises that there are issues with the operation of such governance at present, particularly when it comes to access to justice. However, it appears from the outcome of the review process that little has been given in the way of options to address what seems to be a gap with regard to environmental governance and access to justice. Can you explain to the committee why, now that the issue has been identified, there appears to have been a lack of action in addressing it?

The Acting Cabinet Secretary for Net Zero and Energy (Gillian Martin): There are a couple of things in there, including whether you accept that there is a gap in governance. There is also the issue of access to justice. I will deal with the access to justice aspect first.

I am sorry—good morning, everyone.

Siobhian Brown, the Minister for Victims and Community Safety, is leading on compliance with Aarhus. She gave helpful evidence to the Equalities, Human Rights and Civil Justice Committee on some of the things that she is taking forward to improve access to justice, and specifically her review of legal aid. She also laid out a couple of things that have been done in order to improve access to justice for those who have environmental cases.

I think that the main reason why justice has been seen as not being accessible is the

associated cost. There is the legal expense of taking a case to court in the first place—of paying for your legal team and putting the case together. There is then also the associated cost if you lose, when you could also take on the costs of the people that you have taken the case against.

In her evidence, Siobhian Brown talked about cost protection. Under a rule that was changed in June this year in relation to protective expenses orders, she said that a petitioner can

"request confidentiality when they lodge a motion requesting a protective expenses order".

She also said that

"A rule change was also enacted in June 2024 with regard to interveners",

and that

"In relation to court fees ... an exemption from such fees was introduced for Aarhus cases raised in the Court of Session."—[*Official Report*, *Equalities, Human Rights and Civil Justice Committee,* 12 November 2024; c 22.]

Therefore, people now have that protection against runaway costs.

Siobhian Brown is also looking at the review of legal aid, which will consider access to justice in the round, such that, if people feel that they cannot access legal aid, there could be some flexibility. However, I do not want to pre-empt that review.

In relation to the governance gaps that the deputy convener identified, Environmental Standards Scotland was put together to address the gaps associated with a European Union exit that this Government did not want. Some members of the committee will have scrutinised the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021, part of which was about setting up ESS.

I think that ESS is filling that gap very well, to be honest. It is independent of Government. It can issue improvement reports and prevent things from getting to the point where there needs to be a legal case in the first place. It can also issue improvement reports to the public bodies that it is investigating or looking into, which are perhaps not meeting their environmental legal obligations. It can work with public bodies to reset in relation to whatever gap in achievement they have. It can also issue compliance notices requiring a public body to take certain action. However, there has not been a need for that to happen so far. In the most extreme instances, ESS could petition the Court of Session to go to judicial review. Again, however, it has not been in that situation so far.

ESS can act as a result of investigations that it has done, which have perhaps been put to it by people in civic Scotland who have been unhappy with the work that a public body has done or not done. As a result of that investigation, or of a compliance notice being issued, in an extreme situation, it could also take the matter to the Supreme Court. There is therefore also access to justice through the routes and powers that ESS has.

The Deputy Convener: Notwithstanding whether you think that there is a gap in governance, it would be fair to say that the review identified issues with governance in environmental matters and with access to justice in itself. On the basis of what you have said about the changes to access to justice arrangements that are being made, alongside ESS's powers, are you satisfied that the existing governance arrangements are adequate? The review suggests that there could be further engagement to look at areas in which improvements could be made. If there is a need for further engagement, are there areas that you think should be prioritised?

Gillian Martin: The committee knows that Environmental Standards Scotland is doing a strategic review, and I am interested to see the areas that it proposes where it might want to expand what it does, perhaps by addressing some of the gaps that others have identified.

That review will not be a report to ministers but a report to the Parliament, because ESS is completely independent of the Government. It would be for the Parliament to decide whether the review addresses some of the gaps that have been brought to it. It would also be for the Parliament to decide whether it wants any perceived gaps to be filled and in what way. Members will probably want to talk about what some stakeholders have identified as gaps. I will not go into my responses to particular suggestions in detail right now, because I imagine that members might want to ask me specific questions.

We are satisfied that we have stuck to section 41 of the 2021 act in addressing the governance gaps that were left by EU exit, but we are only four years on from EU exit, so it is early days. Nothing has happened so far that has shown that there has not been a home in the justice service for any particular incident to be investigated, and we obviously do not want something to happen in order for that gap to be identified. I am satisfied that ESS has enough authority and powers to address environmental concerns from across Scotland about how public bodies act and that there is a court system that can deal with environmental cases as they come up.

Let us also remember that ESS is not the only body involved. The Scottish Environment Protection Agency, NatureScot and Marine Scotland are public bodies that are tasked with protecting the environment, nature and our marine environment.

Kevin Stewart (Aberdeen Central) (SNP): Cabinet secretary, you mentioned earlier that your colleague Siobhian Brown is looking at access to justice. Today is international human rights day. The 2023 review said that human rights legislation, which could act as a mechanism to improve access to justice, was forthcoming and that it would include a right to a healthy environment. Now that the proposed human rights bill is not going to be introduced in the current parliamentary session, are there other ways in which improvements can be made to access to justice? Is that some of the work that Ms Brown is carrying out? How does the Government intend to continue to update the committee and the Parliament on that issue?

09:30

Gillian Martin: As I indicated, a number of public bodies in Scotland protect our environment—SEPA, NatureScot and, obviously, Environmental Standards Scotland, which I have mentioned as well. As you mentioned, the human rights bill will probably not be introduced in this session of Parliament, but the right to a healthy environment was associated with its initial draft. It is a very complex area, however, and the cabinet secretary who is leading on that work needs more time to review what has come in from the consultation process in order to get it right.

That does not mean that we will stop doing work in that area. I am always very interested in how we can improve the environmental protections that are in place: I am taking forward a natural environment bill, which will be introduced next year and is an opportunity for us to look at and to put in standards for our environment; SEPA's enforcement activities are constantly under review, and various bills have improved the fixed-penalty notices aspect of its work; the Wildlife Management and Muirburn (Scotland) Act 2024 has environmental protections associated with it; and we have the enforcement powers of NatureScot, with all the licences that it has for the protection of the environment.

As well as "compliance with environmental law", Environmental Standards Scotland's remit extends to considering

"the effectiveness of environmental law".

I was in front of the committee a few weeks ago, because ESS had suggested improvements and recommendations to the Scottish Government on some of our processes and policies. ESS constantly reviews how the law has been applied and where we need to up our game in certain aspects. It does not only take cases, complaints or issues from the public but does proactive work to consider how public bodies, including the Scottish Government, protect the environment and whether we are doing enough in those areas. For example, if an inner city or urban local authority had consistently poor air quality reports, Environmental Standards Scotland could look into what that local authority is doing with regard to its duties under various environmental laws.

That is why it is important that Environmental Standards Scotland be independent of the Government and report to the Parliament only. It must be able to go in independently and be the arbiter of whether standards are what they should be in all public bodies. It has a wide range of powers and teeth in that regard. It provides a constant, independent review of whether the Government is complying with new legislation and EU standards and whether public bodies throughout Scotland are acting in accordance with the environmental law as it stands.

Kevin Stewart: On the access to justice issue, is Siobhian Brown, who is working on it, taking advice from ESS and others about their knowledge of folk or groups who might have difficulty accessing justice through the courts?

Gillian Martin: I imagine that she is absolutely doing that, not only through considering the environmental aspect of things but through leading on Aarhus compliance as well. We are not a state, as such, so we are not compelled to comply with the Aarhus convention. The United Kingdom Government is also looking at its compliance with the convention. Therefore, Ms Brown is working in concert with the UK Government on compliance with the Aarhus convention across the four nations of the UK.

Ms Brown has mentioned that she is looking at the Environmental Protection Act 1990 in relation to how some aspects have been complied with. I have mentioned some of the measures that she has already put in place, and she is particularly aware that environmental cases have traditionally not been taken because of the high costs associated with going to the Supreme Court. She has put caps in place for the costs that are associated with such actions. However, I do not want to go into all the detail—I cannot go into all the detail because it is not my portfolio, and Ms Brown is leading on that. I refer the committee to the very comprehensive evidence that Ms Brown gave to the Equalities, Human Rights and Civil Justice Committee on the matter.

Kevin Stewart: Convener, I have not seen the evidence that was given to the Equalities, Human Rights and Civil Justice Committee, so could we ask the cabinet secretary to get an update, through her good offices, on where that stands? That would be of great interest to us all.

The Deputy Convener: Yes, I am happy for us to take that forward, if the cabinet secretary can arrange for that to be provided to the committee.

We have moved on to a theme that other members are interested in, so I invite Monica Lennon to raise her points now.

Monica Lennon (Central Scotland) (Lab): Good morning. Some important issues have been raised, and it is human rights day, so these discussions are timely. I appreciate that people across Scotland might not know what the Aarhus convention is. To recap, it is about protecting every person's right to live in a healthy environment, and it guarantees the public three key rights on environmental issues, which are access to information, public participation and access to justice. We know that those things are important.

We also know that the EU and its 27 member states are all parties to the Aarhus convention, and the policy of this Government is to align with EU law and to keep pace with developments. Cabinet secretary, you said that the Scottish Government is looking at compliance with the Aarhus convention. Why is the convention not something that the Scottish Government absolutely wants to sign up to, given the well-established policy of keeping pace with the EU and taking such international treaties very seriously?

Gillian Martin: Siobhian Brown has said that we are actively putting things in place to comply with the convention. As I said, we are not compelled to sign up to the convention, because we are not an independent state and we are not a member of the EU. However, Monica Lennon is absolutely right that we want to keep pace with standards in the EU, including environmental standards, but, in rights terms—

Monica Lennon: Just to be clear, is it the Government's position that it is working towards compliance with the Aarhus convention?

Gillian Martin: Yes, and Siobhian Brown is leading on that. I will provide more detail on access to justice. In case I did not make this clear earlier, Ms Brown has introduced an exemption for court fees for Aarhus cases. That is in addition to the protective expenses order system, because that can restrict applicants' liability in such cases. Under the PEO regime, the applicant's liability in expenses is limited to £5,000, and the respondent's liability to the applicant is limited to £30,000. The Scottish Civil Justice Council has undertaken a review of the protective expenses order regime and will be consulting on the proposal to extend PEO for certain relevant litigation in the sheriff court, too.

Those are some of the measures that Ms Brown has been actively working on in order to improve access to justice. That is separate from what she is doing in relation to her review of legal aid. That has already been done in relation to Aarhus cases. In the past couple of weeks, she has made public statements to say that she is now reviewing access to legal aid as well. That will weave in with her work on compliance with Aarhus.

The primary aim of the human rights bill was to embed a human rights culture in public bodies. Getting it right first time is better than having to take public bodies to court.

I come back to where Environmental Standards Scotland fits in. It works with public bodies to prevent a situation in which someone might feel that they have to go down a legal route. The most important thing is getting a result—an improvement in environmental standards. There should be proactive improvements in the work that Environmental Standards Scotland does in scrutinising how things are working—whether in Government, local authorities or other public bodies—but also a response to consistent issues in a particular area as a result of non-compliance with existing environmental law. It will go in and can issue improvement reports and compliance notices. That ability to prevent things getting to a legal situation is critical.

Monica Lennon: It is reassuring to hear about the work that is going on in Government, particularly in the community safety minister's portfolio. However, many stakeholders and communities feel frustrated and perhaps do not feel reassured, because they do not see action and outcomes happening quickly enough—there is lots of reviewing and lots of work, but nothing substantially changes.

The UK is a party to the Aarhus convention, and the Scottish Government has a responsibility to implement the convention in devolved areas. Even if the UK Government is taking longer, is it a priority for the Scottish Government? Given that the human rights bill—which we hoped would have included the right to a healthy environment—is not going ahead as planned, will that right be included in any other Government bill, such as the natural environment bill? Is there a way to tie that together? Obviously, that is really important. If it is not done in this parliamentary session, who knows what will happen next time around.

Gillian Martin: It is important to mention that the human rights bill would not have included absolutely everything that would have got us to compliance with Aarhus. Access to justice has a financial aspect. Having access to a court involves not just the existence of that court or process but the costs that are associated with going through that process. That is why Siobhian Brown

prioritised the caps to the expenses that are associated with that, which you have mentioned as a crucial step in access to justice.

Monica Lennon: Convener, I have a final question, because I know—

Gillian Martin: I am sorry, but may I finish my point, Ms Lennon?

Monica Lennon: Yes. Sorry.

Gillian Martin: The Government has also been working very closely with the United Nations special rapporteur on those issues, in developing the work that is still on-going on the human rights bill. Even though it will not be presented in the Parliament in the next year—it is not in the programme for government—work is still going on to get it into the shape that we want, including the right to a healthy environment. Work is happening with the UN special rapporteur.

However, that right to a healthy environment would not in itself make us compliant with Aarhus. Lots of other things can happen. Some of the things that I have pointed to that Ms Brown is doing in her portfolio would get us to a position of being more compliant with Aarhus. However, that is the direction of travel. We want to be compliant.

Monica Lennon: I have a final question on that. The right to a clean, healthy and sustainable environment does not automatically unlock a door to environmental justice. What would be the benefit of having those rights enshrined in Scotland? What would it mean to communities? What is the Government's understanding of that? What difference would it make?

09:45

Gillian Martin: I guess that we will explore that when we take the human rights bill forward. In relation to the Aarhus convention, we responded to the most recent decisions on article 15, which deals with reviewing compliance and states that it should be done on the basis of consensus. That work is actively happening in the Government, not just in my portfolio, but particularly in the justice portfolio.

What would a right to a healthy environment that was enshrined in law mean? I guess that it would mean that things could be actionable in a legal setting if they were not complied with. However, that does not get round the fundamental point that access to justice is not just about what is in law and what courts and processes are available but is about the expense that is associated with access to justice. Ms Brown is actively working on that, because it has been a barrier to justice, particularly in environmental cases.

The Deputy Convener: Cabinet secretary, before I bring in Douglas Lumsden, I note that both you and Monica Lennon mentioned that a natural environment bill is to be introduced. In the consultation on that, an independent monitoring body was suggested. Do you envisage that that body would be Environmental Standards Scotland?

Gillian Martin: That is really for Parliament to decide. ESS is doing a strategic review, and it is not for the Government to dictate what its strategy should be or what its review should include because, as I said, it is completely independent of Government. It is answerable to Parliament and, indeed, to this committee.

If ESS comes forward with recommendations on expansion of its remit, the law under which to set them up would be the 2021 act. ESS has a lot of flexibility within that act in relation to its role. When ESS reports on its strategic review it will, I presume, bring that to the committee. Obviously, it will copy in ministers as well, but it does not report to ministers. I will be very interested to see what its strategic review includes and what direction it wants to move in.

If ESS wanted an independent review body, which it might suggest, I do not know whether it could fulfil that role itself. That would be up to ESS. Obviously, Parliament will scrutinise any proposal and come to a decision.

The Deputy Convener: I take it from that that you do not, at this stage, know who would fulfil that role. However, it is in the Government's consultation—it is a proposal from the Government.

Gillian Martin: It would make sense for the role to be fulfilled by Environmental Standards Scotland.

The Deputy Convener: Okay. Douglas Lumsden is next.

Douglas Lumsden (North East Scotland) (Con): Cabinet secretary, stakeholders were critical of the scope of the review. Scottish Environment LINK said that it was

"a missed opportunity to examine the environmental governance gaps".

The Environmental Rights Centre for Scotland said:

"The Report is superficial in its analysis, narrow in scope, and appears pre-determined in its conclusions."

Professor Sarah Henry said that the review was "narrow" and could have been more ambitious. Do you accept that the review could have been wider in scope and could have included more analysis?

Gillian Martin: I do not accept that, because the review covered all the matters that are required by

the 2021 act. It set out a clear overview of the policy on environmental governance. It recognised the strengths that exist and the balance of parliamentary, administrative and judicial roles in decision making on environmental matters.

We do not consider that our review was not expansive enough to comply with the environmental governance requirements that are set out in the 2021 act. It not only explicitly covered matters that are required under section 41, but went beyond those requirements and provided an overview on wider issues of environmental governance that stakeholders had raised with the Government. I do not accept those criticisms about the scope of the review.

The sense that I get is that certain stakeholders wanted us to consider the setting up of an environmental court as part of the review, which seems to be the driver behind those views, particularly from non-governmental organisations. However, the Government has decided that there is no need for an environmental court.

Douglas Lumsden: The stakeholders were quite critical. They want the Government to be more ambitious. How do we take that forward? Is that part of ESS's forthcoming strategic plan? How will we progress some of those things?

Gillian Martin: ESS's strategic review is part of that: it is completely independent of the Government, and ESS will report to the committee and to Parliament. It will assess whether there are gaps, and whether it thinks that it can expand its remit within the bounds of the 2021 act. I am open to having those discussions.

Of course we will have those discussions, but it is really for ESS and for Parliament to look at the 2021 act, which sets out ESS's parameters. There is quite a lot of scope under the 2021 act. ESS is a young organisation—it has been operational for only a few years. It is only right that it reviews what it has been doing and what more it could perhaps do. It would then be for the committee and Parliament to decide whether to accept its recommendations. Whatever ESS wants to do within the parameters of the 2021 act is entirely within its gift.

Douglas Lumsden: It would be at that stage that we would look at the powers of ESS and then decide where we want to go.

Gillian Martin: Yes. There is certainly scope in the legislation for ESS potentially to do more. I really look forward to seeing what its review comes up with. If it thinks that there are areas in which it can do more, and those fall within the powers of the current legislation, it will be up to Parliament to scrutinise that and to ask it questions about what it would do.

Douglas Lumsden: I guess that, if ESS feels that it could do more and that enabling that would require more legislation, it would be up to the Government to introduce legislation to allow that to happen.

Gillian Martin: It is also very much the role of this committee to recommend things that should be done.

Mark Ruskell (Mid Scotland and Fife) (Green): I want to ask about Aarhus convention compliance. Is there any sanction for not meeting the terms of that important international agreement? The Government was not in compliance in October. I think that that was the most recent deadline that passed. What happens now, as a result? Is it just a bit embarrassing, or do you work towards some strict monitoring deadline that is enforceable through the convention? Will you explain to me how that works, because—

Gillian Martin: I will try to.

Mark Ruskell: —it feels like we are edging along towards trying to meet the terms of that important environmental international convention. Ultimately, what is the sanction on the Government for not doing so?

Gillian Martin: The Aarhus convention is not legally binding on the Scottish Government, and there are no plans to make it so. However, we are still working towards becoming compliant, and I have outlined a number of ways in which we are trying to do that.

We have full respect for the opinions of the Aarhus convention compliance committee, which is why we are responding to its recommendations and working with the UK Government on overall UK compliance. Incidentally, the UK Government had a deadline to provide the ACCC with an updated progress report by this month, but I think that it has asked for an extension in order that it can report this month. I am looking to my officials.

Tim Ellis (Scottish Government): Would it be helpful if I explained what is happening a little bit?

Gillian Martin: Could you?

Tim Ellis: The Aarhus convention compliance committee has produced some recommendations that are directed at the UK Government, as the constituent party to the convention. The UK Government has replied and produced a report, which it recently sent back to that committee. However, because of the UK general election, it was given a bit of an extension to do that.

The position now is that the response from the UK Government, which covers Scotland as well, is back with the ACCC, which is taking evidence on the response from stakeholders, including in

Scotland. The ACCC will then produce views on what it considers should happen next.

The Deputy Convener: I understand that the UK Government published its report and response last month.

Tim Ellis: That is correct.

Mark Ruskell: Has the Scottish Government given the ACCC a date—by the end of this parliamentary session, the end of this year or the middle of next year, for example? I understand that the Scottish Government is nestled within the UK, as the signatory state, but what is the Scottish Government's commitment to meeting the terms of the convention? Have you given a date for when that will happen?

Gillian Martin: I do not have a date in front of me. Tim Ellis is showing me a bit of paper. I will have to go to Tim on this. The matter is very specific.

Mark Ruskell: That is fine.

Tim Ellis: The UK's final progress report was submitted in November, and that included various areas of compliance. It is not just on one particular point; the ACCC has made four or five recommendations, and there are different provisions in relation to each of those. Some relate to things such as the protective expenses order, which the cabinet secretary has already referred to, and others refer to other aspects. Therefore, it is not about our being compliant by a single point in time: it is about the things that we are doing that we believe are taking us towards compliance.

Mark Ruskell: Does that mean that there are four or five dates?

Tim Ellis: No—there are four or five areas.

Mark Ruskell: Is there a time horizon, rather than a date, by which you expect to be in compliance with that important international treaty on the environment?

Tim Ellis: The report back to the compliance committee sets out the work that we are doing. We hope that that will meet the committee's concerns, but we wait to see whether it has, in fact, allayed them. In some cases, we—

Mark Ruskell: Okay—there is no fixed date, but there is a kind of work plan.

Gillian Martin: The concerns in relation to Scotland were mainly around cost caps. I have outlined how Siobhian Brown has introduced measures to put cost caps in place, because that was the biggest barrier to justice in this area. That has already been done in the areas that I have outlined in order to protect people from runaway legal costs. As I said, there is also the work that she is doing on access to legal aid, which I am hopeful will further enhance that work.

Mark Ruskell: If there is a date for that, it would be useful for this committee and the compliance committee to know what it is.

Tim Ellis: The report to the protective Aarhus committee anticipated that the next consultation on court fees will take place during 2025.

Mark Ruskell: Right. What about the outcome of that?

Tim Ellis: That will be for the courts to take forward.

Mark Ruskell: Okay—I think that we have done that question. Great.

I want to return to an issue that we talked about a lot in the predecessor committee when the UK Withdrawal from the European Union (Continuity) (Scotland) Bill was going through Parliament: that is ESS's role in relation to individual cases. There is a slight difference in the way that that has landed. The Office for Environmental Protection in England has the ability to investigate individual cases, but we still do not have that in ESS's role. You advised ESS

"that it should give further consideration to the conditions where it would be appropriate to investigate the individual circumstances of a local area".

It sounds to me as though you are giving ESS, even within the context of the 2021 act as it stands, a bit of a nudge towards something.

Have you anything more to say about how you define that? It is an area that NGOs and communities are interested in. Part of the context is that not everybody will have an environmental issue that is replicable in other areas of Scotland. One of ESS's first cases was to look at acoustic deterrent devices at fish farms. That was an issue from around the coast of Scotland in which various communities were concerned. However, I guess that not every community will have an issue that is replicable—it might have more of a stand-alone individual case.

I am trying to read into that comment from the Government what you would like ESS to explore and where we might end up after that strategic review.

10:00

Gillian Martin: If I take your last question first, the strategic review will look at that. Our response is that we think that there is scope for ESS to take into account community concerns about things that might happen as a result of whatever public body is involved not complying.

There is a difference between that and an actionable case. ESS is not set up to take on individual cases, but it could look at public bodies' non-compliance with environmental law. It already looks into local communities' concerns that relate to compliance with environmental law by a single local authority or any other public body. I gave the example of air quality compliance issues that had been going on for some time—ESS could look into those.

The exclusion of individual cases from ESS's remit was discussed during the passage of the 2021 act—I think that we were on the same committee at the time, Mr Ruskell—and we decided to exclude it. The intention behind that was to ensure that ESS did not become an appeals body. We have seen in other parts of the world that such bodies have become appeals bodies that are almost like mini-courts. That is not the function of ESS, which is more of a strategic operation.

ESS's investigatory aspect is that it can look into a systemic issue, perhaps with a public body, and it has been good at that, but it is for ESS to decide in its strategic review, within the parameters of the 2021 act, whether it wants to do more than that. I do not think that ESS wants to do that, and I do not think that anyone here would want ESS to do that, because it would then be almost like an appeals court and that is not what ESS does. It is more strategic than that.

Mark Ruskell: I understand that, and I presume that the right to appeal will be with the regulator, if there is an environmental issue. I am interested in a situation in which there might be a very localised case—it might be the only case in Scotland—of a pollution incident, for example. There might not be a way to adequately seek justice in that case and the case might point to the need for a change in the law, or for the regulatory body to regulate in a different way from how it currently discharges its duties. ESS might have gone through the complaints process with the regulatory body and not got anywhere, so it might think that it could look at whether the body is regulating effectively and whether there needs to be a change in the law. Is that not a difficult decision for ESS to make right now? It would still just be one case. Where is the discretion in that?

Gillian Martin: ESS would not necessarily be investigating such a case—it would be looking at systemic issues that might have led to that case. You said in your description of that hypothetical situation that a case or an incident might point to systemic issues in respect of a public body not complying with environmental law. ESS can, of course, look into that.

Mark Ruskell: One aspect of Aarhus compliance involves the ability of citizens to challenge not only a decision-making procedure that they believe was inadequate, but the merit of the decision. That is something that we do not really have. The convention talks about

"the substantive and procedural legality"

of environmental decisions. At the moment—this is the case with fracking and some other environmental issues—environmental non-governmental organisations can take bodies to court when they believe that they have not followed an adequate procedure, but they cannot challenge the substance of the decision. For example, they cannot say that a decision is not great in relation to our legal obligations around climate change. As long as the procedure that a minister or a body goes through to get to that decision is procedurally correct, there is no issue for the courts to consider.

Where does the Government sit on that issue? It would be quite a move to enable people to challenge a decision based on the merits of the decision, and not just on the procedure. I would be interested to hear your views on that.

Gillian Martin: Again, that is all very hypothetical. We have processes and procedures in place that are tied up in environmental law, and there are certain procedures that public bodies have to comply with. To give an example off the top of my head, with regard to consents for developments there is a process that is informed by regulations, some of which sit at United Kingdom level and some of which sit with the Scottish Parliament. Obviously, those regulations would need to change to enable what you are talking about. The issue is being actively looked at as potential developments change—in fact, there is a consultation going on at the moment on consents for energy. There is a constant review. The process that I just mentioned involves a joint consultation between the Scottish Government and the UK Government, because a lot of the regulations exist in the UK space. Whether a process is adequate at any given moment can change.

Mark Ruskell: I know that we are discussing licensing this morning, but I will bring my question down to a specific issue. Do you think that the Supreme Court's recent decision on Rosebank starts to move into the area of concern about the merit of a particular decision rather than the procedural aspect of it?

Gillian Martin: I will not go into the detail of specific court cases but, obviously, decisions that are made in courts could prompt Governments to consider their processes.

Mark Ruskell: You have suggested that the Government could have concerns about the establishment of an environmental court, because

it could be disruptive—I think that that is what you said—to actions that we need to take in relation to delivering net zero by 2045. I suppose that Mr Lumsden might want to take the Government to court over its decisions on pylon lines or whatever.

Could you expand on that issue? What is the underlying concern? Is it about environmental NGOs possibly challenging offshore wind farms, such as the Berwick Bank project, about which there is concern at the moment? There have been concerns about other such projects in the past. Is the Government hesitating on the issues because there is fear that some of the tensions around environmental mitigation and impact could result in lengthy delays to some of the good stuff that it needs to do around net zero?

Gillian Martin: Obviously, the creation of a new court would be outwith my portfolio, so I do not want to speak for the Cabinet Secretary for Justice and Home Affairs or for people who are involved in the justice portfolio.

However, from my perspective, there are routes to justice that do not require a specific environmental court: we have a court system already. The biggest barrier to people taking environmental cases to court is not the lack of a specific court associated with environment, but the expense of doing so. It is surely better to look at the existing court system and at access to processes such as legal aid or at capping of the fees that are associated with environmental cases than to go through the expensive and time-consuming process of setting up an entirely new court.

The Deputy Convener: I have a broader question about the 2021 act, which has been referred to in today's evidence. That act does not require us to align with EU environmental regulations, but my recollection is that the Scottish Government's stated position at the time was that it would continue aligning with those regulations, largely because there was concern about a potential rowing back on environmental standards. Is it still the Scottish Government's stated position that we will align with EU environmental regulations and standards?

Gillian Martin: The position is still that we will align, where that is appropriate. As you know, Angus Robertson gave a statement to Parliament in October on the current status of EU legislation—he might even have written to the committee about it. I think that he gives an annual report to Parliament about where we are keeping pace with European legislation and regulations and what we are working on. Keeping pace with EU standards, particularly on the environment, is a consistent goal for the Scottish Government.

When the UK decision to exit the EU—which we did not want to do—was taken, there was huge concern that there would be a rowing back on environmental protections. We stated very early on that we wanted to keep pace in order to protect Scotland from any potential UK Government that wanted to row back from those protections.

The Deputy Convener: It is helpful to note that the unqualified position of the Scottish Government is that it will align with environmental regulations or standards that are set by the EU for its member states.

Gillian Martin: Absolutely.

The Deputy Convener: That is very helpful.

I thank the cabinet secretary and her officials for attending today, which has been very helpful. The committee will consider the evidence in private later and will consider next steps.

I suspend the meeting to allow for a changeover of witnesses, and intend to restart the meeting at 10.25.

We are slightly ahead of schedule, but that will allow us to ensure that the next group of witnesses is here.

10:13

Meeting suspended.

10:25

On resuming—

Land Reform (Scotland) Bill: Stage 1

The Deputy Convener: Our third item of business is an evidence session on the Land Reform (Scotland) Bill. Today, the committee will hear from a panel of crofting representatives. I am pleased to welcome Donna Smith, chief executive, Scottish Crofting Federation; and Andrew Thin, a commissioner, and Gary Campbell, chief executive officer, the Crofting Commission. Thank you for your attendance at committee this morning.

For this item, I am also pleased to welcome Rhoda Grant MSP, who will have an opportunity to pursue some questioning following committee members' questions.

I will start with a broad question. We are at stage 1—looking at the general principles of the bill. You will be familiar with the policy memorandum associated with the bill and the Government's objectives for the bill. Do the provisions in the bill, as they stand, go far enough to support what the Government is trying to achieve on greater diversity of land ownership?

Donna Smith (Scottish Crofting Federation): I will wade right in and say that the bill is not ambitious enough. The Government needs to be much braver in some of the decisions that it makes on this matter, because we still have concerns that large parts of the country are open to speculative investment, particularly as we look towards the green agenda, carbon offsetting and so on. We have real concerns that, unless tougher measures are put in on such things as transfer scrutiny, the objectives will not be achieved.

Gary Campbell (Crofting Commission): Thank you for inviting us along. We will give our responses in the context of the Crofters (Scotland) Act 1993. We exist to fulfil the statutory functions set out on the first page of that act, which says that

"The Commission have ... the general functions of ... regulating crofting; ... reorganising crofting; ... promoting the interests of crofting"

and

"keeping under review matters relating to crofting".

In answer to your question, when it comes to promoting the interests of crofting, although we broadly support what is being said at the moment, we think that the bill could go slightly further, through specific mention of crofting and specific provisions for the potential creation of more crofting areas, more crofts and more crofting communities.

The Deputy Convener: One of the provisions is on the creation of land management plans. It sets out some of the objectives of land management plans in helping to support sustainability, the achievement of net zero and so on. It does not expressly state anything about crofting. Is such express provision needed? If so, should that be in the bill or should it be dealt with through regulation?

10:30

Gary Campbell: Crofting should be mentioned expressly in the bill. To put that in context, as I have explained, the Crofting Commission works under a piece of legislation, so what we do is a statutory function. Therefore, under statute, we would have to get involved, for want of a better word, in any consultation.

We regulate 10 per cent of Scotland's land mass, which is a large part of Scotland, so it would be remiss not to mention crofting specifically in order that the Crofting Commission is seen as at least a statutory consultee in those discussions and so that we are not left to come in from the side, so to speak.

There is another very specific reason why crofting should be mentioned in the bill. As you know from previous evidence sessions, crofting legislation has been in place since, and has its roots in, the Crofters Holdings (Scotland) Act 1886. There are specific provisions—crofters already have specific rights as well as duties and responsibilities. We need to ensure that those are not ignored or bypassed by accident as a result of the bill not specifically referring to crofting.

Andrew Thin (Crofting Commission): Scotland has probably one of the most concentrated patterns of private landed power in the world, and certainly in Europe. That is economically dangerous, because it creates a localised monopoly. In 1886, that was a problem in the Highlands and Islands, which is why we had the 1886 act. That was Scotland's first attempt to address the problem. It would be odd if we were not pretty explicit in the bill about the role of crofting in addressing it. We have done that for over a century, and, in the places where we have done it—in the crofting counties, for example—it has been quite successful. In the crofting counties, where land is in crofting tenure, there are a lot of people and a lot of houses. Where land is not in crofting tenure, there are not. Therefore, we know that we have a tool that works. It would be a pity not to be more explicit in our use of an existing tool, and there is very little point in reinventing wheels.

Donna Smith: I support what Gary Campbell and Andrew Thin have said. We are disappointed that there is no explicit mention of crofting in the bill. As Gary said, crofting covers a large area of land in Scotland, and quite a lot of that land is peatland, which will be very important as we move forward.

Land management plans for crofting estates must take crofters into account and land managers must work in partnership with those with crofting tenancies to ensure that the plans are sufficient. In particular, if a plan includes land use changes, land managers have to work with the crofting community.

There is a real opportunity here. We have a land, jobs and homes crisis in certain parts of Scotland, and crofting could play a huge part in addressing that, if it is included appropriately and taken into account in the land reform agenda. For example, land management plans should refer to residential property development and outline how those homes will be affordable homes for local families and key workers, rather than second homes for holidays, which is a common problem across the crofting counties. We need to put much more focus on crofting in the whole land reform agenda but in relation to land management plans in particular.

The Deputy Convener: You feel that there is insufficient reference to crofting in the bill and that crofting should be included much more expressly. How should that be introduced into the bill? Where are the gaps, and how would you like those gaps to be addressed?

Gary Campbell: In this part of the bill, there should be reference to the provisions of the 1993 act. The bill should take account of the rights and duties of crofters, to ensure that there is no mismatch. The Crofting Commission should also be a statutory consultee of the proposed new land commissioner. That should be explicit, because we are not on the list of people whom the commissioner will have to consult.

I will give an example, if I may. This year, we were not consulted—although, as a statutory consultee, we really should have been—about the direct heat initiative that was colloquially referred to as the issue of wood-burning stoves. That piece of legislation directly contradicted a statutory right that crofters had had since 1886, but we knew nothing about it until it was proposed in April and then had to go through the process. We were consulted afterwards and got a different outcome, but we were left in a position where although crofters have specific rules and rights another piece of legislation from this Parliament directly contradicted those. We are trying to avoid that happening again.

We also find some of the provisions in our own legislation to be far too prescriptive because they were made 40 years ago, and the world has moved on. There is a need to recognise crofting while, at the same time—as the comment about regulation suggested—having the ability to direct secondary legislation where that is necessary to smooth the path if things change later. We need up-front recognition of crofting and pragmatic working together in future.

Andrew Thin: The bill is very focused on ownership. There is a lot in part 1 about alternative forms of ownership or using lotting to create more fragmented ownership, but crofting is a form of secure tenancy, not a form of ownership. The bill does not adequately recognise that you can use secure tenancy to significantly reduce the problem of concentrated landed power, rather than doing that by fragmenting ownership.

I will give an example. The bill will give ministers the power to require lotting of large landholdings, but it might also be helpful to give ministers the power, in the same circumstances, to require part or all of an estate to be put into crofting tenure. That would not be lotting, because it would not change ownership, but it would significantly change the power structure. That is what has happened historically. Most crofting estates in Scotland are still owned by individuals, but the power dynamic is different because crofting is a secure form of tenancy.

There is also the issue of community engagement obligations and the part of the bill that deals with the community right to buy. The bill should be more explicit and communities should also have, if not an absolute right, at least the right to propose that part of an estate be put into crofting tenure. That would not be a right to buy the estate or to force a change of ownership, but it would be a right to force a change to the power structure within that ownership by creating secure tenancies.

The Deputy Convener: On that suggestion, do you have any practical examples of times in the past 10 to 20 years when such a provision could have been useful and would have allowed land to be used for crofting? Can you think of any examples off the top of your head? If you cannot, feel free to get back to us later.

Andrew Thin: I chaired Scottish Natural Heritage for quite a long time and can give an example of when that did happen, but only because the land was under ministerial control—Michael Russell was the minister at the time.

The island of Rum was entirely owned by the Scottish ministers, through SNH. For very good reasons, there were real concerns about the concentration of landed power in the hands of a

non-departmental public body. With support from the then minister, we put some of that island into crofting tenure and creating those new crofts helped to diversify the power base. That is an example of what you referred to actually happening and of the Government being able to make it happen without legislative intervention. Had Rum been in private hands, as many estates and islands are, ministers would not have been able to do that.

It seems reasonable, particularly in relation to the lotting power, to add a power for ministers—as was done in 1886—to say that some pieces of estates will be put into crofting tenure and will be governed by the crofting acts. The crofter can retain ownership, but the power base will become much more diversified, because individual crofters will have secure tenancies consisting of individual bits within the structure.

Donna Smith: As Andrew Thin has touched on, crofting was one of the direct consequences of early land reform, but we seem to keep forgetting about it when we talk about the current situation. There is a danger of assuming that crofting is dealt with solely under crofting law. One of the interesting proposals under the bill that we do not understand is the introduction of a new regulation system for smallholders. Why not just put the smallholders under crofting tenure? That system is already there, and there is already a set of rules governing it. Why are we going to create another new set of legislation for a small number of people, many of whom would love to be crofters and are frustrated that they cannot be, because they are not currently living within the crofting counties? The Scottish ministers have the power to extend the crofting counties or to run pilots in different ways and in different areas.

There are a lot of things that could be explored without creating new legislation. We must not forget the power that crofting has in keeping people in rural communities. If that is something that we want to achieve through land reform, crofting is absolutely a way to do it. Barvas, in the Western Isles, is the most densely populated rural parish in Europe, and that is the case because of crofting. Crofting has kept people there, living and working on the land and managing the land as they go. There is a lot of power in crofting, and we need to ensure that that is recognised in the full land reform picture.

Mark Ruskell: I will go back to the bill's provisions on land management plans. How will that play out in a crofting estate—whether it is community owned or owned by an individual or a family? Can you point to good examples where land management plans are in effect already being developed or consulted on with wider crofting townships and others? Is there potential for change to reflect good practice through such plans?

Andrew Thin: I will start, and Gary Campbell will want to add some things. That measure is potentially really important in relation to crofting. There are many crofting estates where pretty much all the land, between the crofters' inby land and the common grazings, is in crofting tenure. In essence, we already have what we could call a market failure, and certainly a policy failure. We are failing to pursue carbon sequestration measures on those sorts of properties. In the future, we will probably fail—similarly—to deal with biodiversity credit opportunities there, because it is difficult under the current structures to collaborate on management planning, as the rights are split on those estates.

There is a weakness in the bill. The situation is the same on a tenanted estate as on a crofting tenanted estate. There is a similar problem on big estates down in the Borders that are mainly tenanted farms, except that those farms tend to be bigger, so the farmers tend to be able to act individually, and there will not be common grazings there.

It is important that the sections of the eventual act that cover that area are explicit in unlocking the opportunities on crofting estates for landlord and crofter collaborative management, particularly in addressing the emerging policy priorities around carbon.

Mark Ruskell: Much of the development of land management plans will follow the guidance that will be produced. I am interested in hearing whether there needs to be specific guidance in relation to crofting estates, given the mixture of inby and common grazings and the complexities of getting joint action together.

10:45

Andrew Thin: My answer is yes. However, I am pushing slightly further than that. Under the bill, the duty will sit with the landowner but, if we are going to get collaborative management plans, it will have to sit with all parties.

Gary Campbell: I return to what I said in my opening statement. My primary role here is to say that we have legislation on how we regulate crofting and it is clear that a lot of the duties and responsibilities in crofting estates sit with the crofters. Crofting is not mentioned explicitly in relation to land management plans, but it should be.

I will give an example. The regulation of common grazings—you should bear in mind that they represent half a million hectares of Scotland—sits with the shareholder, working in

association with the landlord. However, their management sits with the shareholders and a grazings committee, and they set their own regulations. I would not want a land management plan to be created by the rest of the community and the landowner that directly contradicted what was already in legislation for crofters and what they were doing.

My point is that we must avoid conflict at that stage, and we must mitigate the risk of that through provisions in the legislation. It is a matter of recognising that crofting estates are different from others.

Mark Ruskell: Do you want that to be in the bill or are you happy for it to be in guidance and to assume that the Government will make the right decision?

Gary Campbell: If there is a general recognition in the bill that the Crofting Commission should be a statutory consultee and if the Crofters (Scotland) Act 1993 is recognised as an equal piece of legislation, a lot of the nuts and bolts could be done through secondary legislation, as I explained. I return to my point that we do not want to be too prescriptive, because we could find that anomalies arise from the changes. The matter could be dealt with through guidelines on policy and through secondary legislation.

Mark Ruskell: That is helpful.

Donna Smith: We would like to see clear guidance on the minimum level of engagement that is required with communities and perhaps a wider range of criteria for when their views must be sought.

We also think that the threshold for land management plans is too high. We would like it to be reduced quite a bit—to 500 hectares—to ensure that a wide enough range of land is brought into consideration. If that happened, the plans could be a really helpful tool. It may be too broad to say that we see this commonly but, on crofting estates, we see absentee landlords who have no idea what is happening on the ground and maybe give it no thought. We sometimes see crofting landlords who do not even understand that they have bought a crofting estate. If we made more landlords go through the process of putting together a land management plan, it might help them to understand exactly what they were dealing with.

That probably sounds a bit harsh, but I am aware of a crofting estate in Shetland that has changed hands a couple of times in recent history, and in both cases the incoming landlord tried to sell off house plots that crossed people's tenanted crofts. Those landlords clearly had a complete lack of understanding of what they had. Anything that can assist with that situation has to be a good tool.

Mark Ruskell: Reducing the threshold to 500 hectares would bring in a lot more crofting estates. Is that correct?

Donna Smith: Yes—it would bring in a lot more estates in general.

Mark Ruskell: Do Andrew Thin and Gary Campbell want to comment on the threshold issue? What would be an adequate threshold for land management plans?

Andrew Thin: What is in the bill is sensible, and flexibility is built into it.

Mark Ruskell: You are happy with the 3,000 hectares threshold.

Andrew Thin: I did not say that; I am just saying that there is flexibility.

It is difficult to know the answer to the question until we try. We need to try and we need to have the flexibility to change the threshold if we conclude that it needs to be changed. At this point, when we have not tried this, it is quite hard to say that that is the only answer. Let us have an answer and start, and see how we get on.

Gary Campbell: Initially, the matter will be for the judgment of the Parliament but, to reiterate what Andrew Thin said, we need flexibility. That goes back to my point about not being too prescriptive. It is a really important point, and that is from our experience.

To put this into perspective, the largest croft that I know of is 5,000 acres and the smallest is 200m^2. We have to be flexible in what we do. If the flexibility has been built in and if the research has gone into the approach, that is a decent starting point, but we need to have the flexibility to change the threshold as circumstances dictate.

Mark Ruskell: You are passing it back to us to make a decision.

The Deputy Convener: I bring in Monica Lennon as she is interested in the issue of scale.

Monica Lennon: I was going to put some questions on land management plans, but Donna Smith has helpfully put her position on the record. You are saying that the threshold is too high and that you have recommended that it should be 500 hectares.

I am interested in unpacking the idea of flexibility a bit. What would flexibility look like, ideally? I will come to Gary Campbell and Andrew Thin. What do we mean when we say "flexible"?

Gary Campbell: Again, this is me talking as a regulator and from a statutory perspective. One of the problems that I have is that, although primary legislation is made in good faith and it is right for the moment, we need to come back to committees

in Parliament to change it, whereas if provisions were written in such a way that they could be put in secondary legislation, the process could be much more straightforward, as you will be aware.

As Andrew Thin said, we simply do not know what the right number is, because this has not been done before. Considerable research has gone into the two figures—the 3,000 hectare and the 1,000 hectare thresholds—so we should go with that. It is not for me to work out how legislation should be written but, if those figures could be changed in the future without needing to change primary legislation, and if they could be changed in consultation with us and all the other statutory consultees, that would be sensible.

I will give you an example from our perspective. The Crofters (Scotland) Act 1993 prescribed that all adverts should be put into newspapers, but things have changed quite considerably since 1993. We have online websites, apps and everything else. We have all sorts of ways of communicating, but we cannot use them. At the moment, people put changes in through notifications in local newspapers either from us or crofters. A newspaper is not defined in the 1993 act, either, and that does not help.

On top of that, people have to put a notice on a post at the end of their croft and hope that somebody reads it. That is in legislation—you have to put a notice on a prominent post in your croft. If that was changed so that the commission could decide from time to time how we put notices out, the process would be much more straightforward. If the same thing was done with the thresholds, it would be fine to have them as 3,000 or 1,000 hectares now, but that could be reviewed from time to time, depending on the circumstances.

To go back to what I said about knowing of one croft of 5,000 acres and another of 200m^2, different parts of the country might well have different thresholds as time went on. We need that flexibility to allow the Scottish Land Commission, us and the other statutory consultees to make an informed decision at that time.

Monica Lennon: That is the challenge—how do we future proof legislation? Your newspaper advert example is good, but perhaps that is keeping local newspapers going—I do not know.

I know that you do not want to give a view on what the threshold should be, but are you concerned that there could be unintended consequences of having a threshold at the proposed level or having a threshold at all? Gary Campbell is nodding and Andrew Thin wants to come in.

Andrew Thin: I do not think that we are disagreeing with Donna Smith. We are saying that, at this time, there is not a right answer to the question—and there might never be a right answer, because there are lots of factors to consider. For example, the cost of regulating at 500 hectares would be considerably more than the cost of regulating at 3,000 hectares. That is a judgment for the Government. What can it afford to do? Yes—we are, to some extent, leaving it to you. We probably should, because where you set the threshold is, to some extent, a political argument and a political judgment.

We are giving a different answer to the question. The answer that we are trying to really underline is that the bill needs to be crafted so that those with democratic authority can change it relatively easily as circumstances change. The circumstances might be that we have learned that setting the threshold at 3,000 hectares is far too high or far too low. We might have decided that we can afford to regulate more landholdings, that it is in the public interest to do so and that we want to bring down the threshold in order to regulate more landholdings. There are different reasons for that.

I am sorry—I know that that sounds evasive, but it is deliberately evasive, because we are arguing for flexibility.

Monica Lennon: We want to reflect on what we hear so that we can write a report and make a recommendation to the Parliament. As we have you here and as you are bringing expertise to the table, I have a question about land management plans. If they make their way into the act—we have to consider that at stage 1—how might the process best take account of crofting communities and local contexts? Do you have views on that?

Andrew Thin: It has to be absolutely explicit in statute that, when an estate is partially or wholly in crofting tenure, there is a requirement to fully consult the crofting tenants, as distinct from the community, because the tenants have a legitimacy. There is also an argument—I am not totally wedded to it, but it is quite strong—that the Crofting Commission should be a statutory consultee in those circumstances. We are not looking for more work, but there is an argument for that.

Monica Lennon: Having heard from Gary Campbell and Andrew Thin, I will come back to Donna Smith. We have got a flavour of your position, but I would like to hear more about what you think about the land management plans and how the local place plan can support crofters and crofting communities. I do not know whether you have much experience of that but, in previous evidence sessions, we have heard concerns about people being asked to do a lot. There are land management plans, local place plans and other statutory requirements. Is it all just bureaucracy, or

is it something that is really meaningful and can improve outcomes?

Donna Smith: I do not have much experience of local place plans. However, we must always bear in mind the crofting context. Crofters do not croft full time; they are not doing it 100 per cent of the time. They generally have other jobs and are also on their community council. They are people who are juggling a lot. If we are asking crofters to engage in any of those processes and to be involved with more consultations and such things, it is really difficult for them to do so time wise, so we must be mindful of that pressure.

Another thing is being able to demonstrate to people that, when all those measures are put together, they are achieving something for the local area. Crofters are often in remote rural locations, and they might feel sometimes that there is a lot of bureaucracy that does not end up achieving anything for them in their communities. That is just me offering my view, rather than a solution.

I agree with Andrew Thin that we absolutely need to engage with crofters on land management plans. I have just said that we should not overload crofters with bureaucracy, but it is really important that they are explicitly included in any consultations about the land management plans on their estate.

It is difficult. There are a lot of things for people to be involved with and to try to stay on top of. If we can ease that in any way by cutting that down and by tying things together, so that people do not have to respond to six different consultations or to provide feedback on six different things but on one consultation that achieves many things, that will be really helpful for them.

11:00

Monica Lennon: We are listening to comments about capacity and the time pressures that people face. My final question is to Donna Smith. I was exploring how the land management plan process can take account of crofting communities and local contexts. One proposal is to add a site of community significance. Would that criterion be helpful?

Donna Smith: Yes, it probably would. Sometimes, the importance of the crofting community to an area is overlooked, but I am not sure whether that can be tied into something on community significance. I am sorry—I probably need to think about that a bit more and get back to you, if that is okay.

Monica Lennon: That is no problem. If you have anything to add later, you can always send the committee a note.

The Deputy Convener: Andrew Thin, I will briefly take you back to threshold sizes. I assure you that I will not push the commission to say what the threshold should be, given that you have been clear that you do not want to do that—and I understand that. I will try to summarise your position—correct me if I am wrong. I take it that you feel that the threshold should be based in regulations, as opposed to being in the bill, in order to provide flexibility. Should the threshold size then be set at Donna Smith's preferred position of 500 hectares, for example, and we found unintended consequences as a result, that would allow us to move relatively quickly to address those. It would be more complex to do that if the threshold size was in the bill, as amending that would require primary legislation. Is that a fair summary of your position?

Andrew Thin: Yes. I will illustrate that. Regulation costs money and resource. There is very little point in doing this if we do not do it well. If we set the threshold at a level that we cannot afford, we will not do it well. I suggest that we therefore need to build in enough flexibility for democratic institutions—the Government and the Parliament—to change the threshold in response to changing circumstances, in terms of not just what we have learned, but the resource that we have for doing it.

Kevin Stewart: I want to follow up a little on what the convener has just asked.

Earlier, Mr Thin, you said that you did not want to be evasive. I do not think that you have been at all evasive; you have explained it quite well. Gary Campbell pointed out the real difficulties in putting things in a bill—in primary legislation—in what is an ever-changing world.

I sometimes feel deeply unpopular in this place, because I would much rather have framework primary legislation, then regulation through secondary legislation, with stakeholder consultation, of course. Is that your position on large parts of the bill? In some regards, we have heard, as always, some pretty polarised positions, but the realities are, quite simply, that if we are too prescriptive and there are no flexibilities, it could all go for a Burton. Would that be fair to say?

Andrew Thin: Yes, for all the reasons that we have discussed. Being too prescriptive can be highly inflexible, damaging and costly, to not just the taxpayer but the economy.

We need to come back to what the bill is trying to achieve. We have a problem in Scotland, which I think is widely acknowledged, in that landed power is too concentrated. That is not in the public interest or in our economic or social interest, and it is unique in a European context.

Let us focus the primary legislation on addressing that fundamental issue, and let us build into it enough flexibility to enable subsequent Governments to adjust but not to drop the fundamental issue, which is that we are trying to deal with the problem of concentrated landed power.

Kevin Stewart: A couple of witnesses have spoken about the possibility of extending the crofting counties beyond Argyll, Caithness, Inverness, Ross and Cromarty, Sutherland, Orkney and Shetland. Does the bill present an opportunity to expand the crofting counties and, if that were to happen, would that make a major difference to land tenure and land use in our country?

Andrew Thin: We have spent more than 100 years proving that crofting tenure helps to reduce the problem of concentrated landed power, so we know that it works. Therefore, to my mind, there is no question but that we have a proven tool. It needs to be modernised and reformed—nobody would argue with that—but we have a proven tool. It absolutely makes sense to seriously consider the opportunity to extend that to the whole of Scotland—I do not doubt that. The challenge is not to answer that question. The challenge is how you would do that in a sensible, pragmatic and incremental way. I do not want to go into all that now, but there are lots of people talking about it, and there are pilot schemes in the south of Scotland and so on.

Kevin Stewart: With regard to taking a pragmatic approach, within the framework, if the bill is right, there is the possibility of introducing regulation to expand crofting tenure. Is that possible, Mr Thin?

Andrew Thin: I do not wish to hog the committee's time, but, yes, absolutely. In the section of the bill on lotting, for example, you could give ministers the power to put land into crofting tenure. That would totally make sense to me. Similarly, in the section of the bill on community engagement, there could be an explicit power for communities to request and require that land be put into crofting tenure—in other words, that crofts be created. There is great scope in the bill to do that. For Scotland, the attraction of doing that is that we have a proven tool—let us use it.

Kevin Stewart: I will turn to Ms Smith. I am the only north-east MSP who does not have a farm in their constituency, and I certainly do not have a croft. There is one commercial apiary and somebody who has 12 chickens. However, this issue is of great interest to me and I would really like to hear your opinion on the questions that I have asked.

Donna Smith: On behalf of our members, the Scottish Crofting Federation is always campaigning for the creation of more crofts, for many of the reasons that Andrew Thin has covered. Crofting has been a great tool for keeping people in the rural population. You will often hear people talk about the fact that crofting has kept the lights on in many of the glens and remote rural areas of Scotland, and it has done that because of the security of tenure that it provides for people. People have absolute security of tenure in their croft tenancy, unless they are in breach of the crofting duties. That is something to think about, because crofting is framed in such a way that it encourages people to a) live on the land and b) look after the land in a sensitive manner. Many crofters pride themselves on the fact that they do that. They see it as an honour and a privilege that they have stewardship of the land. Therefore, with regard to land reform, how brilliant would it be if we could encourage that sentiment across more of Scotland and if that was all built in to the crofting legislation?

There is nothing to stop crofting being expanded, other than some decisions that need to be made by the Government about how to do that. There are various options. For example, you could expand the crofting counties or you could look at pilot areas—for example, you could put crofting into a national park. Crofting brings a lot of good strong values about what it means to have stewardship of the land. If we want land reform to result in more people on the land and more people who care about the land looking after it, crofting could absolutely be a means to achieving that.

When we look at lotting, why would creating new crofts not be part of that process by default? Rather than sewing that on, we could look at whether we could take some of that land to create new crofts and expand the population in that rural area. There are loads of beneficial outcomes that could be gained by extending crofting, if we want to do that.

Gary Campbell: I go back to the fact that I am running a regulator and that our lives are dictated by legislation. The first page of the Crofters (Scotland) Act 1993 says:

> "In exercising their functions ... the Commission must have regard to the desirability of supporting population retention ... in the crofting counties; and ... in any area for the time being designated as mentioned in section 3A(1)(b) and in which there are crofts".

Section 3A(1)(b) refers to the power that the Scottish ministers have to use secondary legislation to create new crofting development areas.

I agree 100 per cent with what Andrew Thin and Donna Smith have said, but all that you have to do is direct people to the existing crofting legislation,

which takes me back to my point that quite a lot of what we need is already here. If the new bill recognises what is already in legislation, we will be a large part of the way there.

Regulation aside, I can tell you that I go to a number of events at which people come up to me and ask why they cannot have a croft in Aberdeenshire or in Dumfries and Galloway. I have to explain the history and tell them that there were once crofts there but that crofting was pushed back into the Highlands in 1955, with slight changes a couple of decades ago to add Moray, Arran and Cumbria. Others across the country are certainly willing to explore that.

I agree with the use of lotting to promote crofting. To go back to Andrew Thin's point, that would start to address the imbalance in land ownership and control. Crofters have many duties and responsibilities but they enjoy security of tenure and have the right to manage common grazings, which puts checks and balances into the crofting estate. Crofting could validly be expanded across the rest of Scotland and we get asked about that every single week.

Andrew spoke about smallholdings and the potential to create a new form of secure land tenure in Scotland. We already have that. It is interesting that we have had legislation in place in one shape or another for 138 years and that that would not be here if it did not still work. That is the simple fact. It is unique in the world and no one else has it.

I am sure that you are aware that, earlier this year, we commissioned a study on the value of crofting to Scotland, which we did because I wanted to find that out when I started in this role. I was of the opinion that crofting must be valuable because it is still here, but I wanted to know how valuable it is. As you will be aware, crofting brings more than £0.5 billion a year of gross value added to the Scottish economy each year. That means that creating new crofts or crofting townships across the country is not only beneficial for population retention but develops the rural economy.

That independent report was done on our behalf by Biggar Economics. Donna Smith explained really well that the linchpin of that value is the requirement for crofters to live within 20 miles of their croft. Crofters have fantastic rights, including security of tenure. A croft can be passed on through a family forever and crofters have that right in perpetuity, which is unique on the planet. Scotland should be proud of that. At the same time, crofters have duties, one of which is that they must maintain and cultivate the croft—they have to do something with it. They must also live within 20 miles of the croft, which means that people must live in, and are invested in, the community. As Donna said, most crofters have another job and are doing something in the community, which helps to boost the local economy, meaning that there is an economic argument for crofting, as well as the argument about land.

I have a final point. In 1996, our predecessor, the Crofters Commission, undertook an academic study when it commissioned the University of Edinburgh to look at population retention. The study compared Cabrach in Huntly—which is just along the road from you, Mr Stewart—with Rogart in Sutherland. Those areas have similar topography and history. Huntly was outwith the crofting area, whereas Rogart was very much a crofting area and always had been. The level of population retention in Rogart was 67 per cent greater than in Huntly, and that was attributed to the 1993 crofting legislation being in place.

11:15

There are a lot of compelling arguments for creating new crofting areas. The point is that the process for doing that is already sitting in secondary legislation that allows the Scottish ministers to implement new crofting areas by way of a statutory instrument. The bill could point towards that and allow it to happen, with us working with the Land Commission.

Kevin Stewart: That is useful—thank you.

Monica Lennon: It has been fascinating to hear you put on the record the benefits and opportunities of crofting and its importance to Scotland.

Although we are here to scrutinise the Land Reform (Scotland) Bill, I am aware of media reports this morning, certainly in *The Courier* and possibly in other newspapers, in which it has been stated that:

"Crofting is in danger of being consigned to the history books".

That is a warning from the Scottish Crofting Federation. I think that the reported comments were made largely in relation to the budget, which we are not scrutinising today, but we cannot look at things in isolation.

I want to give you an opportunity—I am looking at Donna Smith, but also Andrew Thin and Gary Campbell—to comment on whether you recognise those fears and concerns. The Scottish Crofting Federation chairman, Jonathan Hedges, says:

"It's clear the government still does not fully understand the unique contribution that crofting makes".

Is that being understood in relation to the bill, or to policy more widely? I come to you first, Donna.

Donna Smith: Obviously, I am going to agree with the statement that we have put out.

I think that people underestimate what crofting delivers, and that is why we have come out quite strongly with that statement. To be frank, crofting often feels like the poor relation to the likes of NFU Scotland and everything else, and the lobbying that goes on there.

In general, crofting brings in people who are operating high nature value practices and are engaged in local food production. As we have touched on, they are keeping communities alive. They are the reserve fireman, the teacher in the local school or whatever—I could go on and on. In general, they are engaged in crofting part time, because crofting is not about making vast profits or whatever else; it is about being on the land and looking after it.

The reason why we made those comments in relation to the budget announcement goes back to capacity, which we touched on briefly earlier. We keep adding on more and more for people to do. Do not get me wrong—of course we have to achieve things in order to secure public funding to do anything; that is absolutely right. However, the asks that we put on people need to be proportionate.

Our concern with the agriculture budget is that we are asking crofters to do more and more as part of what is in effect, for a lot of them, their spare-time hobby. They may end up withdrawing from the system, which then ends up not delivering on some of the Government's objectives. That is why we have come out with those comments.

We need to do more work to help people to understand what crofting is delivering for those areas, and what would happen if people simply stopped crofting. If that happened, it would be a disaster for rural areas. Gary Campbell touched on the benefit to the rural economy. If all the crofters simply stopped doing it because everything got too hard, it would have a huge impact on the population and on what happens in those communities. There would also be a knock-on effect on other industries in those areas that benefit from crofters being there.

It would be great if we could help people understand what a good thing crofting is in those rural areas and what it can deliver across many of the Government's objectives on climate and biodiversity, as well as on rural population retention and industry.

Andrew Thin: Perhaps we could differentiate between crofting as a form of small-scale agricultural land use and crofting as a form of secure small-scale regulated land tenure, because those are very different things.

As a form of small-scale regulated land tenure, crofting has huge potential for Scotland, for all the reasons that we have rehearsed this morning. It is a proven tool that could deliver so many of the land reform objectives not just of the Government but of the Parliament. However, it is undoubtedly the case that crofting as a form of small-scale agricultural land use is—"under threat" is probably the wrong term to use—under huge pressure to evolve and change. It is for Governments to decide to what extent they wish to support and subsidise agriculture, including small-scale agriculture, but I am absolutely certain that small-scale agriculture in Scotland will continue to evolve very fast. I do not see that as a negative.

For example, earlier we talked about carbon sequestration. There are tremendous opportunities there. Seven per cent of Scotland is in common grazings. Many of those common grazings could be reimagined and reused as carbon sequestration sinks for this country. That is just one example. Therefore, I would replace the phrase "under threat" with "under huge pressure to change".

The Deputy Convener: Let me take you back to land management plans, which are one of the significant levers in the bill, as it stands. There is a provision in the bill that requires that land management plans be produced—there is an obligation on the landholder to do that. Failure to do so will, potentially, result in a fine. Do you think that the provisions go far enough?

I will expand on why I am asking you whether I think that they go far enough. There might be an obligation on landowners to produce a plan, but there is no obligation on them to do anything with that plan once it has been produced. Should the bill include an express provision that requires a landowner to make progress with their land management plan and any agreed actions that are set out in it?

Andrew Thin: The short answer is undoubtedly yes. I will stick with crofting: I want to use the example of common grazings. There are many common grazings that are well over the 3,000 hectare threshold. Unless we take action to push the issue, we will not make use of those areas for carbon sequestration in Scotland and 7 per cent of our land area will not be used for that purpose.

The biggest challenge with the part of the bill that deals with land management is in not only insisting that the landowner implements a land management plan, but in making sure that, where part or all of the land is in some form of tenancy—agricultural holdings tenancy or crofting tenancy—the tenants are also required to implement that plan. On an estate that consists entirely of tenanted farms, the landowner has very little authority to demand many things. There needs to be such a requirement on both landowners and tenants.

The Deputy Convener: Donna, from the federation's perspective, would your members be in favour of a requirement to implement land management plans?

Donna Smith: I do not know why Andrew is laughing.

Yes, we think that the bill needs to have some teeth in that respect. If it does not, what is the point? It will simply be words written on paper that will not achieve anything for anybody. We would certainly like penalties for landowners who do not produce and follow land management plans, but we need to consider—this takes us back into crofting territory—who can report if nothing is happening. The proposals include the ability for groups to report breaches, but we suggest that that needs to be widened to allow communities to report breaches more freely. However, it is a difficult area.

We touched earlier on crofting duties. A crofter has a duty to be resident and to cultivate their land. People can be reported for not doing that, but very few people report it for fear of repercussions. They live in the area and in the community, so if they report their neighbour that is a very difficult situation.

We need to think about that with land management plans. How do we make the process easy for everybody? If the range of people who can report breaches is overly narrow, such reporting just does not happen. We need to give the legislation some bite, but we also need to make sure that how we handle things when they go wrong is given proper consideration so that the process is manageable for people who want to make sure that things progress and are happening as they are supposed to happen.

The Deputy Convener: If you feel that the process is a bit gumsy at the moment, what would a process that has teeth look like?

Donna Smith: There should be proper penalties. As you said, there is an obligation to put a land management plan in place. That is one thing, but what is the penalty if that is not done? I am not proposing an answer, but we need to think about it.

We also need to think about what happens if the land management plan is in place but it is completely disregarded. If there is no follow-up, it would be easy for landlords not to do anything. We need suggestions about how to make sure that the legislation has some teeth.

The Deputy Convener: As it stands, the bill has a prescribed list of those who can raise complaints. Is having a prescribed list the right approach, and does who is on that list need to be expanded? Do you have a view on who else should be on the list or is a prescribed list of that nature the wrong approach and anyone should be able to make a complaint if they wish to do so?

Gary Campbell: From my perspective, the answer is that it should be a prescribed list, but with the caveat that there should be the ability to change it, as I said earlier. If you do not have a prescribed list to start with, you are in danger of overwhelming whoever is in charge of managing the land management plans or of enforcing the regulations. If just anyone could object, that would probably not be helpful and could swamp whoever is the regulator that is looking after the matter.

The Crofting Commission has a very narrowly prescribed list of who can make a complaint when somebody is not undertaking their duties, but there is sufficient wiggle room in the legislation to allow others to be brought in as and when necessary. A prescribed list, with the caveat of its being adaptable, is the right way forward. As we said about the 3,000 and the 1,000 hectare threshold proposals, the bill is a starting point. Let us start from the starting point and see how it goes, but we need the ability to change it.

In the same light, there is, as Donna Smith said, not much detail in the bill about how a land management plan would proceed, who would regulate it, at what point it would be checked, what the penalties would be for not doing things and what the incentives might be for undertaking a land management plan. Those things have to be sorted out.

To come back to legislation, the one thing that I would say is this: when the regulations are passed through the bill or are developed in policy, please take account of the crofters. Again, as a regulator, I do not want to be in the position of having to say that something has been put in place that directly contravenes the rights of the crofters in respect of their common grazings. Therefore, making us a statutory consultee and referring to the Crofters (Scotland) Act 1993 would be perfect for us.

The Deputy Convener: It feels as though your challenges with the various layers of crofting legislation over many years have coloured your view of framework legislation and giving more flexibility to adapt to changes as and when necessary.

Andrew Thin has indicated that he wants to say something.

Andrew Thin: I do not want to disagree with Gary Campbell, but I would like to offer an alternative approach, which is that you do not prescribe who can raise complaints but instead give the land commissioner, or whoever it is, the power to prescribe what evidence is required in order to raise a complaint. That is a different way of looking at it.

11:30

We have exactly the same situation in crofting law. At the moment, very few people can allege that someone is not living on their croft, as they are required to do—as Donna Smith has said. There are not many laws in this country under which only a handful of people are allowed to report a breach of the law. It is an odd situation.

The alternative would be to say that anyone can report a breach of the law, but the Crofting Commission has the authority to decide what level of evidence is required in order to trigger an investigation.

Donna Smith: The list needs to be widened—otherwise, people will not report at all. As Andrew Thin has said, a clear guide on what is acceptable evidence would mean that you could reduce the amount of spurious complainers that could go on the list. Hopefully, that would not create too much of an administrative burden further down the line, because such people could be headed off early at the pass. We would like to have the same with the crofting legislation.

The Deputy Convener: Expansion of the list and setting a threshold for complaints in order to deal with vexatious complaints and so on brings us on to gatekeeping of that process—which brings me on to the land and communities commissioner that the bill sets out. Should the land and communities commissioner have a monitoring role when it comes to land management plans, and should they be responsible for setting the threshold?

I am tempted to come to you first, Andrew, as a commissioner, so that you can give us your experience. What is your view on that? Do you think that the proposed commissioner should have that role in monitoring the implementation of land management plans, and that they should also be responsible for setting the threshold for what would be classed as an acceptable complaint?

Andrew Thin: First, it is worth asking the question whether to have that proposed commissioner or to use the Scottish Land Commission. At the moment, the proposal is to have a single land and communities commissioner. We already have the Land Commission. Whichever of those has such a role, the right way to do it is to say that if someone feels that the law has been broken in some way, they are entitled to raise that with a public authority. That is just natural justice, and I do not think that restricting who can report is necessarily particularly helpful. It is, therefore, important that there is a regulatory authority with which people can raise their complaints—either a single land commissioner or the Land Commission. The Crofting Commission is a whole commission. There is not just one commissioner; there are nine of us—which might be too many, but you need a number.

The Land Commission or land and communities commissioner must very clearly, and in statute, be required to set out a number of things. First, I suggest that the proposed commissioner or Land Commission will approve the plans, which makes sense to me. Secondly, they can decide what someone must do in order to raise a complaint and trigger an investigation. Otherwise, we will end up with only a small number of people being able to raise a complaint, which feels uncomfortable in a democracy, and the commission would have to investigate whether or not all those complaints were properly evidenced. It is not in the interests of anybody to have complaints investigated that do not have a decent weight of evidence behind them.

You must be fair to everybody. Drawing on my Crofting Commission experience, I can say that it is extremely uncomfortable that we have to investigate all complaints that come from certain categories of people, but cannot investigate complaints that come from other categories of people. Some of the complaints that come from the defined categories are not worth investigating, frankly, and that is wrong.

The Deputy Convener: Gary Campbell, should the role of the proposed land and communities commissioner sit much more with the Land Commission than with an individual commissioner?

Gary Campbell: I will do what I did earlier and say that that is a matter for Parliament.

The Deputy Convener: It is like taking the fifth amendment. [*Laughter.*]

Gary Campbell: My job is to regulate crofting. I do not want to do this—it is for others to decide. All that I will say is that the Crofting Commission should be a statutory consultee, so that whoever ends up regulating the land management plans consults us—and has to consult us, in law—so that we can work together for the benefit of the country.

The Deputy Convener: If the commission does not have a view, the federation must have a view, Donna Smith. [*Laughter.*]

Donna Smith: The Scottish Crofting Federation thinks that a new land and communities commissioner should be able to actively regulate the land management plans. However, that would need to be done through a very close relationship with the Land Commission—for example, with regard to consulting on how that would fit with the codes of practice, guidance and all the rest of it. The proposed land and communities

commissioner could actively promote codes of practice and guidance in relation to land management plans to communities, and work with people on those. Therefore, we would say yes—a new commissioner should regulate land management plans.

Bob Doris (Glasgow Maryhill and Springburn) (SNP): I have explored this issue with other witnesses over the past few weeks. I want to turn the whole thing on its head slightly. I will put to one side for a moment the issue of how the role of a land and communities commissioner would sit with the Land Commission more generally.

On who conveys a complaint and whether they would then investigate the complaint, any commissioner would surely have to take a sample-size survey of all land management plans across the country, whether it was 10, 15 or 20—pick a number, I suppose—and then delve into the quality of those plans and general compliance with them in order to have the expertise to, say, share best practice across the country or identify thematic issues. With regard to a specific breach, surely a commissioner should have a discretionary power to investigate and, if we beef up compliance in the act, to take compliance action accordingly.

I have been asking witnesses about that more general picture in the past few evidence sessions. I am consistent, if nothing else, so I am keen to know witnesses' views this morning. Mr Campbell, what is your view on my suggestion?

Gary Campbell: Broadly speaking, as an individual, I would say yes—that makes sense. I can give you an example, which might or might not help. The commission has an annual notice that people have to fill in to tell us what they are up to every year. Through that, people sometimes tell us that they are in breach of duties; we then work with them on resolving that.

This year—we will expand it next year—we have been taking the issues on which people have told us that they are in breach and doing a random sample of those who fill in the annual notice to find out exactly where we are on the issue. It is a move towards exactly what you are talking about—finding out the state of crofting and the relationship between crofters, landlords and the commission. Where does the commission sit in that? Crofting is a contract between the individual and the state, and we are the regulator, in the middle. From my perspective, that would be a sensible way forward, if it was me in that position, but I am not.

Again, that is a decision for somebody else, but please take account of crofting legislation in making that decision. Make the Crofting Commission a statutory consultee so that, when somebody says, "We're going to do X" and the land concerned includes crofting estates, we are not potentially looking at the same thing. That would be a very straightforward answer. Bring us into the consultation process and we can all work together. With regard to the crofting regulatory framework, the role sounds very similar to what we already do.

Bob Doris: Mr Campbell, your request to make the commission a statutory consultee will be ringing in members' heads after the evidence session. You have been very clear, forceful and focused on that point. Therefore, you think that it is a worthwhile thing to do, but it is not a role that you would like to have yourself.

Gary Campbell: Do you mean in terms of the Crofting Commission doing it?

Bob Doris: Yes.

Gary Campbell: Unless you gave me considerably more resources, I would not be able to do it.

Bob Doris: That was a maybe, was it not? [*Laughter*.]

Mr Thin, do you have any comments on that?

Andrew Thin: I will make a slightly different point, rather than repeat that answer.

Investigation is potentially expensive—I am sure that that will be addressed in the financial memorandum to the bill. Many of the issues, including the threshold, the cost and the depth of power, are linked. We need to be clear that there will be a cost to the taxpayer of having a commission with investigatory powers and all the rest of it, and that there will also be a cost to the economy of adhering to regulations.

We need to focus on a question: what is the problem that we are trying to solve? It is that, in some parts of the country, we have local landed power monopolies that work against the public interest and inhibit the growth of rural economies, population, housing and all the rest of it.

A commissioner or commission needs to have powers, but it would be better for those powers to be substantial and focused very much on the problem than for them to be weak and spread across a much wider area. I am giving a bit of a view about the threshold in that answer.

Bob Doris: That is quite helpful, Mr Thin.

Further to that, do you think that if landowners across the country knew that there was a theoretical chance that a land and communities commissioner would say, "You've been selected at random, as one of 10 this year. Can we have a wee look at your land management plan and your evidence for how you have sought to comply with that?", it would focus their minds? Whether there

is a complaint or not, they may feel that they had better just get on and do it, because they could be the next one to be selected.

Andrew Thin: As you probably know, I chaired the Land Commission for eight years. There is no question in my mind but that the vast majority of landowners want to adhere to the regulations; they do not want to be found wanting and named and shamed. I do not doubt at all, therefore, that anything that adds transparency, such as you suggest, will be helpful.

Bob Doris: Okay. I commend you for your previous work in the Land Commission—I am very aware of that.

Donna Smith, do you have any thoughts on the matter?

Donna Smith: Yes. We would like to see active regulation, and if that means taking a random sample, however that would work best, that would be great.

We have to put that in context, as we are focusing a lot on crofting today. At present, we have crofters who might be in charge of only a small bit of land and who are expected, in effect, to follow a land management plan. If we are imposing it on them, why can we not impose it on the big guys?

Bob Doris: I think that we have all made that point. I think that Mr Campbell would also want to make the point that there should be a statutory crofting consultee in relation to the land management plan, which is a consistent thread across all the evidence.

I have no other questions at this point, convener.

The Deputy Convener: I call Douglas Lumsden.

Douglas Lumsden: I move on to the community right to buy. We have already discussed the threshold for when that right would kick in. I am looking at the responses that you have submitted, and I think that you all agree with the principle of strengthening community bodies' opportunities to buy large holdings. However, are we taking the right approach to that in the bill? Perhaps Donna Smith can go first.

Donna Smith: Yes and no. Communities should absolutely be given ample right to buy. One of our big concerns with what is proposed, however, is the 30-day timetable. We touched earlier on capacity in communities. Unless communities are already primed and ready to go, that timescale feels like a really tall order. Either that needs reviewing, or there may be other ways in which it could be implemented that would make it easier. There could be, say, a pre-defined pro forma that would need completing in order to put in a notification; it would be almost like an expression of interest, but it would delay the process and allow people to put in a bit more work. After all, it is a big ask. I guess that it depends on what we are asking the community to put in before any decision is made. Capacity is a big issue.

11:45

Douglas Lumsden: So, is the timescale the biggest issue? Is it too short?

Donna Smith: It is very short. Thirty days is nothing, is it? As you can imagine, if you are doing all the things that we talked about earlier—running your croft, doing your job, doing your firefighting or whatever else you do with your time—having only 30 days to put together a detailed bid that sets out how you want to progress will be a really tall order. Some communities might already have some stuff in place and have thoughts on the matter; however, if they do not and the proposed sale comes out of the blue, that timescale will be very difficult to meet.

Douglas Lumsden: Andrew, do you have a view?

Andrew Thin: Yes. The community right to buy is only one way of reducing the problem of monopoly power. Given that I am here to speak for the Crofting Commission, I emphasise that putting land into crofting tenure does not require community ownership; it could—communities could buy land in order to create new crofts—but ministers, too, could require land to be put into crofting tenure. Indeed, that is why I made my earlier point about lotting. We are slightly in danger of seeing the community right to buy as the only answer to the challenge—it is not.

Douglas Lumsden: Do you have any further comments, Gary?

Gary Campbell: I simply agree with Donna Smith and, in particular, Andrew Thin. I think that we have an opportunity here. In answer to the question whether the proposals would fulfil the Government's objectives, we said no, but that was in relation to the very specific point that we did not think that crofters had been included well enough in that particular proposal. As Andrew Thin said, we have an opportunity here to look at this slightly differently; when there is a right to buy proposal or an estate comes up for sale, there is the potential to look not at a whole community buyout, but at having an area where new crofts and a new township could be created. That would bring things under crofting legislation, but it would be a mix-and-match approach.

Just to be clear, I would point out that, during the recent community purchase of an estate up on

the west coast—Coigach—a lot of people came and asked, "What does the community buying the estate mean for the crofters?" The answer is: absolutely nothing. They are just another landlord. There might be a misconception that a community landlord will enhance crofting by default; that is not the case. It is just another landlord. Instead of the landlord being someone, say, in London, it could be your neighbour.

As Andrew Thin and Donna Smith have said, there is an opportunity to do something different and not make this just about purchase. We could enhance community or local involvement in land management through the crofting tenure system, which, as we stand, is here and ready to go.

Douglas Lumsden: Under the bill as it stands, a large landowner selling even a small part of their land would trigger the community right to buy. Would there be any implications for crofting in that respect?

Gary Campbell: It depends. Again, if the land that was sold was under crofting tenure, the crofting law would carry on—it would not matter. However, if we were talking about a smaller area, there would be the opportunity to pass it over. Instead of the land being sold on to somebody for another purpose, the Scottish ministers would, as Andrew Thin has said, have the opportunity to step in and say, "Whoa, let's have a look at this. Would that land be better under crofting tenure for the benefit of the local community, and the country, as opposed to its just being sold to another individual?"

That would not mean that the person could not sell it; they could sell it to somebody else, who would then become a crofting landlord. If this one pause could be put in, so that we could ask, "Before you sell that land, is there the potential to move it into crofting tenure?", the Government's objective—which, as I understand it, is to broaden the base of land influence, for want of a better word, in Scotland—would be achieved without the necessity for a community buyout.

Douglas Lumsden: But if a large landowner was looking to sell a small part of that land to a crofter, he would not be able to do so straight away—he would have to offer it up. Indeed, the community right to buy process would kick in, too, which might be an issue. Andrew, do you have a view on that?

Andrew Thin: I do not think so. It does not change things that much.

Douglas Lumsden: Thanks, convener.

The Deputy Convener: I want to clarify a point that you made earlier, Gary, about ministers looking at using lotting to put land into crofting tenure. If ministers had that power, should such lotting be restricted to land in the crofting counties, or should it apply to any parcel of land, even if it is outwith the crofting counties?

Gary Campbell: I mean both. I run the Crofting Commission, so I think that you know my answer. It is in legislation that part of our statutory obligation is to promote the interests of crofting. I think that that should apply across Scotland, and I do not think that it should be restricted to rural areas either—you could have urban crofts. It could apply across the whole of Scotland.

As I have already said, it is a proven system. It is 138 years old, it is still working and it is unique on the planet. Other countries around the world have tried to have state regulation of land—the best example is soviet Russia—but crofting was there beforehand and crofting is still there afterwards. It has worked because there are rights and responsibilities. It is a system that I think we can confidently say would be of benefit to the whole of Scotland.

Andrew Thin: I think that it is worth inverting that question. Why, in the 21st century, do we still restrict a proven form of land tenure to part of our country?

The Deputy Convener: That is a good question, and we will save it for the minister when she appears.

Bob Doris: I am in danger of asking a silly question, but it would not be the first time. Mr Campbell, when you speak about community right to buy and lotting, you say that we should look at the opportunities to use the land, or part of it, for crofting. You contend that that could build sustainable communities and retain people in an area, or expand the population, and that there is a community sustainability advantage in having more crofts or expanding crofting concerns. Are you talking about those who are already running crofts expanding, or are you talking about new entrants to crofting? If the latter, how would they be identified?

Gary Campbell: It would primarily be new entrants to crofting. There is a very good system called the Scottish land matching service, which is funded by the Government. It matches up potential farmers and crofters to the land that is available. It is very one sided at the moment, because there is very little land available and an awful lot of people have expressed an interest. We have 2,000 people now showing an interest in crofting through that service. It is a real step forward, because there was anecdotal evidence, going back decades, that more young people wanted to get into crofting. I was asking, "Where is the evidence?", but now we have it, and it is very clear.

Please do not think that crofting is something that is not—crofting is relatively dynamic. In the year to March 2023, we had more than 500 new entrants to crofting, half of whom are female. We are doing our bit, but when you have only 21,500 crofts, by virtue of the fact that crofts can be passed on through families, there are very restricted opportunities for new people to come in. There is a clear demand, and such a measure would really help to address that.

Bob Doris: That is very helpful. I did not know that there is a Scottish land matching service. I have learned something, which is always important when we scrutinise legislation.

To go back to land management plans, on reflection, having heard what you have said, Gary, I wonder whether there should be an obligation for land management plans to consider potential future diversification over, for example, 10 years, which the deputy convener spoke about, rather than five years. Land could be screened for its suitability as a crofting venture, irrespective of whether that is in the strategic interest of the landowner. Could that be done when the land management plan is drawn up? Theoretically, that could provide a significant amount of additional land for people who go to the Scottish land matching service because they quite fancy establishing a croft. They could then watch out for future lotting arrangements and declare an interest.

I am trying to work out how we make sense of it in a way that would make a practical difference through the policy that you would like to see propagated. Do you have any reflections on that, Gary?

Gary Campbell: I would go slightly further so that considering crofting would be one condition of doing a land management plan. It would be as simple as that. We have said all the time that we should be consulted by the land commissioner and others. As part of the land management plan, there should be consideration of whether the land is suitable for crofting tenure and that should be addressed by everyone across the entire country.

Bob Doris: That is really helpful. Andrew Thin and Donna Smith, do you have any reflections?

Andrew Thin: My reflection is simply that there is an imbalance between supply and demand. There is no question about that when very small, bare-land crofts in some parts of Scotland are changing hands for £100,000, £200,000 or £300,000, which makes no sense. The proposal is not necessarily against the interests of landowners, because there may be an opportunity to create value.

Mark Ruskell: The conversation about new crofts is tantalising. The committee recently held a meeting in Perthshire, where there was a lot of interest in forest crofts, and Forestry and Land Scotland is doing some work that is particularly exciting for young people.

Andrew Thin, you mentioned national parks. Would any reform of the powers or functions of the national parks be required in order to deliver more crofts within the park areas? We have only two current national parks, but a third one may be on the way.

Andrew Thin: I am so old that I chaired a national park for a while, too.

Mark Ruskell: We keep going back to your previous roles.

Andrew Thin: From what I remember, the National Parks (Scotland) Act 2000 is perfectly compatible with the bill. I do not envisage a national park authority buying land and owning or creating crofts, but I do envisage Government using a distinct area of land to pilot something. Rather than flicking a switch and rolling this out to the whole of Scotland tomorrow, we could say that, in the national parks—including in any new one in the south of Scotland—we should pilot that and see how it goes. That is how I see it and it would need next to no legislation: you could pretty much do it tomorrow.

Mark Ruskell: You have mentioned lotting a number of times. Before we leave that subject, does anyone want to reflect more on what is currently in the bill? We have heard a lot of comments from stakeholders about the lotting process. Do you want to comment on lotting?

Andrew Thin: I apologise for repeating myself. I do not think that the commission is commenting on the lotting proposals, about which there are issues. Instead, we are saying that, alongside the lotting proposals, ministers should also be empowered to put land into crofting, which does not actually involve lotting but is a different way of breaking up the power base.

Mark Ruskell: Do witnesses have any comments about the specific proposals for ministers to lot estates or about the process behind that?

Donna Smith: The Scottish Crofting Federation has some comments. The lotting process, as currently proposed, needs far more clarification. We are concerned about the oversight of who buys the lots. We must ensure that whatever is put in place does not allow people to keep on accumulating land by different means. There should be something about a public interest test and about whether land is contiguous. We all agree that the ultimate aim is to break up land ownership, but that should not be by letting people buy bits of land here, here, here and here.

Whatever is put in place must prevent that happening.

Mark Ruskell: What would you say about having a transfer test for the seller instead of a public interest test for the buyer?

Donna Smith: We must be really clear that the public interest must be considered. If you will indulge me, I will read a list of things that we think should be considered when looking at new ownership and the public interest.

12:00

One of those is a reduction in large-scale ownership. We also want there to be an increase in access to land for small-scale food production. We are thinking about the bigger picture and some of the other Government objectives. We want new tenanted crofts, including woodland crofts, which were mentioned earlier, to be created. We favour improved use and management of agricultural land and common grazings, the repopulation of areas, and the maintenance and improvement of mosaic habitats, to help with biodiversity. I could go on to mention others. There is a whole list of criteria that could be looked at in a lot of detail for prospective purchasers, and we would like some, if not all, of those to be included.

Mark Ruskell: So you would have preferred to have had a public interest test.

Donna Smith: Yes.

Mark Ruskell: Okay. I presume that Andrew Thin and Gary Campbell are not going to comment on that. I see that they are not.

Bob Doris: I have a brief question on an important issue. We have heard in evidence—although our witnesses can challenge this if they think that it is not borne out by the reality—that large landholdings are more likely to attract private investment and to be able to deliver on woodland and peatland targets at pace and at scale. Is that the view of today's witnesses? Are there examples of crofters collaborating to deliver at scale? Donna, perhaps you can go first.

Donna Smith: At the moment, it is sometimes difficult for crofters to collaborate. As part of the agricultural support scheme, we have the agri-environment climate scheme—AECS—which is very hard for crofters to qualify for because of the way in which it is designed and the scoring level. In some areas, there are crofters who are keen to do something, but they are unable to qualify for the grants that would help them to get started. I appreciate that that is not to do with the Land Reform (Scotland) Bill, but it shows intent—there are crofters who are willing to do such work.

There are some crofting estates that are already considering peatland action or doing peatland restoration, but there is probably a need for some clarity there. I think that I am right in saying that crofters cannot apply for peatland code funding, but they can apply for peatland action funding, which relates to the capital cost of getting works done. I visit a crofter in Shetland who has done some peatland restoration under the peatland action programme. He is now extolling the virtues of that to his neighbouring crofters, who were a little sceptical at first. They were unclear about what the impact might be on them, but he has been able to demonstrate that the programme has been of real benefit to not only the landscape but his livestock. His sheep are healthier and produce better lambs as a result of it. There are examples out there of crofters who are taking action to do such things.

Bob Doris: That is helpful. You are suggesting that it is absolutely possible to deliver at scale and to attract investment in crofting, but that there are barriers to rolling that out.

Mr Thin, what is your view?

Andrew Thin: I have two very quick points to make. First, of course it is correct that if you concentrate landed power, you can do things at pace and at scale. Dictators can do things at pace and at scale, but that does not make it in the public interest. That is a curious piece of logic that goes in different directions.

There is a challenge for crofting, but there are crofting townships—golly, there have been since the early 2000s—and common grazings where woodland has been created at scale. There is a great one up in Coigach, for example, which I drove past the other day. It is now looking quite good. That can be done, it has been done and it is being done.

The process is more complex because there are more people involved, but you get an answer that is more in the interests of the community precisely because it does not involve someone doing things at pace and at scale. People think about it and consult first.

Bob Doris: That is a point well made. What do you think, Mr Campbell?

Gary Campbell: From a regulatory perspective, we simply look at any application to change the use of a croft or common grazing area under the regulations. It is not for me to have a view on where those projects should take place, but it would help us considerably—I have asked others who have done such work—if we could have a definitive map of Scotland that showed the areas that are suitable for peatland restoration specifically. We do not have such a map at the moment. If somebody could do a survey and say

which are the specific areas—particularly in relation to the common grazings; from my perspective, I am really interested in the 500,000 hectares of common grazings—I could take that and do something with it under the commission's function of

"promoting the interests of crofting".

However, at the moment, we do not have that information, so we just treat every single application as an individual application, as and when it comes in.

Bob Doris: Thank you. I have a series of questions on the role of the land and communities commissioner that is proposed in the bill, but I will group them together, given the time constraints.

Should the work of the proposed land and communities commissioner be a stand-alone role—I spoke about that a little earlier—or should it be incorporated into the work of the existing commissioners? Are the functions of the Land Commission up to date and fit for purpose in light of the proposal for a new commissioner with regulatory powers?

I know that there is a lot in there, but it is really about where the new commissioner would sit within the Land Commission. Would they be accountable to the Land Commission or independent of it? What would that relationship be? There may be a slight grey area around how they would plug into that wider system. Do you have any thoughts in relation to that? We will go from left to right, starting with Gary Campbell.

Gary Campbell: I think that you know what I am going to say. As long as they consult with me, that is fine. I genuinely do not mind what they do or where they are, because, once again, it is a matter for the judgment of the Parliament on where the role finally sits. As long as the Crofting Commission and the crofters are taken account of in that decision, I will be quite happy.

Andrew Thin: It is curious that, in a bill that is designed to reduce monopoly power, we are trying to put power on one individual, so I think that we have to really think about that aspect. The Land Commission has probably given evidence on that, and I cannot really comment on the Crofting Commission role. However, when I was chairing the Land Commission, we were clear that there were real risks in concentrating the power in one individual and, in doing so, in effect disenfranchising the rest of the Land Commission from this whole thing.

Donna Smith: We considered the role based on it being an independent role. We feel that there needs to be corporate accountability; there must be a strong element of consultation with the Land Commission on any actions that the commissioner takes.

Bob Doris: Yes, I think that that point was in your written evidence. I have no further questions on that.

The Deputy Convener: I will briefly cover part 2 of the bill, in particular the proposed model lease for environmental purposes, as well as the small landholdings provisions. Donna Smith, you have taken a particular view on this from the federation's perspective, and we have also had a range of views from stakeholders. Is the proposal that is set out in the bill the right one? If not, why not?

Donna Smith: When we get into the environmental purposes, we have strong concerns about outside green investment—I am sure that you have picked that up.

We feel that there is a lot more yet to understand about the impact on crofting communities in the long term, in relation to the decisions made by one generation and how they might impact those who follow. When we get to sharing community benefits and so on, it is unclear how that would work in those situations. We are just not convinced that it is in the interests of future generations and we would like to see it thought through a bit more to make sure that there is sufficient protection for people in the longer term.

For instance, I might sign up to something today that ties in my land for 99 years. What happens to those who come behind me? It is a generational thing, so there are some concerns there.

The Deputy Convener: Is that a concern on the basis of how the crofting land will be used over that 99-year period, if somebody enters into an agreement of that nature?

Donna Smith: Yes, and the fact that you are potentially tying somebody in who does not even know yet that they are coming to the croft. People in future generations might be really hamstrung in terms of what they can do if we rush to lock in land under long-term agreements. We are just a little bit wary of where it all might lead, particularly if the land is sold to outside investors for carbon credits or whatever. That is a real concern to us.

The Deputy Convener: There is nothing wrong with being a bit wary. Gary, do you have a view on this?

Gary Campbell: Not really, except to say, as a regulator, that we will regulate within the law at any given time.

The Deputy Convener: Okay. I call Rhoda Grant.

Rhoda Grant (Highlands and Islands) (Lab): Thank you, convener. I have a supplementary and a substantive question, if that is okay.

A lot of this morning's discussion has been about land management plans and how they relate to crofting. In a way, a landowner cannot impose on the crofter what the crofter does with their tenancy, and it seems to me that that could be a conflict in land management plans. A crofting landowner might be able to write up a land management plan for only quite a small part of the land that they own, because the rest of it will be out to tenancy. Would any of that impose on a crofter's agency, or would their rights be protected under the bill? I am concerned that land management plans might interfere with a crofter's rights.

Andrew Thin: I alluded to this earlier, and I think that you are right. A crofting estate is a bundle of rights, some of which belong to the landowner and some of which effectively belong to the crofters. If you are going to have a land management plan that will be particularly meaningful, you will need to tie the rights of both parties. As things stand, the proposal does not tie the rights of tenants, only the rights of owners, and that will limit what can be in a land management plan, because you cannot have in it something where the tenant, not the landowner, has the rights. Typically, crofters will have the grazing rights on the common grazings on a crofting estate. As written, the proposal will significantly limit what can be in a land management plan.

That said, the provision could be rewritten so that it tied both parties—that is, owners and tenants. I think that that is true, whether we are talking about a crofting estate or about an estate tenanted under the agricultural holdings legislation. It is the same thing; a secure agricultural tenant in the Borders also shares rights with a landowner.

Rhoda Grant: Does anyone else have anything to add?

Donna Smith: I do not think so, but it is an interesting issue. I guess that it takes us back to the idea that crofting tenants must be involved in and consulted on land management plans as they are being drawn up, to ensure that we do not end up with a conflict. That is all that I would add to what Andrew Thin has said.

Gary Campbell: I would make the same point. I know that we are talking about part 2 of the bill, but the fact is that there is no mention of crofting in part 1, and, in part 2, crofting and crofts are mentioned in connection with the 1886 act. Again, it is all about how we bring crofting into this and—dare I say this without using the word "framework"?—all about leaving it to the various bodies that regulate these things to work out how best to do that.

Rhoda Grant: Moving on to my substantive question, I note that, although previous legislation has given crofting communities a right to buy, we have not really seen that right exercised. Crofting estates have changed hands, but seldom under the crofting community right to buy. I wonder why that is. Is it an issue with the legislation itself, and could the bill provide an answer to that?

Donna Smith: I see that Andrew Thin is looking at me.

Anecdotally, the feedback that I have had from members is that they find the crofting community right to buy legislation a bit daunting and complex, but I am afraid to say that I do not know enough about that to comment any further.

Andrew Thin: Right to buy legislation, whether it be about the community right to buy or the crofting community right to buy, is very difficult. A hostile bid under right to buy is very hard to do. The vast majority of community acquisitions have been on a willing-buyer, willing-seller basis and the same is true of crofting community acquisitions. They have been exercised not by right, but on that willing-buyer, willing-seller basis.

The main reason for seeing more of the community rather than the crofting community right to buy is that crofters already have security of tenure, so the motivation is perhaps not as great. Secondly, it is easier for a community as a whole to organise and assemble the energy, the skills and the capacity to put together an acquisition and then run the estate than it is for the crofters themselves to do it, because the crofters are only a proportion of that community.

Actually, I would not read too much into this. What matters is that where communities want—and have good reason—to acquire land, they are able to do so, and if they then want to put part or all of that land into crofting tenure, they are able to do that, too. We are already seeing communities creating crofting communities; indeed, we will be seeing it on Mull this week.

12:15

Gary Campbell: My only comment is that it will be down to the individuals concerned, which is exactly what Andrew Thin said. However, I just want to reinforce the fact that, in many respects, the community wishes to own an estate in order to be in charge of its own destiny and land. However, crofters already have that as tenants in law and have had it since 1886.

Rhoda Grant: So we do not need to use this act to change that in any way.

Gary Campbell: I do not think so, no.

Donna Smith: I would just add that there is an issue about people knowing that the estate is up for sale in the first place; hopefully, though, some of the changes that will come through the bill will ensure that that is the case. It has perhaps not always been the case in the past.

Rhoda Grant: But the crofting community right to buy does not need to wait for the estate to be up for sale, does it?

Donna Smith: No, I appreciate that.

Rhoda Grant: So, if the process were simplified, it might be more useful.

Donna Smith: Potentially. It is a complicated issue. As Andrew Thin and Gary Campbell have touched on, there is probably a feeling that, because crofters have that security, they are not under threat. That said, though, there can be frustration with landlords, particularly when they are absentee, and it is interesting to think about why, given such cases, crofters do not get together more often and try to do something about it.

Rhoda Grant: Would that not have been an option for the crofting communities on Berneray? It does not appear to have been used, but is that just because it is complex?

Andrew Thin: I actually think that the solution to Berneray is community ownership rather than crofting community ownership. You will be more tuned into your constituents than I am, but what I am not hearing in crofting counties is a clamour for more crofting community buyouts. I am hearing a lot of aspirations for community buyouts, so I think that that is probably where the priority needs to sit.

Undoubtedly, we could streamline these things a bit, but, as I said at the start, a hostile bid—that is, a bid where there is no willing seller—is a very difficult thing to do in law, even under the current legislation. Indeed, it is quite likely that any attempt to change that further will trigger a challenge under the European convention on human rights.

The Deputy Convener: Thank you very much for your attendance. Your evidence has been a very helpful contribution to the committee's evidence taking on the Land Reform (Scotland) Bill. It will help inform our thinking and our stage 1 report, which is due next year.

We now move into private session.

12:18

Meeting continued in private until 12:36.

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