OFFICIAL REPORT
AITHISG OIFIGEIL

Net Zero, Energy and Transport Committee

Tuesday 5 November 2024

Session 6

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NET ZERO, ENERGY AND TRANSPORT COMMITTEE
32nd 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)
*Jackie Dunbar (Aberdeen Donside) (SNP)
*Monica Lennon (Central Scotland) (Lab)
*Douglas Lumsden (North East Scotland) (Con)
*Mark Ruskell (Mid Scotland and Fife) (Green)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Dr Josh Doble (Community Land Scotland)
Linda Gillespie (Development Trusts Association Scotland)
Rhoda Grant (Highlands and Islands) (Lab)
Jon Hollingdale (Scottish Community Alliance)

CLERK TO THE COMMITTEE

Peter McGrath

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Net Zero, Energy and Transport Committee

Tuesday 5 November 2024

[The Convener opened the meeting at 09:18]

Decision on Taking Business in Private

The Convener (Edward Mountain): Good morning and welcome to the 32nd meeting in 2024 of the Net Zero, Energy and Transport Committee.

Our first item of business is a decision on taking business in private. Do members agree to take in private item 3, which is consideration of the evidence heard on the Land Reform (Scotland) Bill; item 4, which is consideration of the recommended candidates for appointment to the Scottish Land Commission; item 5, which is consideration of the committee's work programme; and item 6, which is consideration of the committee's pre-budget scrutiny letter?

Members *indicated agreement.*

Land Reform (Scotland) Bill: Stage 1

09:19

The Convener: Our second item of business is an evidence-taking session on the Land Reform (Scotland) Bill. Our focus is on part 1 of the bill, and we have been joined by a panel of community land stakeholders. I am pleased to welcome Dr Josh Doble, policy manager, Community Land Scotland; Jon Hollingdale, policy adviser, Scottish Community Alliance; and Linda Gillespie, head of community ownership, Development Trusts Association Scotland. I also welcome Rhoda Grant, who will be joining us remotely.

As people might have forgotten, I always like to make a declaration at the start of these sessions. It is the same declaration that I have made previously. I declare an interest in a farming partnership in Moray, as set out in my entry in the register of members' interests. Specifically, I declare an interest as the owner of approximately 500 acres of farmed land, of which 50 acres is woodland. I declare that I am a tenant of approximately 500 acres in Moray under a non-agricultural tenancy and that I have another farm tenancy under the Agricultural Holdings (Scotland) Act 1991. I also declare that I sometimes take on annual grass lets. All the details of my entry in the register of members' interests can be found online.

We have allocated about 90 minutes for this session. As convener, I get to ask a gentle warm-up question at the beginning. Is part 1 of the Land Reform (Scotland) Bill the right way to address any perceived problems?

Linda Gillespie (Development Trusts Association Scotland): I am glad that that is the warm-up question. [*Laughter*.]

At the moment, the scale of the bill's impact will potentially be more limited than it could be. DTAS is certainly looking for the threshold to be reduced from 3,000 hectares to 500 hectares. There could be other considerations about urban Scotland, because, as it stands, urban Scotland does not feature in the bill, although I do not know whether that is where the committee would like to take things. There are opportunities to change the definition of landholdings, which could result in a stronger impact on communities.

Dr Josh Doble (Community Land Scotland): I thank the committee for the invitation to give evidence. I will give some background information. I am the policy manager at Community Land Scotland, which is the representative body for Scotland's community landowners. There are now more than 500 community landowners around

Scotland, covering about 3 per cent of the total landholdings in Scotland. That includes very significant landholdings, such as entire estates, right down to particular assets, buildings or bits of green space in urban Scotland that are owned by communities.

In relation to part 1 of the bill, we welcome further land reform legislation, because Scotland still has some of the most concentrated land ownership patterns anywhere in the world. Since devolution, successive Scottish Governments have made pretty serious commitments to land reform, and it has been generally understood that such reform will diversify land ownership. We have concerns that, as it stands, part 1 does not include viable mechanisms for diversifying land ownership.

We agree with some of the points that Linda Gillespie made. I hope that we will get into the detail during the evidence session, but our view is that aspects of the bill could be amended to make it meaningful in starting to diversify ownership. As it stands, pretty serious work needs to be done.

A key point, which would be great to get into and is certainly in our written evidence, is that there is possibly too much focus on community sustainability as a basis for land reform, rather than on public interest concerns and the diversification of ownership more broadly. I could get into specific proposals, convener, but I do not know whether, in the interest of time, you want to save those for later down the line.

The Convener: Let us see whether they come out later down the line. My question was meant to be a short and easy starter to warm you up before I hand over to other committee members to ask questions.

Jon Hollingdale (Scottish Community Alliance): I thank the committee for the invitation, and I apologise that I cannot be with you in person today.

I am policy adviser for the Scottish Community Alliance, which is a coalition of 28 community-led networks and umbrella organisations that cover the whole of urban and rural Scotland and many sectors, from energy and food to housing and tourism. It has a collective membership of several thousand groups, which are interested in increased opportunities for ownership and access to land and in distribution issues relating to who benefits from land.

Broadly speaking, we were disappointed with part 1 of the bill. The 2022 consultation was pretty encouraging. It had a broad scope and a number of interesting proposals. We were therefore dismayed to see that most of that had been lost when the bill was introduced. It is a limited package of essentially performative measures that will not contribute significantly to land reform.

The Convener: Thank you, Jon. The next questions are from Monica Lennon. Over to you, Monica.

Monica Lennon (Central Scotland) (Lab): Thank you, convener, and good morning. We know that land and land use are Scotland's biggest emitters of greenhouse gases, so do the owners of large landholdings have a responsibility to promote net zero and climate change measures? Should there be obligations on the biggest emitters to reduce their emissions? I put that to all the witnesses, but I will come to Jon Hollingdale first.

Jon Hollingdale: Broadly, yes, but some of them will need some support to do that. It is not as simple as switching emissions on and off. Landowners of all types—public, private and community—are in a position to reduce their existing emissions and perhaps add sequestration. How we encourage and support that should be a focus of public policy.

Linda Gillespie: Yes, I agree with Jon on that.

Dr Doble: I agree with Jon, but would add that, first of all, just as a key point, we disagree with the framing of "large land holding" in the bill. We would prefer the term "significant landholding" to be used. The current framing indicates that size is an important mechanism for understanding concentration and scale in land ownership, but if we really want to dig into concentration, we need to think about the significance of landholding. The Scottish Land Commission has talked about that for a few years and we would like to get it on the record.

On Monica Lennon's point, we agree with Jon's point that there needs to be support to enable a reduction to happen. Net zero, climate change and biodiversity targets and improvements are essential parts of land management. Having those as criteria to underpin the guidance that would have an impact on things such as a transfer test or public interest test and land management plans makes absolute sense. That could be part of the reframing of those mechanisms as being tailored to meet public interest considerations. Net zero, climate change and biodiversity would absolutely be key public interest considerations, as we see them.

Monica Lennon: Thank you for that.

You made a point about language that could be in the bill. I take your point about the phrase "large land holdings". Do you want to expand on what you mean when you talk about "significant landholdings"? In the committee, we think about the meaning of words and their definitions.

Dr Doble: Yes, absolutely. My point builds on research that the Scottish Land Commission has done, which pointed out that large-scale landholdings might not operate in the public interest. They can create issues of localised power, but you also get issues of localised power with much smaller landholdings, such as strategic bits of land between two villages or sites in urban areas that might be causing blight or are vacant and derelict.

It is about getting back to the core point about what a land reform bill is for, which is the diversification of ownership and meaningfully changing land management practices. If we use the blunt instrument phrase "large scale", we miss significant problems of land ownership and land management. We need to reduce the size down to 500 hectares and 25 per cent of inhabited islands, and, as Linda Gillespie said, consider urban Scotland. Considering dynamic and proactive criteria, such as sites of community significance, starts to pick up on the point about significant landholdings. We just want to push the bill to think a bit more expansively about issues of land ownership and land management, and this is a key way of doing it. "Large scale" is too blunt an instrument, in our view.

Monica Lennon: Thank you for that.

To expand on my initial question that I put to all the witnesses, you might remember that, back in April, the Scottish Government announced a consultation on a new carbon tax on large estates to incentivise peatland restoration, tree planting and renewable energy generation. Do you have a view on that proposal? Do you agree or disagree that taxation is the best way to achieve decarbonising land use and agriculture? I do not know whether anyone has a strong view on that or wants to go first. I will go to Josh Doble, and then to Jon Hollingdale.

09:30

The Convener: The trouble is that if you all look away when you are asked who wants to go first, it falls to me to nominate somebody and I invariably pick the wrong person. However, Josh Doble has saved the day. Please do not all look away; raise your hand.

Dr Doble: We have a specific briefing on the proposal, which I can send to committee after the meeting. In a nutshell, we are supportive of exploring other regulatory measures for reforming land management, and taxation is certainly one of those measures. Other mechanisms for more effectively regulating land to achieve net zero could be really effective.

Obviously, we are thinking about our membership, who would be impacted by potential taxation such as has been proposed, but, broadly speaking, we are supportive of it. We need to look at the support mechanisms that Jon Hollingdale mentioned, and think about how to make sure that landowners of all types are enabled to make use of the grant mechanisms, particularly to carry out peatland restoration, in the context of such a tax.

It is a potentially good idea, and, if we are thinking about net zero, climate change and natural capital more broadly, we would certainly encourage having decent regulation and taxation that sit alongside grant mechanisms and talk of private finance and investment. We need to have a carrot-and-stick approach.

Jon Hollingdale: Similarly to Josh Doble, we were certainly supportive of the idea that tax is one of the levers that Government must use to direct land use, land ownership and so on.

We thought that the carbon tax proposal that was put forward needed quite a bit more work, and there were probably far too many exclusions and caveats in it for it to really contribute significantly, but we are certainly supportive of further work being done on that area.

Monica Lennon: I see that Linda Gillespie does not wish to comment. That is fine.

I will move on to land management plans. The plans are required to set out how the land is being managed in a way that contributes to achieving net zero, adapting to climate change and increasing or sustaining biodiversity. Is that adequate, or are there other criteria that it might be appropriate to include? Should those be addressed through primary or secondary legislation?

Josh Doble is again maintaining eye contact, so we will go to him.

Dr Doble: Jon Hollingdale was looking away. [*Laughter*.]

There should be other considerations that bring in the social, economic and cultural aspects as well. In our written evidence, we set out some of the policy objectives that could be used to frame regulations. Those should be in secondary legislation and guidance. A statement could be made that land management plans will be subject to public interest considerations that are set out in guidance, or something along those lines. That could include things such as achieving more diverse ownership of land; furthering sustainable development; advancing community wealth building; increasing community agency, which could be picked up through the community engagement obligations; meeting repopulation or resettlement criteria; and adequate supply of social housing. There is a whole host of additional considerations that could be in there. Interestingly,

some of those are kind of within the policy memorandum already, but they are not being necessarily framed or converted into the kind of public interest considerations that could end up in guidance.

Monica Lennon: I put my question to Jon Hollingdale.

Jon Hollingdale: Sorry—I was looking away, trying to find my notes of the list of things that could be included, which is very similar to that which Josh Doble has just provided.

This is one of the aspects on land management plans that we are very disappointed with. We are very supportive of the headline notion—the principle—of large landowners being required to prepare and consult on a land management plan, but the details on implementation in the bill are very vague, and the caveats are such that the requirement would apply only to very few landowners. In addition, there are very limited processes for reporting a breach, so there is probably no chance that anybody would ever get sanctioned for not having a land management plan and so on.

A great deal more meat needs to be in there behind the land management plan idea in order to make it worth while, in our view. Josh Doble has very ably provided a list of some of the criteria that we think ought to be considerations when drawing up a plan.

Monica Lennon: It is helpful to get that on the record.

I want to focus on biodiversity, for a moment. Does the panel have a view on whether sustaining biodiversity is a sufficient requirement, or should the bill require the land management plan to set out how the land is being used to increase biodiversity? Linda Gillespie is definitely looking away, so I am looking again at Josh Doble.

Dr Doble: Yes, we would be supportive of that. On the idea of sustaining biodiversity, some of the reasons—the rationale, as we understand it—behind things like land management plans are to reform poor land management practices. I do not necessarily need to name those. We are probably all aware of what they are. As Jon Hollingdale said, we have concerns about the bill’s mechanisms being strong enough and clear enough to address the issue; if the bill is about addressing poor land management, we might be dealing with significant landholdings that have very depleted biodiversity. The idea of just sustaining poor biodiversity seems like a missed opportunity, when we could be saying that it actually needs to be increased and improved.

Monica Lennon: I will press you a little further on that. Do you have a view on how specific the land management plan should be? I know that we do not want to give a long list of particular problems, but I am thinking about management in respect of deer or rhododendron, for example, which were mentioned in a debate in Parliament last week. Is that the kind of detail that you think would be required for the plans to be effective?

Dr Doble: Again, that is not needed in the bill, but could just be in a clear statement about public interest considerations and guidance. There could be quite extensive guidance that would work as a kind of framework. There could be a danger in creating a land management plan pro forma that is far too prescriptive. We have a lot of different types of landowners around Scotland and one size does not fit all.

We need a set of considerations that a landowner will have to show that they are engaging with, and the land and communities commissioner needs to be empowered to properly interrogate that and to feel that there are mechanisms within the bill to pick that up, if owners are missing things or a community or someone else is able to report a breach because they feel that something like a rhododendron issue is not being dealt with. The guidance should not be superprescriptive, but there should be headline principles and robust mechanisms in order that we can check whether land management plans are actually delivering what they are supposed to deliver.

Monica Lennon: I will stick with land management plans. Is there a risk that production of the plans will become quite a formulaic exercise with a big role for external consultants, such that we start to lose meaningful engagement with communities? Does anyone have a view on that or any advice to the committee, as we look at this part of the bill?

Jon Hollingdale: I am happy to speak on that.

First, perhaps I am being very naive, but I assume that most, if not all, large-scale landowners already have some sort of plan. They do not get up in the morning and do stuff on a whim: they have fairly worked-out plans that are probably more detailed than the bill expects. What they are being asked to do is consult on the plans and do them in a particular format. I assume that they already do a great deal of planning. If they do not, one might suggest that they are not very responsible landowners of thousands of hectares.

Secondly, it rather depends on the process, but it is possible to define processes that do not need to work in that way. I come from a woodlands forestry background in which we are very familiar with the long-term forest plan process. All existing woods and forests—we are not talking about woodland creation—of more than 100 hectares,

which is a pretty small threshold, need a long-term forest plan in order to be in receipt of forest management grants, so the plan is tied to subsidy and grant. That has a multistage process. There is an initial scoping to outline the main objectives, stakeholders are invited to comment, then a draft plan is written, which goes on the public register for 28 days for public comment.

Throughout the process, Scottish Forestry manages things. It asks questions and checks compliance with the United Kingdom forestry standard and so on. It brings up things like people having rhododendron in their forest and asks what they will do about that, rather than all that having to be set out in legislation. In practice, a lot of the work is done electronically these days, and it can be done by an in-house forester, although sometimes it is done by consultants. The process is well understood—it works not perfectly, but reasonably well, and it probably goes into much more detail than we are expecting in land management plans.

I think that it is perfectly possible to develop a process that works effectively for land managers and stakeholders. There will be some extra costs, and perhaps other bodies will need some support, but I do not think that we should exaggerate this as creating a complete festival for external consultants, unless the process is designed to make it that way.

Monica Lennon: Finally, and briefly, you mentioned support for others. I do not know whether by that you mean communities, but what is your view of capacity? I know that communities are all very different, but with whatever process is established, are you confident that communities will have enough time, resource and knowledge, or will extra support be required to ensure that capacity is meaningful?

Jon Hollingdale: That will depend, because some community landowners will have in-house staff and foresters and others might need support. I help to produce long-term forest plans for a couple of community woodland organisations, and I know that there is a small amount of grant available from Scottish Forestry through the Scottish rural development programme to enable communities and others to go through the process.

Monica Lennon: Thank you, Jon. I see Josh Doble signalling that he wants to respond.

Dr Doble: First of all, I want to back up and agree with what Jon Hollingdale has said. A significant number of landowners of all stripes are already producing such plans, so it will potentially just be a case of tailoring to the specific guidance that is set out.

Moreover—to build on Jon's comments—I would say that most, if not all, community landowners provide community engagement. There is local community democracy, and they produce land management plans. The degree of capacity varies, as Jon said, but such things are already being done. Things can be learned from the community land sector, particularly with regard to community engagement.

There is something else that I want to flag up and get on the record. If the thresholds for producing a land management plan through just the scale criteria are brought down to 500 hectares—as, I think, our three organisations have suggested—we would be talking about 2,025 or so landholdings having to produce land management plans. Most of them will already be producing some form of land management plan. That is opposed to around 420 landholdings at the 3,000 hectare mark. Therefore, we are talking about a big increase, but not a huge number of land management plans being produced.

Monica Lennon: Thank you. That was helpful.

The Convener: Before we leave this, can you verify where you got that figure for landholdings from?

Dr Doble: Yes. It is in the financial memorandum for the bill.

The Convener: I think that my maths is probably going to let me down here, but 2.471 times 500 hectares gives us roughly 1,600 acres. Are you confident that that will take in every single farmer in Scotland who farms 1,600 acres or more?

Dr Doble: That is what is in the financial memorandum. From a parliamentary question that was lodged by Ariane Burgess with, I think, information that was drawn from the 2021 agricultural census, 96.4 per cent of agricultural holdings in Scotland are less than 500 hectares.

The Convener: I think that that is individual businesses, is it not? Individual businesses might comprise more than one holding.

Dr Doble: That brings up the question of aggregate landholdings, which I guess we could talk about.

The Convener: We will come to that in due course. I am now going to hand over—

Monica Lennon: Just before you do so, convener, I want to go back to the point that Josh made a moment ago about thresholds. Is that something that you want to be amended at a later stage?

Dr Doble: Absolutely.

Monica Lennon: I just wanted to be clear about that.

The Convener: Before we come to Bob Doris's questions, I think that Mark Ruskell wanted to come in.

Mark Ruskell (Mid Scotland and Fife) (Green): On land management plans, I am interested in getting your views on what good consultation actually looks like. As Jon Hollingdale has pointed out, we already have forest strategies; there is also a forest licensing process that communities input to and there are local place plans.

09:45

Is there good practice when it comes to meaningful consultation in which communities feel that they are actually participating in decisions, instead of just being asked, "What do you think of this?"

Is there a risk that the bill will set up a tick-box exercise? How can we make the process appropriate, meaningful and participative, so that communities actually feel that their objectives are being met?

Linda Gillespie: I will answer first.

The Scottish Land Commission has community consultation guidance for landowners. Some landholdings will not necessarily have obvious communities around them, but where communities have an interest in, are close to, or live on the land, there are groups and mechanisms so that landowners can consult them.

Communities themselves consult through community councils and established community groups, and local authorities also have a view of where the active community groups are, so there are clear routes for landowners to consult communities, which need not be a tick-box exercise.

We must be mindful of the potential risk when the community actually lives on the land. Other responses to the committee have picked up on the fact that it can be challenging to consult people who live on the land. More broadly, there are established groups and individuals who have a clear interest in what happens with land.

Mark Ruskell: Do you mean that people are less likely to be open about their true feelings regarding land management?

Linda Gillespie: Yes.

Mark Ruskell: Josh Doble, do you want to come in?

Dr Doble: I agree with Linda Gillespie. We can look at the engagement that community landowners do, although that might be slightly different because they are locally democratically accountable and there is a feedback mechanism through their membership, through people joining the board or via annual general meetings.

Some of that can be more broadly replicated: there can be village hall or community centre meetings with genuine dialogue. We are seeing emerging practice of local management boards being set up voluntarily and community members sitting on the board for a particular landholding, especially when there is a more contentious land use change.

There is a danger that that might become a tick-box exercise with a report being produced by a land agent and brought to a village hall or community space to be signed off, so we would want more meaningful dialogue and communities having agency and being able to shape decisions. We do not want them to have a veto, but we want them to meaningfully shape decisions.

Mark Ruskell: How should good practice be codified? Should it be in the legislation or in guidance, or should we expect that to evolve?

Dr Doble: Good practice should be in guidance. If we are talking about community engagement obligations, there is a lack of clarity at the moment about what those obligations should look like and about the definition of "community". At some points in the bill, particularly where it deals with reporting breaches of land management plans and community obligations, the definition of "community" is specifically tied to community bodies that are eligible to use the community right to buy, but that is far too restrictive because those community organisations have to be set up in a very particular way and must already have had engagement with the Government to get a section 34 letter. That is incredibly prescriptive, so we might need a clear definition of "community" and some sense of what the community obligations will be. The meat of that should be in the guidance in order to keep the bill as straightforward as possible.

Mark Ruskell: Jon Hollingdale, do you want to come in?

Jon Hollingdale: I particularly echo that point. We are very clear that the opportunity to engage must be open and must go far wider than only to land-reform-compliant bodies.

As the bill is currently written, there is no real obligation for landowners to take any notice of comments or, as far as I can see, even to document those. It is impossible to create a situation where everything must be taken on board and delivered, but we need clear documentation, via some sort of issues log, that will show the points that have been made and create a degree of transparency about which comments have come from the community and from others. I

imagine that public agencies such as NatureScot would also comment on some aspects of plans.

There is probably also an important role for whoever manages the process in ensuring that landowners try to accommodate reasonable or productive comments by consultees. That is the role of Scottish Forestry in the long-term forest plan process: it not only approves the plan but ensures that, where possible, landowners take on board reasonable comments and suggestions. That should be in the guidance, but it is also a cultural thing for whichever body oversees the process, whether that is the Land Commission, the agriculture department or someone else.

Mark Ruskell: Linda Gillespie said at the start of the meeting that the bill focuses less on urban areas, which takes us to the issue of local place plans. I can imagine having a local land management plan for the estates surrounding a village and a local place plan for the village. That plan might or might not incorporate land that is owned by a local estate and it might be relevant for housing. Some of those issues were highlighted in the committee's trip to highland Perthshire. It feels as if that could start to get a bit messy and that we need some clarity about where democratic influence lies. Do you have any thoughts about how to bring those things together?

Linda Gillespie: I am aware of the committee's visit to Perthshire, where you will have clearly seen the influence of aggregated land on communities.

You are right that there is an opportunity to link local place plans to the consultation. That might be done through assets of community significance or at the point when communities engage on the basis of what is important to them. A consultation might be about land management plans, but a genuine consultation will also seek information about what is important to the community, which might be house plots, community facilities or something else. That should create an opportunity for collaboration and for partnership working, so getting those mechanisms right would be extremely useful for communities. The mechanisms are not in the bill at the moment, but linking all that could give the bill a far more powerful impact.

Mark Ruskell: I am aware of a discussion at the moment in Aberfeldy about woodland crofts. Would that be part of the forestry plan with Forestry and Land Scotland, or does it belong in the local place plan, the land management plan or all three? There is a question in my head about how to make sense of that.

Josh Doble, do you want to come in?

Dr Doble: That is a valid concern and goes back to a point that I made at the start about the onus for land reform falling on communities. We do not want to create a number of different statutory mechanisms for communities to proactively engage with, because that will burn out their capacity.

You raised an important point about local place plans. There are two potential ways to link them quite effectively to the bill. The first is that, as with community engagement obligations, a landowner's land management plan could have to "pay attention" to—however that might be phrased—any local place plans that are already in place. That could be set out in guidance.

The other way would be connected to the criteria with which land management plans and transfer tests or lotting decisions are made. The idea of sites being of community significance is one aspect of local place planning, so if a local place plan exists and a community has proactively identified sites that are of significance in that area, the Land Commission could take a decision based on guidance about whether the land reform mechanisms within the bill should apply to those particular sites.

Mark Ruskell: Jon Hollingdale, do you want to come in?

Jon Hollingdale: I have nothing to add to what the others have said and with which I entirely agree.

Mark Ruskell: Thank you.

The Convener: This is going to get messy, because the next questions will come from you, Bob Doris. Please stick to the questions about threshold, because the deputy convener wants to come in and I am keen to come in, too, but you are getting the first crack at this.

Bob Doris (Glasgow Maryhill and Springburn) (SNP): Of course, convener. I have a line of questioning that I would like to explore. I am sure that you will let me do so, following that session of supplementary questions.

The Convener: Yes, please.

Bob Doris: I want to return to the scale of land management plans and the threshold that is involved. Mr Ruskell's exchange on that was helpful in pointing out that it is not always a matter of scale but about public interest and other overlapping policy considerations.

The threshold is currently set at 3,000 hectares, but, for many people, that will be just a number. For example, Glasgow's botanic gardens and their lands are in my constituency, and those would fit 150 times into 3,000 hectares, which perhaps brings home the fact that the threshold is way too

high and should be reconsidered. Evidence to the committee has suggested that the threshold could be set at 500 or 1,000 hectares. However, we must also consider whether additional burdens might be placed on what could be small businesses if we were to place such obligations on them. I get the fact that responsibilities come with owning significant holdings such as 500 or 1,000 hectares. How do we get the balance right between potentially imposing such burdens on small businesses and their taking on the responsibilities that we would like to see happen? Perhaps Jon Hollingdale would come in first on that.

Jon Hollingdale: Yes. I will make two points. First, as you said, those are just numbers. We can never find the right number. I do not think that we could find one small enough to capture everything that we want to capture, which is why we on this side all agree on the idea of sites of community significance that do not have such a threshold. It will never be small enough to capture the botanic gardens, for instance. We think that there should be different or additional ways of flagging up important areas.

Secondly, as I mentioned in the context of long-term forest plans, there is financial support to help businesses in the delivery of such obligations. If there are concerns about additional costs being placed on certain businesses, that has usually been a pretty good basis for giving public support to help them through it. However, as I stressed earlier, there is not likely to be a huge extra cost over and above what people would assume businesses normally spend on land management and business planning.

Bob Doris: That is helpful. Before I come to Dr Doble, I might layer my second question on top of that, because the convener is conscious of time constraints.

I think that Dr Doble said that 2,025 landowners would come into the gamut if the threshold were to be 500 hectares as opposed to 420 landowners if the threshold is 3,000 hectares. That would be an additional 1,545 landowners. However, he also anticipated that many of those would have land management plans of a sort anyway. Indeed, he would expect them to do so as responsible landowners. Dr Doble, will you answer the same question that I put to Jon Hollingdale? Also, if, for instance, the owner of 1,000 hectares of land did not have a land management plan, would that be a risk factor? Would that concern you in the first place?

Dr Doble: In answer to your first question, Jon Hollingdale has covered the point that support mechanisms might need to be in place. However, as we outlined earlier, it is likely that some form of land management plan will already have been produced. We consider 500 hectares to be a significant amount of land to which a land management plan should apply.

As for a holding of 1,000 hectares that does not produce some form of land management plan, I would not be concerned about that off the bat. It would depend on the specific circumstances, but I would certainly question why there was no such plan in place and what the nature of the landholding was if no plan was in place.

Also, I should be clear that we are not suggesting that the business plan for that 1,000 hectares should be published in full. There is no expectation that a landowner, who is likely also to be a business owner, has to achieve complete transparency in their business planning. This is about the owner looking at a business or forestry plan, or whichever plans they have already, examining the public interest considerations in the guidance on the bill, and then considering how those map across and whether they could do anything else differently, in particular on community engagement obligations.

10:00

I know that we are talking about land management plans, but there is a really strong argument for aligning the thresholds for the two mechanisms in the bill—the idea of a lotting process or transfer test, and land management plans. That is for policy coherence and proportionality and predictability, but also because, as the bill stands, there is a degree of disparity. A landowner with between 1,000 and 3,000 hectares does not have to produce a land management plan, yet they might be subject to a transfer test. If a landowner has more than 3,000 hectares, they will produce a land management plan, have community engagement obligations and engage with the public interest considerations, so they will be far better placed to engage with a transfer test. If we align those thresholds, we will get a much greater sense of coherence and we will not have any of that disparity between landholders.

Bob Doris: I am pretty sure that we will return to that later in the evidence session. Linda Gillespie, do you have any reflections on the two questions that I have asked?

Linda Gillespie: I have nothing to add to what Josh Doble and Jon Hollingdale have said.

Bob Doris: Okay. We are talking about a threshold of 3,000 hectares, but I am conscious that we are limiting the proposals to a single composite and contiguous holding. We are not looking at aggregated corporate holdings. Linda Gillespie, I give you an opportunity to comment on the idea of ensuring that we incorporate

aggregated holdings as well as single holdings. Do you have any views on that?

Linda Gillespie: It is important to consider that. The committee has been to Perthshire and seen the impact that aggregated landholdings can have on communities. There would probably be bodies that you would wish to exempt from that—for example, public sector bodies and the Church of Scotland, given the nature of its aggregate holdings of small glebes. However, I am in agreement with aggregated holdings being included.

Bob Doris: With caveats.

Linda Gillespie: Yes.

Bob Doris: That is helpful. I saw Josh Doble nodding as you made that comment. Do you want to add anything, Dr Doble?

Dr Doble: Yes. We think that the removal of "contiguous" under proposed new sections 44D and 67H of the Land Reform (Scotland) Act 2016 is vital. The example that we have used, which you might have seen, is Gresham House Ltd partnerships. The funds that Gresham House manages make it the third biggest private landowner in Scotland. We have to be careful in the phrasing of that. I know that it was at the committee earlier in the year and spoke on that topic. Gresham House would not be picked up by the provision because of the nature of those holdings. None of its landholdings are more than 3,000 hectares, yet it owns more than 53,000 hectares in total. There has to be some means of picking that up.

On the topic of Gresham House, I know that, when it gave evidence earlier in the year, it said that it would provide information on the number of jobs—in response to a question from Monica Lennon, I think. I do not know whether it has produced that yet, but we would certainly be interested to see it, because we are not clear about the contribution that it makes in terms of jobs.

On how aggregate holdings could work, as Linda Gillespie says, we need clarification on some points. An example is public utility organisations. There are existing mechanisms in the bill. I can send you the detail of this so that we do not get bogged down in it now, but there is a provision at proposed new section 44B(2) of the 2016 act that the committee needs to look at because it opens a potential loophole for parts of a landholding that would not need to have a land management plan applied.

As Jon Hollingdale pointed out, it would be a job for the land and communities commissioner to look at whether holdings are all in a particular area and, therefore, a land management plan could cover all the aggregated holdings or whether a land management plan needs to apply to each one. There is a need for proportionality, but, coming back to the foundational point of diversifying ownership, we would miss an opportunity if we did not pick up corporate landowners who have many holdings of a smaller size.

Bob Doris: I am sure that we will return to that. You mentioned proportionality. We will perhaps return to ensuring that the framework for alleged breaches in enforcement compliance is proportionate. There is a limited framework in that regard. In the bill, the maximum fine for non-compliance is £5,000, and it refers to, but is not explicit about, the potential cross-compliance issues. Are you content that £5,000 is enough? I imagine that it will cost a lot more than £5,000 to produce a land management plan in the first place. Have we got that framework right? Jon Hollingdale, will you comment on that?

Jon Hollingdale: We are not particularly convinced that £5,000 is a sufficient stick to convince all large landowners to produce plans. We would much prefer it if the bill could, if possible, contain the potential for cross-compliance penalties, because, for most large landowners, that will mean a much more significant amount of money. It could also be repeated year on year, instead of its being a one-off fine.

The related issue, of course, is that, as far as most landowners are concerned, there is probably a vanishingly small chance that a breach will be reported in the first place. As it stands, breaches can be reported only by land reform act-compliant community bodies and a number of public agencies for whom I suspect—and I am putting this politely—it will not be a priority. Therefore, I think that, in most cases, we will not even get to the point of a breach being reported and a sanction applied. As a result, we would like there to be a much wider process for reporting breaches and a cross-compliance mechanism to ensure that landowners meet their obligations.

Bob Doris: That was very helpful, and what you have said will please the convener, as it links with my next question. That is good for keeping us timeous.

The Convener: We do need to get back to the original questions on criteria and thresholds. I will let you ask this question, Bob, and then I will bring in the deputy convener.

Bob Doris: I apologise, convener. I was just running through the line of questioning that we had agreed.

Clearly, the list of those who can report breaches is, as Jon Hollingdale has said, relatively

narrow. In that case, can we look in the round at whether the current compliance framework is adequate? Perhaps either Linda Gillespie or Josh Doble will comment on that and, indeed, on whether they agree with Jon Hollingdale's comment that the list of those who can report non-compliance is too restrictive and narrow.

Linda Gillespie: We would absolutely agree, being an act-compliant community body. The fact is that communities do not set up such bodies—or have them set up—just to report breaches or to express an interest in land, so we would certainly want a much broader definition of who could report such things that could include community organisations or, indeed, individuals. All three of us have discussed the Office of the Scottish Charity Regulator's role in looking at breaches for communities with regard to charities and so on, so there are mechanisms for dealing with these things.

That was not particularly clear. Our point is that we would want a much more open basis for reporting breaches.

Bob Doris: Is the £5,000 figure about right, or is it too limited?

Linda Gillespie: I agree with Josh Doble—it is not clear that that would be a significant deterrent. Actually, I am not sure whether it was Josh or Jon who said that.

Bob Doris: My understanding is that if the proposed land and communities commissioner became aware of or suspected potential breaches—however they became aware of them—they would not under the bill have the power to kick-start their own investigation. Is that a weakness in relation to the system?

Dr Doble: Yes, we think that that will be a weakness. The new commissioner needs to have an ability to investigate breaches on their own terms.

That can be supported with reference to your point about compliance. We think that there could be some light-touch monitoring to ensure implementation, but it would indeed be light touch, as I have said, and would involve conversations with landowners about why aspects of their land management plans might not have been met, with an understanding that there would be due process and a sense of proportionality.

That sense of proportionality is really important with regard to the breaches that you have mentioned, because £5,000 as a blanket fine is just not proportionate. It could be a significant amount of money to some landowners and completely inconsequential to others, so there could be a system of fines that, following other examples in regulation, might link to, say, percentage turnover of the holding company, percentage value of the landholding or whatever it might be. There are more dynamic mechanisms for picking up that sort of thing.

I just want to make a point that I did not make earlier with regard to composite and aggregate holdings. It would be really good if the committee could look at the definition of "composite" in respect of composite holdings, as it seems to be linked to the controlling interest in land register rather than a UK-level register such as Companies House. There is a significant loophole in the bill that applies to the issue of transfer, but which is relevant here, too: if the sale of shares or the sale of companies in terms of composite landholdings is not picked up, we could see shares or companies being sold to get around any mechanism that tries to pick up a land transfer. Therefore, we would really welcome it if the committee could speak to the Scottish Government about how it has defined the term "composite" in the bill.

Bob Doris: I think that my colleagues will return to that imminently.

The bill is apparently silent on whether those who report breaches will be granted anonymity within the process. Is there a risk that groups or organisations that have to work daily or routinely with large landowners might be deterred from reporting breaches or raising concerns if anonymity is not secured? Do you have any thoughts on that?

Linda Gillespie: That almost certainly would be the case, particularly for people who have a relationship with the landowner or live on the land, who are less likely to report breaches. So, yes, I absolutely agree with that.

Bob Doris: You were nodding your head, Dr Doble, but the *Official Report* will not capture a nodding of the head—sorry.

Dr Doble: Yes, I absolutely agree that there is such a risk. We have already seen that issue with some of the functions of the tenant farming commissioner, in terms of reporting breaches under that mechanism.

The Convener: I am just pondering whether anonymity would open the gate for anyone to make a vexatious claim without having to put their name to it. There are always checks and balances.

The deputy convener wants to come in with questions.

Michael Matheson (Falkirk West) (SNP): Good morning, and thank you for your evidence so far. I want to go back to the point about the 3,000 hectare threshold that is set out in the bill. Beyond what is stated in the policy memorandum, why do

you think that the 3,000-hectare figure has been selected and not the 500-hectare figure that you have suggested?

Dr Doble: That is a good question. As Jon Hollingdale set out in his statement on the bill, there is a sense of a lack of ambition. There is maybe a balancing act, with the Scottish Government trying to strike a balance between sticking to manifesto commitments and claiming to meet land reform commitments, but not wanting to concern investors or significant landowners. Maybe the figure is a middle ground that has been landed on because it is within the broad criteria that the Scottish Land Commission set out, although I think that the commission arrived at 1,000 hectares as a more appropriate criterion.

Obviously, there would be implications for the monitoring and production of land management plans if the figure was 500 hectares rather than 3,000 hectares, but we do not see that as a particular barrier. We have done calculations on the likely cost implications, which we can send to the committee. There is a sense that the Government is trying to find a middle ground rather than arrive at a mechanism that will be most effective for achieving the ultimate aim of land reform, which is diversification of ownership. That is our sense of the reason, but it would be helpful to get a sense from the Government of why it has done that.

Jon Hollingdale: With a number of things in the bill, it is difficult to understand why they are the way that they are. In this case, as Josh Doble said, one hypothesis is that there is clearly a need to deliver a land reform bill but, on the other hand, a concern that any effective regulatory framework around land ownership might discourage natural capital investors. Everything has been very soft-pedalled compared with what we want, but also compared with the Scottish Land Commission recommendations. As Josh said, the commission seemed to settle on 1,000 hectares as a useful middle point.

Convener, can I quickly go back to the point that you made about the potential for vexatious complaints? We accept that that potential is always there, but there is a lot to be learned from how OSCR deals with and regulates Scotland's 25,000 charities. It has a pretty robust process for that, which I think most stakeholders feel is fairly effective, and it is also fairly effective at weeding out and managing the vexatious complaints that it receives. I do not think that that issue is a deal-breaker; it is about having an effective process to manage it.

The Convener: I am sorry, but I am looking at the deputy convener, and I am not going to answer that comment. I have made my point.

Deputy convener, do you have anything more to ask?

Michael Matheson: Yes, I have just a couple of things.

The Land Commission recommended a figure of 1,000 hectares. Do you think that the Land Commission got it right?

Dr Doble: That is a very good, direct question. The Land Commission does a lot of excellent research. As an arm's-length Government body, however, it is perhaps not able to push mechanisms as far as organisations such as ours can. Nevertheless, to return to the foundational point, which is about diversifying ownership and actually achieving some form of land reform, the threshold should be as low as possible for all mechanisms so that we can try to bring in the number of landholdings and land transactions in order to bring about meaningful change.

10:15

Michael Matheson: So you think that the Land Commission got it wrong.

Dr Doble: I did not say that.

Michael Matheson: I am not going to put words into your mouth.

The Convener: You just did. [*Laughter.*]

Michael Matheson: However, I am taking that as a "wrong".

I turn to Jon Hollingdale. In your evidence on consultation on land management plans and engagement, you raised concerns about the lack of a definition of "community" in the bill. Will you expand on what you mean by that? Do you have a definition that you believe should be in the legislation? If so, should it be in the text of the bill or in the regulatory provisions?

Jon Hollingdale: I have a number of points to make on that. First, we are very concerned that the provisions in respect of consultation might use the same definition of "community" that appears elsewhere in the bill, which is very restrictive and refers to bodies that are compliant with section 34 of the Land Reform (Scotland) Act 2003. We feel that that should not be the case and that the definition needs to be wider, because there are a very limited number of such bodies across Scotland.

Secondly, the definition should not be confined purely to those who live directly on the land in question. There are also those who live around it. We would be comfortable if the bill referred to those local stakeholders who have a demonstrable interest in the land. That would cover individuals and groups who live near or adjacent to the land

as well as those who live on it. It would cover a wide range of groups as well as, potentially, individuals. If that definition is in the bill, more detail on how it is to be interpreted could be in guidance, because there will be different circumstances and it is difficult to define a one-size-fits-all model in primary legislation.

We were clear about how we did not want the definition to be restrictive, rather than setting out absolutely what model should be used, because of the impossibility of having a one-size-fits-all approach.

The Convener: Can I quiz you on that so that I understand it? In the legislation, "community body" is defined with regard to the leasing of land. Are you saying that you also want "community" to be defined in respect of consultation, and that you do not feel that it is sufficiently defined at present? Is that what you are saying?

Jon Hollingdale: No. We are concerned that the definition of "community" means that the only eligible community bodies will be those that are compliant with the 2003 act, which represents an unnecessary restriction in the process. A much wider range of community bodies and individuals should be able to be involved in a number of processes through the bill, including consultation on land management plans.

The Convener: So you want that section of the bill to be rewritten and a definition of "community" put in. When it comes to setting out a plan, it might be very difficult in parts of Scotland where the nearest community is miles from the bit of land in question.

Jon Hollingdale: That is possibly true, and that is why taking a one-size-fits-all approach is very difficult, but the vast majority of Scotland is covered by active community councils. I am not sure what the percentage is, but most areas have an active community council at the very least, so that is one potential body.

The Convener: I am smiling only because I know of a huge number of community councils across the Highlands that do not have enough members to be actually working, and have gone into abeyance.

Back to you, Michael.

Michael Matheson: As a word of caution, I note that I would not use community councils as the marker here because, even in urban areas, many of them do not function due to a lack of members.

Jon Hollingdale: Sorry—I was just saying that that was one option.

Michael Matheson: I was just taking on board your point about the lack of a definition of "community" and testing whether you have a clear understanding of what you think should be applied in defining that against what is proposed in the bill. I take it from what you said that you think that it should not be in the bill, but should be addressed in guidance. That could be more principle based, rather than being overly prescriptive, to help to define what a community is. Is that a fair reflection of what you are saying?

Jon Hollingdale: Yes. A great many well-established community bodies—I am thinking of the memberships of DTAS and CLS and the networks of the Scottish Community Alliance—do not meet that specific land reform criterion, including many groups that have used the asset transfer processes and are already community landowners.

The Convener: Thank you, Michael.

Mark, will you ask your first set of questions? I will then come in with a question before you move on to your second set.

Mark Ruskell: We have covered thresholds in some depth, convener, so I was going to move on from that.

The Convener: I am keen to ask a question on thresholds before you move on.

Mark Ruskell: Can I just wrap up on the criteria?

The Convener: Yes, of course.

Mark Ruskell: We have discussed sites of community significance. When Josh Doble mentioned that, I could not help thinking about the Taymouth castle estate. It is relatively small, but there is a huge amount of community interest in the assets, and other such examples have been mentioned in evidence. Is there a way in which we can define such things in the bill? It feels as though it is open to a lot of interpretation, but a way forward could be to say, "This is a hugely significant asset to the community, so aspects of the bill should apply". I am tempted to go along that line, but I am interested in how we would define it. As with the definition of "community", we could get into a bit of a grey area.

Dr Doble: Yes. There is always a tension around definitions, and there is a danger of straitjacketing things. We will probably come on to that if we talk about public interest. As Jon Hollingdale said on the issue of focusing on "community" as meaning a community with a section 34 letter, if we make a definition too restrictive, it is an issue.

The point of having discretionary criteria for places such as "sites of community significance" is that we have a clear phrase in the bill that is explained in guidance. We can then, potentially, link up with existing mechanisms, as we spoke

about earlier in relation to local place plans, which have a similar mechanism. Communities would be able to go through a process of lodging that somewhere is a site of community significance to them, and the land and communities commissioner would look at that using the same guidance, with public interest considerations, and decide whether to put an official label on that designation so that the land reform mechanisms will apply. Although it seems a nebulous and loose term, like public interest, it has an existing legal or statutory precedent.

The key point is to get the discretionary criteria into the bill, and then to have guidance that is drawn up by the commission. Scotland's Rural College has already done research, which I believe was commissioned by the Scottish Government, to look at how that could work, and the commission mentioned it a lot in its evidence. We are at an active point in thinking about how it could work, but we and other bodies have done a lot of thinking about it over the past two years. To us, it is pretty clear, and we hope that it is clear in the evidence. We can provide further written evidence on the matter if that would be helpful.

Mark Ruskell: So that is reflected in planning legislation.

Dr Doble: A version of it is. The committee, the Government and other stakeholders could decide whether that is an appropriate way to go, but there is an example in local place plans.

Linda Gillespie: To strengthen that point, I note that the piece of work by the SRUC that Josh Doble mentioned talks about communities engaging proactively in the process. It could provide a mechanism that will move communities on to the front foot, and it would be welcome across all the legislative areas—the Community Empowerment (Scotland) Act 2015 as well as land reform. It could be a very helpful addition.

Mark Ruskell: Okay. The committee has another question in relation to the minimum threshold for prohibiting and notifying land transfers—

The Convener: I would like to go back to the matter of thresholds, if I may. I have been waiting very patiently, as convener—

Mark Ruskell: I ask the panel to hold that thought. We will come back to it.

The Convener: Hold that thought. You will get Mark Ruskell's question on it in a minute.

I go back to the point about thresholds and community consultation. I accept the point that Josh Doble made about the fact that, if someone has a relatively large estate, they are probably already drawing up plans. During our visits, the committee saw some very useful plans that were drawn up by Buccleuch estates and Atholl Estates, which have put those out to the community. In some other places that we visited, we did not see any plans. We have had a lot of talk about plans that are being developed.

Dropping the threshold to 500 hectares has been mentioned. With regard to small farmers, I think about all the things that I have to do, such as carbon budgets, soil testing maps, herd health plans, Scottish Quality Crops plans, Quality Meat Scotland plans for the livestock and all the other issues that I have to address in order to get my single farm payment or basic support payments—there are quite a lot of plans. You are suggesting that those people put their plans to the local community.

I have watched Forestry and Land Scotland carry out community consultations on forest plans. I am worried about the level of consultation that you think that small farmers and small landowners should do and how much that is going to cost them. You might like to see that. What level of consultation will be required? How many meetings will people have to hold? Who will they have to publicise the plans to? What will be the costs to individuals of drawing up the plans?

Dr Doble: The headline point is that "small farms" and "smaller farms" are subjective terms. I note the point that was made earlier about the answer to the parliamentary question that referred to 96.4 per cent of farms being less than 500 hectares. I take your point about ownership, which is why we probably need to talk about aggregation. It seems proportionate that a farmer who has a number of landholdings in an area that take them over the threshold of 500 hectares—or significantly over if they are aggregated—should engage with the community.

The point about proportionality is very fair. That needs to be dealt with accurately and it should be set out in guidance that the measures need to be proportionate. If someone has a single landholding that is just over the threshold and they are already producing a number of plans on a number of different topics, parts of those can be used in a land management plan.

With regard to the community engagement that is associated with the bill, small farmers are likely to also be members of the community, which is why it is important, as you mentioned, that they have means of ensuring that there are not vexatious claims, for example in cases of personality differences or similar issues.

Proportionality needs to be addressed, and it could be written into guidance quite simply. It is a fair point, but the terms "family farm" or "small farm" are very subjective, and we need to look at

the actual numbers, particularly with aggregation, because they change the level of proportionality.

The Convener: I think that you referred to land agents at some stage. I was a land agent at one point and I know that engaging with the local community—writing to it and meeting it—involved hours of work. I am sure that the pittance that I was paid when I was a land agent has gone up. The rate for a professional land agent is now probably not far off £250 an hour, so drawing up a plan could mean costs of £3,000 or £4,000 to carry out a community engagement exercise. Is that a reasonable cost for small family farms given that, in some years, it will be more than the profit that they make from agricultural operations?

10:30

Dr Doble: I note what I said earlier about use of the terms "family farm" and "small farm". That is why proportionality is so important. I do not think that anyone wants a land reform bill that is about diversifying ownership and encouraging positive land management to hit farmers who are producing food and are living in and with their communities.

You mentioned land agents. The purpose of measures such as substantial staggered penalties in relation to land management plans is to pick up poor land management on significant landholdings. It is not about targeting small farms. Guidance can be drawn up with the Scottish Land Commission to ensure that we do not create excessive issues for farmers who are over the 500-hectare threshold, which will be a small number, unless we start talking about aggregation.

The Convener: You have just mentioned the one thing that always terrifies me, as a parliamentarian. You have said that, instead of dealing with the issue in primary legislation, we should just come up with some figures and then some guidance afterwards. As a parliamentarian, I am meant to pass legislation that I understand, but I cannot understand stuff that is not in the bill. That means that I have to leave it to someone else to do that at a later date—and that person might not be as reasonable as you are, Josh.

Dr Doble: There is always a danger of that, but we can look to the clear precedent of the Scottish outdoor access code, which—although there might be disagreement on this—is seen as being an excellent example of how the process works. A statement was made in the Land Reform (Scotland) Act 2003 about access to land, and it was followed by significant guidance, which has worked pretty well for the past 21 years. Therefore, we know how to do that sort of thing.

The bill is already very complicated. We need it to be simplified and strengthened through the process of amendment; we do not want further words and complications to be added. So, there is guidance; we also have the Scottish Land Commission, which is fantastic, and we should lean on its expertise and research to help shape guidance in relation to which there is accountability.

The Convener: We could discuss at length the Scottish outdoor access code, which, given that it has been in force for 20 years without ever having been reviewed or reconsidered, is a subject that is close to my heart. However, we will not do so. Instead, we will move on to Mark Ruskell's next question.

Mark Ruskell: I come back to the fact that there is no minimum threshold for prohibiting land transfers or requiring notification to be provided of an intention to sell. The whole landholding needs to be above the wider threshold, but there is no minimum size for a transfer that falls within the prohibition and notification requirements. Do you support that? Do you think that there could be any unintended consequences?

We took some evidence from Atholl Estates, which talked about the very small transfers of land alongside footpaths or the backs of gardens that it might be involved in. It said that, as a larger estate, if it came under some of the proposed requirements as a result of there being no minimum threshold for the transfer of such very small assets, that would be problematic for the community as well as for it. Do you support the fact that there is no minimum threshold?

Jon Hollingdale: [*Inaudible*.]

The Convener: I think that this is one of those situations in which broadcasting is pressing one button to allow Jon to speak and Jon is pressing another one to allow himself to speak, and it is cancelling the permission that broadcasting has given him to speak. Can you hear us, Jon?

Jon Hollingdale: Yes—sorry. I am sorry, Mark.

We expect that there would, in effect, be sets of transfers that might be excluded from what is proposed, but I do not think that we can necessarily define that simply by setting an area. The issue is to do with the context of any proposed transfer.

It might be useful to look at the issue of prior notification. A while ago—back in May, I think—the committee received a hypothetical case study in correspondence from the cabinet secretary, which set up a scenario in which a 1,500-hectare estate was being sold for the first time in many generations. The estate included a number of holiday cottages, with a village adjacent. There was a need for affordable housing, and a body had been working on the proposal for years.

Under the status quo, the estate could be sold completely off market, with no notification to the community, while under the bill, the landowner would have to notify ministers, who would inform the community—and, of course, everything would proceed swimmingly.

The reality is that that sort of thing works only if everything is perfectly aligned. If the estate were under 1,000 hectares, the community would not be notified. The sale would get to progress, even if there were an existing community body.

That demonstrates that it is essential to include sites of local significance, which can be very small. It also demonstrates why we need much wider eligibility, at least for the initial stages—that is, before prior notification, which goes to a much wider set of bodies than just the existing land reform-compliant bodies. In this case, the bit that the community is interested in is only 1 hectare, so the threshold would have to be very small. Whatever number you set, such an area would almost certainly be excluded.

Moving to a system with sites of local significance, with the community pre-notified, would make it easier to say whether smaller sites and sales from large landowners could be judged as being outwith the scope of the bill. I would be loth to have a threshold based on a particular number. The system would work much better if there were a mechanism for sites of local significance to ensure that the things that really mattered to communities were captured. It would give larger landowners more certainty that they could just do excambions—that is, transferring a piece of land to a tenant to build a house, or whatever it might be.

Mark Ruskell: That is a good example of significance—that is, if there were housing need in a community, and 1 hectare of land was available to be turned from temporary accommodation to permanent housing.

One issue that was raised with us was whether moving a fence by a couple of metres, say, would be captured by the bill. Might that be deemed to be not significant to the community? Could such cases, under the definition, be left out of the provisions?

Jon Hollingdale: I think that that is right. There ought to be examples. We cannot define every circumstance absolutely, but I think it quite reasonable for that sort of thing to be excluded from the bill. Whether they are included in the bill itself or whether they form part of the guidance given to the land and communities commissioner or whoever is administering things, the fact is that de minimis transfers of that sort are not what the bill is about. Indeed, I do not think that any of us think that they are what the bill is about.

The Convener: We will go to Douglas Lumsden for questions next, but I notice that our timings are going to be under pressure, so I must ask everyone to give succinct answers, where possible.

Douglas Lumsden (North East Scotland) (Con): Still on the topic of the community right to buy process, I have a question that follows on from Mark Ruskell's question. Are the pre-notification and registration provisions unnecessarily complex and difficult to navigate? Are they likely to act as a deterrent to communities?

I invite Linda Gillespie to kick off on that.

Linda Gillespie: It is not so much that they will act as a deterrent. The fact is that landholdings might not have changed hands for generations, so communities will not necessarily have set up bodies, just in case land became available or they had to object to a land management plan. If we encouraged them in that respect, and if a community organisation had not already been established, we would be asking them to artificially sustain a structure on the off-chance that something might happen.

That sort of thing just does not happen; in our experience, communities are not generally all that proactive. They tend to react to the sale of an asset or to a disposal. The provisions are a deterrent, in that having such a narrow requirement would not be effective.

Douglas Lumsden: That ties in with my next question, which is about the tight timescales. Are the timescales enough—

Linda Gillespie: Absolutely not.

Douglas Lumsden: I think that they would be okay for an established community group, but are they enough for one that needs to get going?

Linda Gillespie: Frankly, even for an established community transfer body, the timescales are far too tight if the land is just coming onto the market and you have 40 days to decide whether you will go forward with securing it. Is it 30 or 40 days again?

Douglas Lumsden: It is 40 and then 30 days.

Linda Gillespie: If you are not an established group, you will not stand a chance.

The Scottish land fund is open at that early stage to a whole range of community bodies, so there is very much a case to be made for having a more open definition of a community body to pursue a transfer at that stage. That might not be the structure—indeed, it is likely that it will not be the structure at the point of purchase—but there is a case for a much wider definition to get into the process.

Douglas Lumsden: If the timescale of 40 plus another 30 days is too tight, I have to ask what you think the timescale should be or whether there is a different way of doing this altogether.

Linda Gillespie: It comes back to the point about having a broader definition of the community that can pursue the right to buy at the expression of interest stage. A three-month period would be reasonable for consulting on whether you were going to take the process forward and whether it met the needs of your community, before you got into the community right to buy process.

Josh, do you want to add anything?

Dr Doble: Sure. Building on what Linda Gillespie has said, we really welcome the transparency mechanism in the prior notification—that is, the fact that land transfers will have to be on an open register. After all, between 2020 and 2021, 61 per cent of land sales were off market, and we want to see that figure severely reduced. Therefore, the measure is very welcome.

We share Linda Gillespie's concerns about the community right to buy process. There are ways of streamlining it, either through the bill or in something adjacent to it, to make the prior notification mechanisms much more effective.

There is also the timescale issue. Ministers could, for example, be obliged to provide standard submissions for community bodies to assist compliance and speed up the process. A section 34 letter, say, could have to be produced for a community body within a working week, instead of its taking the two months that it can take at the moment. There are a number of points to highlight about streamlining the existing community right to buy process to make that function much more straightforward, but we can send you further evidence on that.

There is a need for clarity on the register that has been talked about, or the prior notification list, with regard to who holds and manages that register and what the eligibility criteria are. We would want those criteria to be as broad as possible when it came to an initial registration of interest in being on the register, and communities would then have 30 days to decide whether they wanted to proceed to sale. That seems proportionate, but we need clarity on the register that communities will sign up to.

Douglas Lumsden: My next question ties back to Mark Ruskell's previous question. Let us say, for example, that a landowner with a large estate has a cottage that he is looking to sell. Would that sale be delayed by the whole process? Would it be right to delay it? How do we get around that?

Dr Doble: Your example is an interesting case in point, because, essentially, we are saying that the decision on the transfer—which is what we are talking about here—needs to be underpinned by public interest considerations, some of which might relate to the supply of adequate housing in the area. If the new commissioner has to decide whether there is enough adequate affordable housing in that local area—there might be, say, a concern around the housing stock there—and a piece of stock that falls within the criteria goes up for sale, there can be an assessment of whether there needs to be a lotting process and an intervention on the sale of that house.

That is an example of how it could work. Actually, a prior notification mechanism might need to be applied, or there might need to be a lotting decision.

Douglas Lumsden: Does that not overcomplicate the issue if we are talking about just one cottage in an estate?

Dr Doble: I do not think that it overcomplicates it—how that would be set out seems quite straightforward to us. A decision would have to be made, and the commissioner could decide relatively promptly that no mechanisms needed to be applied and that there did not need to be an intervention, so the sale could just proceed.

However, it all depends on the number of houses in that local area. One cottage on an estate could be very significant in an area that is facing depopulation. It will be context specific, which is why the guidance is so important and why it is important for the commissioner and the team behind them to be embedded in the commission.

10:45

Douglas Lumsden: This is my last question. Is it helpful to add a further, complex right to buy process to the existing one, particularly while the latter is under review? Jon, do you want to have a go at that?

Jon Hollingdale: We are not convinced about that. Going back to your previous point, I would just say that one of the advantages of the sites of local significance mechanism is that, if the community that is interested in a cottage or cottages has already put that marker down, that will be known to the landowner before they make any decision about selling. It is not delaying the process—it is actually part of the process that the landowner understands. I agree with all the other things that Josh Doble and Linda Gillespie have said on that point.

We are all really disappointed that the review of the community right to buy has taken place separately and on a different timescale, particularly because the measures in part 1 of the Land Reform (Scotland) Bill lean so heavily on the

community right to buy, and we do not quite know what that might look like after the review. I agree entirely that it is not enormously satisfactory to add something to a process that is under review. It would be much better to have known the outcome of the community right to buy review or have it as part of this process, because we could then have managed the whole thing in the round.

The cumulative legislation on community bodies and land reform has not been done holistically. You have lots of different definitions for community bodies; for example, a body that can use the asset transfer process is not necessarily eligible for the community right to buy process and so on. There is a real danger here of our adding something extra.

I am not sure what we can do about the fact that the community right to buy review is happening on a different timescale, but it is fair to say that we are not very happy about it and that it is not ideal at all.

Douglas Lumsden: Thank you, Jon. Do Josh or Linda have anything to add briefly?

Dr Doble: On the community right to buy review, we agree with Jon's disappointment. However, we will feed into the process, because we really need legislation that will amend community right to buy as a whole in the new parliamentary session in 2026.

I would also point out that the bill does not necessarily introduce new community right to buy mechanisms: although there is a new pre-notification register, the bill leans on existing late application procedures. What we really need is not necessarily a change to legislation but a change of process to make it work, as Linda Gillespie and I have detailed. That can happen concurrently with the community right to buy review.

It is not ideal, but there is a way to make it work. Some amendment to the prior notification process and mechanisms could be helpful in achieving more community ownership or, certainly, giving communities a chance to take part.

The Convener: We have actually stretched this evidence session longer than I had anticipated, so I briefly suspend the meeting for five minutes to allow for a comfort break.

10:48

Meeting suspended.

10:54

On resuming—

The Convener: I reconvene the meeting and move straight on with the remainder of our questions. Douglas Lumsden has asked all his questions, so we will move on to the next set, which come from Jackie Dunbar.

Jackie Dunbar (Aberdeen Donside) (SNP): Good morning. I want to ask a couple of questions about the framework and processes in respect of lotting of large landholdings. Do you think that a defined statutory threshold can be anything other than arbitrary? Can the lotting proposals be designed to take account of the local context?

Josh, I see Linda looking at you, so I am afraid that you are first up.

Dr Doble: Any scale-based threshold will be somewhat arbitrary, but the 1,000-hectare threshold for the transfer test is based on the Land Commission's recommendations. From the commission's research on land transactions—the test will, after all, apply at the point of transfer—I think that we would be looking at eight transactions at 1,000 hectares and 17 transactions at 500 hectares per year. That is just off the top of my head—I can check the figures in a moment—but in any case, it is an average, so it will obviously change. What the Government is trying to do with such thresholds is to pick up localised issues of concentration of power. In that sense, there is a solid basis to the proposal, and we think that it is a good idea.

The point about picking up the local context, the transfer test and lotting mechanisms in general is that the criteria, or the guidance, that are needed to inform a decision to lot or to intervene in the land market must, as I have said a few times, be based on public interest considerations. Those considerations can be applicable to the entire country, but the point is that they will be interpreted in each local context. After all, biodiversity gain might be particularly important in one area, whereas housing might be particularly important in another.

I come back to the convener's very fair point that, if the local area in which you have a landholding does not have a community, community sustainability does not work as a means of assessing whether there needs to be an intervention in the land market. With public interest considerations, however, issues such as net zero, biodiversity, carbon sequestration, infrastructure projects and all kinds of other things could apply. When it comes to interpreting the local context, we would like the commissioner and the commission to base their decisions on those kinds of public interest considerations.

Jackie Dunbar: Do Linda Gillespie or Jon Hollingdale have anything to add?

Jon Hollingdale: The local context must absolutely be taken into account; this is not going to work otherwise. There is no one-size-fits-all

approach or any kind of mathematical model for drawing up lots. It has to be about what is appropriate to the local circumstance and context. Our view is that it needs to be tied to a much more effective consideration of the public interest, as was suggested in the consultation two years ago. Indeed, lotting was really just an outcome of the public interest test, and the removal of that test from the bill means that the lotting bit has got slightly orphaned. The bill contains a lot of text on this, but the objectives and operation of the mechanism are very unclear and need quite a bit more work.

Jackie Dunbar: How can lotting decisions work in the best interests of landowners and local communities? What needs to change to ensure that the public interest, human rights and environmental issues are all considered? Do you think that they should be included in the bill?

Dr Doble: Taking your last question first, I think that public interest considerations need to be mentioned in the bill as part of a public interest test, and lotting itself needs to be reframed in terms of such a test, one outcome of which could be lotting. Jon made a very valid point about lotting being orphaned as a result of the bill's having been drawn up away from the original proposal of a public interest test with a lotting mechanism. The committee should look at that. With such an approach, you would have public interest considerations mentioned in the bill itself, and then a whole list of such considerations set out in guidance.

11:00

A key thing in making this work for the existing landowner and in the public interest is having clarity in the guidance, which will be publicly available and accessible to everyone. Also, the point about having a public interest test with a lotting mechanism as a potential outcome is that it is forward looking. As it stands, we have a transfer test that is on the seller and their landholding, not on the buyer and the future landholding. Therefore, the public interest test is much more forward looking.

Moreover, such a test intervenes less on the European convention of human rights, because although you have a right to dispose of land, you do not have a right to acquire it. We need, therefore, to intervene at the point of acquisition by looking at the incoming landowner, their land management plans and what the landholding is going to look like in the future and then saying that they can purchase the land, but they have to lot 10 acres within the first six months, say, for adequate affordable housing or to meet local need in some other way.

Jackie Dunbar: I see that no one else wants to come in, convener, so I will hand over to you. That is how to be short and quick.

The Convener: I know, and I am going to blow the whole thing by asking a supplementary question.

I understand what you have just said, Josh, but interfering in the open market value by dictating who can buy something will depress the value of the land, will it not? Will it also not give rise to claims? I have been doing lotting for years, and it is a bit of a black art; you have to take into account what the market needs and what local individuals want and then try to strike a balance between the two. It can work very well, as we heard when we were on the Buccleuch estates, if you know what communities and individuals want. However, you seem to be suggesting that that is not the best way of doing this—or have I got that wrong?

Dr Doble: Buccleuch is one positive example of how a business and a landowner with a significant amount of power and resources can do things that are very positive for a community, but we are basing that view on the good will of one landowner. We are talking about setting up land reform mechanisms that apply across the country and achieve diversification of ownership. Such an intervention in the market could bring land values down, but that, in our view, would be no bad thing, as land values are far too high at the moment.

However, this is not an idea that has been dreamt up out of nowhere. Under crofting legislation, if you are going to become an owner-occupier of or acquire a tenancy for a croft, you have to live within 32km of the croft and actively cultivate it. There are means of intervening in market transactions in order to say how a person will manage the land. I am thinking of, say, tax residency; I know that that sort of thing is possibly outwith the bill, but there are a number of land reform mechanisms that could achieve much.

The Convener: With respect, I should say that, if you are going to buy a croft, its value will be determined under the crofting legislation. What we are talking about here is interfering with the free market. I understand that that might be your way of interpreting it, but do you accept that there could be quite a substantial cost to the Government in doing what you are suggesting?

Dr Doble: First, on crofting, research by the Scottish Crofting Federation shows that there is an open market on crofts now. If you actually want to purchase a croft as an owner-occupier, that sort of thing is dictated; however, that is why tenancies for crofts are going for several hundreds of thousands of pounds, which is a separate issue that you probably know plenty about.

The point is that the bill as it stands, which is neither strong enough nor ambitious enough, is already intervening in the market. What we are saying is that, if you are going to do that sort of thing, you should do so on the basis of public interest considerations and ensure that it actually achieves something. There is a risk here of intervening in the market and not achieving anything but opening things up to claims for compensation and creating work for lawyers and land agents. We would not actually achieve the policy intention, which is land reform and diversification of land ownership.

The Convener: Okay, I think that we are coming at this from different angles. I will bring in the deputy convener.

Michael Matheson: The Scottish Land Commission recommended that a public interest test be applied to transfers, but the Government has chosen to go for a transfer test instead. Why do you think that it has taken that approach, and not a public interest one?

Dr Doble: We do not know. We have seen some of the Scottish Government's thinking on this, and from our reading of its rationale, it should be a public interest test.

We would welcome the committee speaking to the Scottish Government about why it has made that decision and how it came to that conclusion. As far as we can see, it not only weakens the mechanism but opens it up to further legal challenge. The point of having a public interest test and centring any land reform legislation on the public interest is that that is the rationale for intervention into property rights that is written into the European convention on human rights. That has a long establishment and precedent in Scots law and in UK law—it is already in 200 pieces of legislation. We do not know why the Government has gone for a transfer test based on community sustainability rather than a public interest test based on public interest considerations. That is a serious weakness in the bill. It does not follow manifesto commitments that explicitly engage with the public interest and it does not follow Scottish Land Commission guidance. That really needs to be looked at, and we think that it needs to be amended.

The Convener: We turn to questions from Monica Lennon.

Monica Lennon: We have had evidence that suggests that large landholdings are more likely to attract private investment and deliver against woodland and peatland targets at pace and scale. Is that the witnesses' view, or do you have a body of evidence or examples of smaller landholdings achieving that or working together to deliver at scale?

Linda Gillespie: Jon Hollingdale is probably better suited to answering that question.

Monica Lennon: Jon, you have been nominated.

Jon Hollingdale: It is clear that a large landholding has the potential to act at scale in a way that a small landholding does not, but that does not mean that it will happen. If those things could happen only through large landholdings, most of our European neighbours would be in dire straits because they are not blessed with Scotland's pattern of very large landholdings. The reality is that you work with what you have. There is a lot of evidence, certainly with regard to woodland creation, that, so far, the vast majority of those schemes are on a very small scale.

In addition, large landholdings are what we have, and we have a huge number of problems with a range of climate change and biodiversity issues, such as rhododendron, deer and peatland emissions. Large landholdings might be a way forward and they might help, but they are not a necessity. I do not think that the level of change that we are suggesting—even if all the amendments that we are proposing were adopted—would have a significant impact on that sort of climate and nature action.

Dr Doble: With regard to Ms Lennon's question about examples of existing good practice in collaboration, there is the Northwoods partnership, which the Scottish Rewilding Alliance is a key part of, and the Black Hills regeneration project on the Knoydart peninsula, which is community and private landowners and crofters working together on big regeneration projects. We have examples of smaller landholdings working together and some bigger landholdings working together. When you have that kind of collaboration, you also get a greater degree of local democracy and more voices in the room. Those projects deliver social, economic and cultural benefits, as well as environmental outcomes.

I absolutely echo everything that Jon Hollingdale said about our existing pattern of landholdings in the current crisis that we find ourselves in.

Monica Lennon: If we have more small landholdings, is there more scope for collaboration and working differently?

Dr Doble: Yes, and that is what we have seen already. Each of the prospective community landowners that we engage with—and our members who are community landowners—has their own priorities, but fairly near the top of those lists are issues around biodiversity, climate and resilience. The local people who live in and are of that place—and will be there for multiple generations—are thinking multigenerationally. They are not thinking about how to secure or

maximise investment over the next 30 years or about the project delivering in the next 10 years; they are thinking about a place that is climate resilient and biodiverse for the next 200 years. It is a much more robust, resilient way of thinking about land custodianship than the existing patterns in many places.

Monica Lennon: Sticking with this part of the bill, we have had questions about lotting and the transfer test. Is there anything that you want to bring to our attention today in relation to international examples or examples of good practice elsewhere of what the regulatory mechanisms could look like? You do not have to answer that, but if you want to add anything, this is the time to do so.

Jon Hollingdale: The Scottish Land Commission has done quite a lot of work looking at international models. If I remember rightly, it looked at 22 countries, and 18 of them had mechanisms to regulate land ownership and use in some way. The commission made it clear that there is no single model that we can lift wholesale and impose on Scottish conditions. We will have to work out what works for us. The clear thing is that the great majority of our peer nations have such regulatory frameworks in place. In a lot of ways, we are the unusual ones because we do not have them in Scotland.

Monica Lennon: The last word on this goes back to Josh Doble.

Dr Doble: I echo everything that Jon Hollingdale said. Research that Dr Kirsteen Shields did for the Scottish Government detailed a number of international examples, which I can send on to the committee.

As Jon said, the key point is that we are the anomaly in Europe in not having more robust oversight. Iceland, which is also a signatory to the ECHR, has what we would see as extremely stringent rules on ownership. The rules are around having to be domiciled or a citizen, and capping ownership at a handful of hectares, although it is slightly more for a business. There will be guidance around that for areas such as agriculture. We are the anomaly, and stringent controls on land ownership are the norm in lots of parts of Europe.

I will send on the research from Dr Kirsteen Shields if you do not have it.

Monica Lennon: Thank you. The committee has a good relationship with parliamentarians in Iceland. A few of us are just back from a trip there, so we might want to ask some questions of colleagues there.

Josh Doble asked whether Gresham House had come back to the committee with an answer on the number of jobs. I found the letter from April, in which Gresham House came back to the committee in response to my question. I will not read it all out, because it is a public document now, but the letter confirmed that Gresham House has contributed to the creation of around 200 jobs. There is a long-winded explanation on the issue of ownership, but the letter says that Gresham House indirectly owns around 298 hectares of forestry assets in Scotland.

This question is not directly about the bill, but how does that level of job creation compare with what we see with community-owned land or smaller landholdings? Does Josh Doble want to say anything on that?

Dr Doble: I will not say anything about specific figures, because I would have to look into them—I do not want to put a foot wrong. However, I would query the figure that Gresham House has given for land ownership. If it owned only 200-plus hectares and provided 200 jobs, that would be a very successful business.

From conversations that I have had with colleagues, the best way to describe the ownership patterns of Gresham House is that funds that are managed by Gresham House Ltd partnerships own 53,000-plus hectares. If it has provided 200 jobs from that amount of landholding, it would be interesting to know what kind of jobs they are. Are they for seasonal contractors who fell trees? Are they long-term employment? It would be interesting to look at the tax accounts. All of those kinds of things would be covered by a public interest test, but not under this bill, which has a point of transfer test. It is about beginning to have a public interest test as the norm in Scottish land reform legislation, so that we can start to look at who owns land in Scotland and how they are contributing to our wider sustainable development.

Linda Gillespie: We will be able to provide you with details of community landowners and jobs that have been created. We can send that on to the committee.

Monica Lennon: Yes, that would be helpful. I am sure that the clerks can assist in pointing people to the letter that we received in April.

The Convener: We will turn to the deputy convener, and then to Rhoda Grant, who has been waiting patiently to ask her penultimate questions.

Michael Matheson: Section 6 will establish the land and communities commissioner. Has the Government got the establishment of the commissioner right?

11:15

Dr Doble: Our view is that it is not exactly right. There is absolutely a need for a greater regulatory role for the Land Commission, but we have concerns about the commissioner as proposed in the bill. We want the increased regulatory powers that are in the bill and, moreover, those that would be in place if our amendments were accepted, to be vested in the commission. The commission has been set up for a number of years and is widely respected in the sector. It has a lot of research and policy background and would be well placed to make such decisions.

The concern with the commissioner as proposed in the bill is that the role will be highly individual and will depend on the person who gets into post. That is in part because the Government has followed the model of the tenant farming commissioner. I am not an expert in that area but, from what I understand, that commissioner is widely respected, based on the individual who is in post, but that is too subjective.

Further, the tenant farming commissioner has a largely mediatory function, whereas the new land and communities commissioner is to have a regulatory function. Because it is a regulatory function, it needs to be much more closely tied to the commission. There are a number of ways of doing that. We have set out some wording for the bill that would make it less tentative and the commissioner's position much clearer. We suggest, for example, that the new commissioner

"must consult with the Commission before making recommendations ... must have regard to the Commission's policies in undertaking their work and ... must have regard to any considerations the Commission itself must have regard to".

We think that a number of relatively easy changes to the bill could secure the commissioner as part of the more accountable body of the commission and prevent potential discrepancies between the commission and a more independent floating commissioner who has a regulatory function.

Michael Matheson: Are you saying that you do not believe that the land and communities commissioner should be a stand-alone commissioner and that they should be part of the Scottish Land Commission? Is that correct?

Dr Doble: Yes. Like the other land commissioners, the new commissioner should be on the board of the commission and be subject to the same rules as the commission.

Michael Matheson: Linda, is that your view?

Linda Gillespie: Yes, that is also DTAS's position.

Michael Matheson: Jon, is that your view?

Jon Hollingdale: Yes, I agree entirely with what Josh has said. I would add a couple of things. First, I think that the land and communities commissioner should be able to initiate inquiries rather than being reactive, as is the current position in the bill. Secondly, I am concerned about the line in the financial memorandum that suggests that the post would be at least partly funded by a reduction in the Land Commission's wider policy work. That is a big concern to us, because we think that that work has been one of the commission's great strengths in its time of operation. We would be worried if that were being scaled back. Of course, we understand that resources are tight everywhere, but it would be disappointing to lose some of the good work that the commission does.

Michael Matheson: Josh, you mentioned enforcement. Are you clear about what enforcement functions the commissioner will have? Are those functions sufficient, particularly in areas such as community engagement or land management plans?

Dr Doble: No, they are not sufficient as things stand. I want to go back to the penalties that are associated with enforcement. We have spoken a bit about the fixed £5,000 limit for fines, but we are making the case that there should be much more robust points of intervention. We suggest that the commissioner should have an escalating scale of intervention, which is another reason why the commissioner should be more embedded into the commission.

The first stop would be some kind of proportionate fine, escalating to a sheriff's order for a land management plan. The commissioner would have oversight of that and would then use that order to try to enforce the production of and compliance with land management plans and community engagement. That is also the point at which cross-compliance, which Jon Hollingdale mentioned, could come in. There would then be a third and final point of escalation, which in essence would be triggering a public interest test. That would probably happen after a period of years of lack of compliance and would have proper oversight and proportionality built in.

The key point is that a land management plan needs robust regulatory mechanisms and the ultimate backstop, in extreme cases of mismanagement and lack of engagement with public bodies, of a means of changing ownership. If we had a public interest test rather than just a transfer test, that could be applied in extreme circumstances if a land management plan has not been engaged with over a period of years and when orders and cross-compliance have been ignored. There must be a means of changing ownership.

Michael Matheson: Should the enforcement provisions for the commissioner be based on statute?

Dr Doble: As opposed to guidance? That is a good question. Some of the detail that I have just gone into should be in guidance, but I think that it would be helpful to have the potential powers that the commissioner would need in statute, because it is more of an intervention. I am more inclined for some of the detail of that to be in guidance, because it would need to be more worked out. I am happy to send you further detail on the kind of specific amendment and changes to the face of the bill that would encapsulate all that.

Michael Matheson: I would be interested in seeing that. I take from what you are saying that it is important to have the principles of enforcement in statute, but the practical application is probably best dealt with in guidance.

Dr Doble: Yes, the practical application is—

Michael Matheson: That gives you more flexibility if it is not working properly.

Dr Doble: Yes.

Michael Matheson: My final point is in relation to the disqualification criteria that are set out for the commissioner. A provision in section 6 says that a person is to be disqualified from the role if they have been the owner of a large landholding in the preceding year. Is the threshold sufficient?

Dr Doble: Jon Hollingdale is looking away, so I can come in again. I am aware that I have been speaking a lot; I do not know whether Jon wants to come in.

In essence, something like that is sensible, but having such a provision becomes less important if my previous suggestions are implemented and the commissioner is more embedded in and accountable to the commission, instead of them having a slightly ambiguous, floating position that will be more dependent on who that individual is. By the same token, significant private landowners could say, “What if a prominent land reformer applies for that position and gets it?” It cuts both ways.

If the bill as it is now is not changed, it would be sensible to build in such disqualifications, but a more robust way of doing it would be to make the commissioner much more accountable to the commission, so that the commissioner’s decisions will be informed by the Land Commission, not just their own experience.

Michael Matheson: Does Jon or Linda want to contribute on this question?

Jon Hollingdale: Sorry, I was looking away because I wanted to check what the bill said. The provision is sensible, but, as Josh says, you would manage it better by restructuring how the land and communities commissioner sits in relation to the broader commission, instead of thinking about how best to do a person spec for that post.

Michael Matheson: My reading of what you are saying is that you think that the threshold of disqualification is sufficient, but the risks associated with the issue of potential conflict are better managed by the commissioner being based within the Land Commission. Is that correct?

Dr Doble: Yes, that is correct.

Michael Matheson: Thanks.

The Convener: I hear what you are saying, but surely the legislation is written such that the land commissioner sits within the commission, but he or she has special skills. The commissioner is still in the Land Commission; it is just that his powers are not shared out with all the Land Commission, in the same way that the tenant farming commissioner is a member of the Land Commission but his work on tenant farming is his within the commission. I am not sure that I understand what you are saying.

Dr Doble: I do not think that there would be any need to limit the specialisms, although it would be good to have someone with a specialism that would be helpful for such things as lotting mechanisms or public interest considerations.

The wording in the bill is very vague about the relationship between the commissioner and the commission. Using some of the terminology that I have just suggested and that is in the written evidence would be a way not of spreading the powers of the commissioner around the commission, but of making sure that the commissioner is making their decisions—which will be regulatory and interfering in the property market—with proper reference to the existing work of the commission. That is not there already.

The Convener: I am not sure that I see that, but I will reflect on what you have said.

Rhoda Grant has some questions. Rhoda, you have waited very patiently—the floor is yours.

Rhoda Grant (Highlands and Islands) (Lab): Thank you very much. I have some questions on a theme and then some supplementaries on evidence that was given previously, so bear with me if I appear to be dotting about a wee bit.

First, I will ask about urban land reform. Because of the way that land is defined in the bill, it means that urban land reform cannot really happen under this bill. What are the benefits of extending land reform to urban areas and how could that be done in practice?

The Convener: Now I can see only two witnesses on my screen. Oh, there we go. I cannot

see whether Jon Hollingdale is looking away or at the camera. Linda Gillespie, were you going to kick off?

Linda Gillespie: Yes. It is vital that the bill picks up urban land reform. We have touched on the challenges for urban communities around vacant and derelict land, access to space and significant assets, including public assets, and there are challenges with the legislation that is available to rural and urban communities around the community right to buy. It would be very helpful if other mechanisms were available to communities, particularly in densely populated urban areas, be that within the bill or through other legislative routes, so that they could access land, whether by compulsory purchase or compulsory sale orders, or the reframing of the community right to buy provision.

Dr Doble: I agree with Linda Gillespie. There has been what is now a relatively long-standing Scottish Government commitment to land reform being a nationwide issue affecting rural and urban communities, since the Community Empowerment (Scotland) Act 2015. The existing land reform rights have been extended to urban communities, so it seems a shame—a missed opportunity and an error—for them to be missing from the bill.

As Linda Gillespie just detailed, urban Scotland faces very particular issues that could be picked up by the bill, if we pivot from talking about “large land holdings” to talking about significant landholdings, and if we start thinking about sites of community significance and the more proactive discretionary criteria for communities. We have discussed those at some length, so I hope that they are clear to the committee. That could mean that things such as community engagement obligations and land management plans could apply to very significant areas of urban Scotland that are not being managed well and that are subject to land banking and absentee landowners. It could be a way of not only potentially changing the ownership but seriously reforming the land management of areas that are blighting urban Scotland.

Rhoda Grant: Does Jon Hollingdale have anything to add?

Jon Hollingdale: I do not have a lot to add, but I back up what has been said. It is essential that we have a unified land reform process that covers urban and rural areas, because the division between them is quite arbitrary and it is certainly not captured by thresholds of either population size or area. The idea of sites of community significance is absolutely critical to bring the urban realm—even the very small villages and towns of Scotland—into the picture and allow those places to have the opportunities that might be provided for remote rural areas.

Rhoda Grant: Thank you. There was discussion about a public interest test, which seems to fit quite well with this topic. What are the implications of our divergence from that internationally recognised test? What effect could that have on the bill?

Dr Doble: In our view, that divergence opens up the bill to more legal challenge and lack of clarity, rather than building on existing legislation in Scotland and elsewhere. It also raises challenges for urban Scotland. As it stands, the transfer test is focused on community sustainability. If the bill were applied to urban Scotland, there might not be a valid community sustainability argument for a particular site of community significance—say a vacant and derelict site in Glasgow—but there might be very pressing public interest concerns about why that land should be owned and managed in a different way.

In a sense, the Government is shutting off really productive ways of reforming ownership and management by focusing simply on community sustainability. That seems like an odd thing for a community land organisation to say, but there is a limit to the legislation if it focuses only on communities. The public interest considerations in relation to land are far broader and they are very important.

11:30

There are two issues—there is the potential for legal challenge and there is the missed opportunity for more expansive land reform that brings in public interest considerations. The real point for the committee is that we are very unclear as to why that decision was made and would welcome the committee interrogating that.

Rhoda Grant: Thank you. I am sorry; being online means that I am at a slight disadvantage. Jon, did you want to come in?

Jon Hollingdale: No, I have nothing to add to that. Josh has covered it superbly.

Rhoda Grant: There was some discussion about knowledge of land transfers and about how communities could register their interest in land. What is the panel’s view on making land transfers and sales much more transparent? Should that information be available publicly, so that if a community has an interest, it can register that interest? Should there be an obligation on landowners, including owners of land of community significance, to always do that transparently?

Jon Hollingdale: Yes, we agree that that is needed and that the mechanism for notification should be as broad as possible. That might include local organisations, but also perhaps

relevant national stakeholders that can ensure that any local relevant groups are notified. For example, there is a process in place for Forestry and Land Scotland, which quite frequently sells large or small areas of land for various reasons, through which it notifies not only local organisations but national stakeholders. Such things are never quite perfect, but they work pretty well. That would be essential for what will, I hope, be a lower threshold than exists at the moment.

Dr Doble: I absolutely agree that the transparency mechanism for prior notification is very welcome. Whatever thresholds are decided on, applying greater transparency to transfers over the thresholds would be incredibly beneficial, not only for communities, including communities that might want to own land or particular assets, but for anyone who might want to engage in the land market, whether that is a company, a business or an individual.

To get back to the foundational point of diversifying land ownership, greater transparency is absolutely vital to achieving that, because a whole range of organisations and people can engage in the land market.

Rhoda Grant: Thank you.

The Convener: I think that we have come to the end of the questions, but I have a last, very simple one. Whenever I come up with a wish list of all the things that I would like to do, what tempers it at the end is the thought of how much it would cost.

Josh, I have waved a magic wand and everything that you want in the bill goes into the bill. What will it cost the Scottish Government?

Dr Doble: That is a good question. We have looked at the financial memorandum and spoken to the Scottish Government about this. As Jon has said, there is a resourcing implication for the Scottish Land Commission around the creation of the new commissioner, and we would not want to see the other functions of the commission diminished. There needs to be proper resourcing of that.

We have spoken a little about the potential cost implications of land management plans and the need for some support. The financial memorandum, as currently set out, details some of those costs, none of which we see as particularly punitive. Somewhere in our evidence, there is further working out of the likely financial implications of changing the thresholds, which I will send on to the committee directly.

On the point about compensation, that is a risk with Government intervention. We have not seen a huge amount of compensation paid out for the much more radical land reform acts of 2003 and 2016.

The financial memorandum sets out that if an intervention goes wrong, the Scottish ministers are the final buyer, and if there is a public interest test under which a buyer cannot be found, the Scottish Government might have to purchase, although it would be purchasing an asset, not a liability. The Government would be purchasing land but it owns lots of land already and there is a potential for it to resell at a profit.

I have not put a specific figure on any of the points that we are talking about, but we are in active conversation with the Scottish Government about the possible financial implications, none of which we see as being punitive. If we also start to see land management plans with the escalating penalties that we are talking about, there is a means for revenue to come back in as well.

That is the long answer; the short answer is that I will send you our workings out.

The Convener: I look forward to seeing them and I look forward to seeing whether the Scottish Government agrees with you on the costs, because I am sure that those will have driven some of its proposals in the bill.

Thank you very much. That was quite a long evidence session, but it was extremely worth while.

11:35

Meeting continued in private until 12:27.

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