OFFICIAL REPORT
AITHISG OIFIGEIL

DRAFT

Net Zero, Energy and Transport Committee

Tuesday 26 November 2024

Session 6

The Scottish Parliament
Pàrlamaid na h-Alba

Tuesday 26 November 2024

CONTENTS

NET ZERO, ENERGY AND TRANSPORT COMMITTEE
35th Meeting 2024, Session 6

CONVENER

*Edward Mountain (Highlands and Islands) (Con)

DEPUTY CONVENER

*Michael Matheson (Falkirk West) (SNP)

COMMITTEE MEMBERS

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

*attended

THE FOLLOWING ALSO PARTICIPATED:

Malcolm Combe
David Dishon (Ferguson Marine (Port Glasgow) Ltd)
Rhoda Grant (Highlands and Islands) (Lab)
Calum MacLeod
Andrew Miller (Ferguson Marine (Port Glasgow) Ltd)
John Petticrew (Ferguson Marine (Port Glasgow) Ltd)

CLERK TO THE COMMITTEE

Peter McGrath

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Net Zero, Energy and Transport Committee

Tuesday 26 November 2024

[The Convener opened the meeting at 09:15]

Decision on Taking Business in Private

The Convener (Edward Mountain): Good morning, everyone, and welcome to the 35th meeting in 2024 of the Net Zero, Energy and Transport Committee. Monica Lennon is joining us remotely this morning. Other members may be joining us; if they do, I will let people know.

The first item on the agenda is a decision to take items 4 to 6 in private. Item 4 is consideration of the evidence that we will hear from representatives of Ferguson Marine (Port Glasgow) Ltd, item 5 is consideration of the evidence that we will hear on the Land Reform (Scotland) Bill, and item 6 is consideration of correspondence from the Scottish Government regarding the reappointment of the board of Environmental Standards Scotland.

Are members happy to take items 4 to 6 in private?

Members *indicated agreement.*

MV Glen Sannox (Hull 801) and MV Glen Rosa (Hull 802)

The Convener: Our second item of business is an evidence session with representatives of Ferguson Marine (Port Glasgow) Ltd. I welcome Andrew Miller, chairman; John Petticrew, interim chief executive officer; Simon Cunningham, member of the board; and David Dishon, chief financial officer, all of Ferguson Marine.

We tried to ascertain whether you wanted to make an opening statement, but you did not respond to our query so we will go straight to questions. My first question is for Andrew Miller. At this vital time, when Ferguson Marine is discussing its future and finishing off its vessels, it does not have a permanent CEO. What is happening regarding the appointment of a permanent CEO?

Andrew Miller (Ferguson Marine (Port Glasgow) Ltd): We started looking for a permanent CEO some 12 months ago, but we have been unsuccessful in securing a candidate via the usual routes. We had one candidate who signed their contract but withdrew about 10 days ago. We asked the learned fellow to my left, John Petticrew, to extend his interim contract under certain conditions, and he has agreed to do so.

The Convener: Could you enlighten the committee as to how long John Petticrew's interim contract will remain interim?

Andrew Miller: He has not signed it yet—the ink is not quite on the paper. His contract will run until next Easter—another three and a half months.

The Convener: Will you continue to look for candidates during that period?

Andrew Miller: Yes. Somehow, we do not seem to be the most attractive opportunity in the Scottish economy.

The Convener: Okay. You can—

Kevin Stewart (Aberdeen Central) (SNP): Why do you think that is, Mr Miller?

Andrew Miller: It is because of the background and the history of the yard—10 years of negative publicity surrounding the enterprise, the administrations, the delays to the ferries, and so on. That makes it less attractive than some other opportunities, especially given the financial package that is on offer.

Kevin Stewart: How are you going to overcome that, in order to get the right person?

Andrew Miller: Personality, drive and determination—every way that we can.

The Convener: I remind committee members wishing to speak to catch my eye and not to jump in when I am about to open my mouth. I am looking at you, Mr Stewart.

Deputy convener, do you want to come in as well?

Michael Matheson (Falkirk West) (SNP): Yes. Mr Miller, you mentioned the process that you have used over the past 12 months to try to secure a chief executive. What will you do differently this time to help you to attract the right type of candidate?

Andrew Miller: That is a good question. In the short term, some opportunities have appeared in the market. Specifically, there is a large, commercial shipbuilder based in Belfast that is in the process of administration and that is looking for an owner. That will release some people into the job market.

Michael Matheson: Are you intending to target individuals who you think might be suitable candidates?

Andrew Miller: Yes, there is a search organisation that is doing that for us as we speak. There is also another company—I do not want to mention its name—that is a bit closer to us, which has decided to restructure and has let go of about 50 senior managers and staff, because of its financial outlook.

The Convener: Monica Lennon, did you put your hand up?

Monica Lennon (Central Scotland) (Lab): I did, thank you.

Andrew Miller, I am sorry to hear that you have been unable to appoint a new CEO. Does the way in which David Tydeman, the previous chief executive, was sacked have any bearing on your ability to recruit?

Andrew Miller: It does not help, but it is not the core of the issue. The core of the issue, as I mentioned, is that we are looking for someone who is exceptional and who has a background and experience that can add significant value to the enterprise. They must be able to steer the enterprise in the correct and proper long-term direction, so that it uses some state funds but is not, in the longer term, subsidised or supported by the Scottish ministers, who are currently its owners.

Monica Lennon: Are you able to explain what project domino is?

Andrew Miller: No.

Monica Lennon: You are not familiar with it. Okay. I may come back to that point. Are any of your colleagues familiar with project domino?

The Convener: There are blank-looking faces—

Monica Lennon: I cannot hear what you are saying, convener. Was there an answer?

The Convener: There were blank faces from all the witnesses. Perhaps you could develop that point later in the meeting.

Monica Lennon: Yes.

In that case, I have one final question for Andrew Miller. Are you able to explain for what reasons the board was unhappy with David Tydeman's previous evidence to this committee? There are board papers that seem to suggest that the board was unhappy with unsubstantiated opinions that he had given to the committee. I want to understand what is behind that.

Andrew Miller: Generally, Mr Tydeman had lost the confidence of the board in his ability to forecast both timetabling and financials. At one of the evidence sessions he made some statements that the board and I believed were not exactly accurate. Some of the statements overexcited some of our partners; some letters of apology had to be written to those parties after the evidence was given.

Monica Lennon: It would be interesting to see those papers.

I know that you probably see a lot of paperwork, but I am looking at the annex of information released following a freedom of information request. On page 4, it talks about project domino and a submission to the Scottish Government. Do you not recall project domino?

Andrew Miller: I do not know what document you are referring to. If you can help trigger my memory by way of a date for the paper or when the FOI request was made, I might be able to help.

Monica Lennon: It was in March of this year.

I will hand back to the convener. If I can pull out the relevant dates to help to jog your memory, I will send a note to the convener.

The Convener: I have some questions for John Petticrew. I am sorry, John, that we have been talking about you while you have been in the room, but here is your chance to come in.

In February, on behalf of the committee, Jackie Dunbar and I visited the yard. We had a look around and saw what was going on. We were then somewhat taken aback by the change and your moving into post.

You gave some dates—four dates, in fact—for the delivery of the Glen Sannox, all of which were missed. I am trying to understand why those delivery dates were missed, because the reason given to the Parliament for David Tydeman's

departure was that he was continually missing such dates. You then went on to miss four handover dates. Could you enlighten us as to why that happened?

John Petticrew (Ferguson Marine (Port Glasgow) Ltd): The complexity of the ship became more apparent the deeper we got into the project. I think that we gave too much credence to the sea trials on the date that you mentioned in February, which were just a way of demonstrating the operation of one fuel system. The other system had not even been installed yet, and as we know, there were complexities with that.

I do not think that any of our partners—including Caledonian Maritime Assets Ltd and Caledonian MacBrayne—had experience with liquefied natural gas or with installing and operating such systems. The installation was far more complex than people thought. In the end, we had to hire private contractors to help us with watchkeeping. People who have experience in this area are very thin on the ground. That is still the case. That means that once the ship is in operation there will be a need to get more people trained in the area. We have helped our partners to train people so that they can take fuel on.

The last delay was caused by the anchor not passing the relevant examination by the Maritime and Coastguard Agency. It was noted during the February trials that it had passed, but it turned out that it had not passed: the anchors had been lowered, but they had not been signed off. That led to us having to get new parts.

The Convener: I am unsure of what you mean when you say that the anchors had been lowered but not signed off. Did they hit the bottom of the sea? Did they work? Had someone simply not been in to say that they had seen them working? I do not understand that point. Could you explain that?

John Petticrew: Yes, I sometimes forget that not everybody works in shipbuilding.

The Convener: Well, I have been involved with the ferries for eight years, so I know most of the ferry jargon but not quite all of it.

John Petticrew: There is a thing called a gypsy, which is basically a mechanism that connects with the anchor as it is lowered to prevent the anchor from simply freefalling. Just so the committee is aware, the anchors in this case are slightly different from the ones that you might recognise—they are actually a safety mechanism; they are not put down simply to harbour the boat in the far end of the Clyde. Without that safety mechanism the ship cannot sail. One of the anchors was slipping, and although we could get it down, we were not sure that we could get it back up again. CMAL and the governing body were concerned, so we made modifications to the apparatus to make it work. A permanent solution is on its way in the form of new gypsies, and that should be in place in the coming weeks.

The Convener: Does that mean that the ferry is being handed over without a permanent solution?

John Petticrew: Yes, it is without a permanent solution—but with a safe solution. It has been signed off by the MCA and by Lloyd's Register, and it has been agreed to by CMAL.

The Convener: So, I understand that there were two reasons for delay: LNG and the anchor. However, there were four delays.

John Petticrew: LNG was an issue behind all those delays, and it took us a considerable amount of time to get the LNG passed. The last issue took about three or four weeks to resolve; it was a minute little bubble in one of the welds from the previous subcontractor that had not been looked at—we thought that it had, but it had not. The piping used is double-walled piping, where—and I will use my hands to show you—the liquid goes through the inside, there is then a wall and there is vapour around that to keep the liquid cold. If you have a fault with the piping, you have to take the outer wall off and start again. That is what was behind the issue. LNG was therefore the thread running through three of the delays.

The Convener: Would it be right to say that your life would have been made easier if your predecessor's offer of making the vessels available without LNG had been accepted?

John Petticrew: Or if we had installed the LNG at the proper time.

The Convener: I will ask further questions afterwards, as Kevin Stewart would like to speak.

Kevin Stewart: Again, there is an understanding about LNG being a new technology, and I have heard what you just said about getting it right to begin with. However, anchors are not new technology, so why is it that the anchor mechanisms have to be looked at once again?

09:30

John Petticrew: They were bought seven years ago, and I was not at Ferguson Marine seven years ago. At the time, the proper quality control and quality assurance procedures had not been put in place.

Kevin Stewart: When did you become aware that it was not the right kit?

John Petticrew: When the vessel was sitting across from the esplanade in Greenock, and they

lowered the anchors. I got a report back that the system had not passed.

Kevin Stewart: Why did none of your predecessors recognise that it was not the right kit?

John Petticrew: I cannot speak for my predecessors; I can speak only about the things that happened on my watch.

Kevin Stewart: Maybe Mr Miller, as the chair, can talk about some of your predecessors.

Andrew Miller: We are the shipbuilder, but there is a regulator—the MCA—that has oversight of the process of clearing something, and Lloyd's has oversight as well.

Clearly, some things are tried and tested, and some things are tried and tested in front of the regulator but do not work. Therefore, we have to go back a little bit and make corrections. As John Petticrew said, most of the issues surrounded LNG.

Kevin Stewart: We have dealt with LNG. I am asking about a very simple and basic thing: the anchor system. That is not a new technology. Why was it wrong?

Andrew Miller: The point that I am making is that the anchor was used and there were no issues. Then, when the anchor was used in the sea trials, which were overseen by the MCA, there was a problem with that piece of kit.

Kevin Stewart: You say that the item was used and there were no issues, yet it had not been signed off at that particular point in time for whatever reason, as Mr Petticrew has just said. Why did it take reaching another point in time to recognise that the anchor equipment was not the right stuff?

Although I am the grandson of a shipbuilder, I would not claim to know a huge amount about shipbuilding, but I know that anchoring technology is pretty old. How can you get that wrong?

John Petticrew: The kit was shown to have been signed off in the February sea trials. When I went to speak to my counterpart at CMAL, he said, "Yes, it has been dropped, but it has not been signed off," and so he wanted to see it dropped again. When it was dropped again, the coupling did not function the way it was supposed to.

We checked the drawings and all the technical data that we had received, and those suggested that it should have worked. When we went down and did some measurements on vital parts, the measurements did not match the drawings that were provided.

Kevin Stewart: We have the LNG complication, but we also have the complication of not getting a simple system right. Is that correct?

John Petticrew: If that is your opinion, yes.

Kevin Stewart: Would you say that an anchoring system is quite a simple technology?

John Petticrew: Yes. I was as surprised as anybody that we had the issues that we had. It was very disappointing that in February, it had not been signed off, nor had it been indicated that we had that issue.

Kevin Stewart: In that case, do you share my opinion?

John Petticrew: I partially share it, yes.

Kevin Stewart: Okay, thank you.

The Convener: Regarding delays, is completion of the Glen Rosa still on target? What is the target date for that?

John Petticrew: September 2025.

The Convener: We have heard about the parts that you have taken off the Glen Rosa to build the Glen Sannox. Is that going to delay the target date?

John Petticrew: No. We have ordered four gypsies. As Kevin Stewart indicated, we now know that the gypsy in question will not work on the Glen Rosa, so it will be fixed at the same time—or close to the same time—that the Glen Sannox will be fixed. Any issues similar to that will also be fixed.

The Convener: Were there control panels taken off the Glen Rosa as well, or was it just the anchor bits that were taken off?

John Petticrew: Various pieces have been taken off. For the long-lead items, it was easier to take something off the Glen Rosa, but I believe that what we took off has been documented. If I can take a step forward, I can say that, in the coming weeks, we will be doing lessons-learned sessions. I do not mean for an hour or two hours; I mean over days. Our sponsor has offered a facilitator to sit down with us and to look at objectives and what we were trying to achieve. Everybody, not just Ferguson employees, will be involved in those sessions—we will have Lloyd's there, as well as CMAL and CalMac. They will be able to give their input on the lessons that have been learned over the past seven years.

The Convener: Douglas Lumsden wants in to follow up on the anchor issue, and then I will go to the deputy convener.

Douglas Lumsden (North East Scotland) (Con): Was the anchor issue a warranty issue or a design issue?

John Petticrew: It was a design issue.

Douglas Lumsden: So there was nobody to go back to on it.

John Petticrew: No—it was a design issue.

Douglas Lumsden: Thank you.

Michael Matheson: For the 802, what is your degree of confidence in the timeline of September 2025 that you provided?

John Petticrew: If I am being completely frank, about 90 per cent. There has been some impact with people being seconded to ship 1. I do not mean the workforce; I mean in relation to engineering. We do not have a vast engineering department; for instance, on the electrical side, we have two people. Therefore, we must really put our shoulders to the grindstone.

One thing that we have not done in Ferguson is to utilise other shifts—putting people on full shifts, full second shifts and back shifts. That will be done shortly. We have just appointed a night shift manager, which we have never had before, and we will be putting people on night shifts. That will allow us to do work such as electrical cable pulling, for which people need to be out of the way. That is what the plan sets out to do.

Michael Matheson: On that 90 per cent confidence, you have mentioned that part of the issue is around skills, but what are the other principal risks to the September 2025 date?

John Petticrew: It is about getting people to believe that they can do it in a certain timeframe. One of the things that we have not been good at, including during my tenure, is keeping to the dates that we have given. We are trying to get a plan that everybody buys into, so that we do not have passive resistance, whereby people agree to dates and then go off and do their own thing. It will be more structured.

We will also be breaking the ship into smaller zones, and having managers of zones. We did not do that before; we had a manager for the whole ship. We will have senior people who will look after small parts of the ship.

We have said that shipbuilding is not new—it is just a matter of getting a plan and a design. We have the design now, which we did not have before, and we have the model to look at. We can install LNG in the proper time so it does not impact on installation. We can get that signed off in a much shorter timescale than was the case with the Glen Sannox. With the Glen Sannox, we were finding things out as we went along, such as with the anchor. If we had found out about the anchor in the February trials, it would not have been an issue. Does that make sense?

Michael Matheson: It does, and it is helpful. During the remaining 10 months for 802, are there key points at which you will have to make a decision on whether September 2025 is a go or not?

John Petticrew: Yes. Previously, we did not have those gates, when we reflect on the progress or the non-progress that we have made to that point. They will enables us to make informed decisions and provide informed updates to this committee quarterly, or on an interim basis if we think that something is going wrong.

The chair has set up various committees, one of which is an operations committee. We have an ops committee meeting every two to three weeks, which is called by the chair of the ops committee, and we report to it as well. We have a monitoring group, even in the shipyard, so it is not just about life according to the CEO or the CFO. There are various groups that we report to on the board, as opposed to just the board. That is where we will be monitored.

In short, there will be major gates, such as switchboards being switched on, engines being started, basin trials and so on. Those types of things are common, but we did not previously have some of those milestones to recognise where we were going.

I was asked whether we should put LNG on the second ship. I definitely think that we should put LNG on the second ship, because it is working fabulously, as we hoped. When LNG is on, it is like an electric car. If one of the systems is not working properly, it gives CalMac the opportunity to switch to the other so that it does not have to go into dry dock to get fixed. It is like a hybrid car because we can switch from one system to the other.

Michael Matheson: Are there any external factors that worry you about achieving that September 2025 date?

John Petticrew: Whether it is internal or external, it is about the retention of people. We might be having a bit of difficulty getting a replacement or a permanent person in this position for the same reasons, and it is about retaining people for the future of the company. We are all drawing from the same gene pool. There will be a bigger employer up the road or across the river, or there might be people in Saudi Arabia who are going to build a big shipyard there and they can fling money at people just like they do for the football. Bringing people in and keeping them definitely involves external factors.

The Convener: Before I go to Douglas Lumsden, can you just clarify something? I am confused—maybe it is because I have been looking at this for too long. I was told that LNG was an easy fuel to use, that it had been used

before, that there was nothing wrong with the design of LNG ships, and that that is why it was chosen for the design of the Glen Sannox and Glen Rosa. That came from CMAL and the owners of the yard at that stage. Everything seems to be turned around now and we are told that it is a very new technology. I think that LNG technology was being used before the ships were being built. It is not new technology, it is just that we have had problems installing it; surely that is the right way to say it.

Andrew Miller: I will answer that, if I may. It is not new technology globally, but most of the installations are not in the United Kingdom. In fact, this is the first time any ship has been registered in the UK with dual fuel—gas and diesel. The regulator, quite correctly, takes a cautious approach to regulation of that.

The skill set in the UK around that fuel is also wanting. We had great difficulty getting people with expertise to come from overseas to the yard to help with what the business was trying to do. It is not new technology, but it is new technology in terms of the certification process in the UK. That is the issue, or it was the issue.

The Convener: Okay, but it seems to be the build technology that we have had the problem with, if I remember rightly.

Andrew Miller: What technology?

The Convener: The build technology. We had couplings all over the place, and pipes everywhere.

Andrew Miller: Absolutely. It was the planning. The yard has gone through major restructuring issues with the different owners and so on, which has not helped with having a consistent planning document all the way through.

The Convener: It is a question always of building to your strengths.

Douglas Lumsden, you have some questions.

Douglas Lumsden: I was going to ask about the £14.2 million investment that the Scottish Government announced in July. I am just wondering where we are with that. I think that I heard that some of the trade unions had concerns that that investment might not be in place quickly enough for some work that you have been tendering for. I am just looking for an update on that, please.

Andrew Miller: The £14.2 million figure is in the public domain, and we work closely with the unions. Obviously, there is a sales hopper that is large and wide and our ability to bid for 100 per cent of that work is somewhat limited, given our background and experience. We will release the capital expenditure over time, as and when necessary, to fill the order books and to put the yard into a more efficient mode of operation so that we can bid for the work and achieve the price points that prevail in the marketplace.

09:45

Douglas Lumsden: Is there a plan to commit and spend the capital investment? That might be for David Dishon to answer.

David Dishon (Ferguson Marine (Port Glasgow) Ltd): Yes, there is a plan. We have broken down the £14.2 million into different areas. First, there is a pot of money for capital expenditure. That is for equipment that is obsolete, is not working and needs to be upgraded. That is a result of the fact that there has not been a capital pot for the past five years. Usually, you would expect there to be £1 million or £2 million a year to keep upgrading equipment. That pot is for catch-up purposes.

That first pot of money is for things that really should happen straight away. There is a separate pot that will be used to accelerate work on 802, to make sure that it is delivered as quickly as possible. The third pot is for the development and the future of the yard and more significant upgrades.

There is a specific set of pots. Each piece of equipment has a different lead time. We will be going through Public Contracts Scotland to start getting quotes.

Douglas Lumsden: I remember David Tydeman, when he was before us, talking about a new plating line. How much of the £14.2 million would be for that sort of improvement? I remember that the lead time for that was very long.

David Dishon: Yes—I think that it was 12 to 18 months. We are up against other shipyards across the world that have more money to accelerate those lead times. We have changed the business plan that David Tydeman put in last year; it is completely different.

Douglas Lumsden: How much of the £14.2 million will be used to make upgrades in order to try to win work?

David Dishon: There is probably about £4 million for obsolete equipment, so the rest of the £10 million is a combination of what we could do now and what we need for future bidding. I would say that probably around £8 million—probably half of the £14.2 million—is for future work.

Douglas Lumsden: Okay.

This might be a question for John Petticrew or Andrew Miller. How many full-time employees do you have in the yard?

John Petticrew: We have 435.

Douglas Lumsden: Okay, I am looking at—

John Petticrew: That includes subcontractors, too—everybody who clocks in.

David Dishon: There are about 290 Ferguson Marine employees. We have probably got about 430-odd people in the yard, including subcontractors.

Douglas Lumsden: Given your plans for the next two years, how will the workforce fluctuate? One vessel has been completed and handed over. That is great. Some of that workforce will now work on the Glen Rosa. What are your workforce plans for the next two to three years?

John Petticrew: At present, we are negotiating for a major subcontract—I cannot mention the people to whom we are talking. We have two other potential customers that are a little bit further to the right.

Earlier, Michael Matheson asked me about how we are going to go from a confidence level of 90 per cent to one of 100 per cent. We are going to achieve that extra 10 per cent by keeping a lot of those members of our workforce around and putting them on second shifts and by putting more people to the task. If anybody was not required, it would be subcontractors; it would not be out of the 290 staff.

That is the model that most shipyards are using now. They have a core group and, if they have to increase those numbers, they do so by subcontracting. If they have to let people go, the subcontractors get let go. For example, say that we have a core group of 300, that we go up to 400 or 430 and that we stay there consistently. It is incumbent on us to try to bring in permanent people to bring the workforce up to that level.

I worked for J D Irving Ltd—the Irving group. It is currently building frigates in Halifax, Nova Scotia. Prior to that, it was in Saint John. In Saint John, the company hired too many people. When there was a downturn in its work, it had to let local people go. When it moved the business to Halifax, it came up with a workforce figure that it was confident that it could go five or 10 years with and increased that with subcontractors. When that 1,700 went to 2,000 and it stayed consistently at 2,000, it brought 300 people back in. I believe that we would want to continue with that model.

Douglas Lumsden: I will explain why I ask. I am looking at a social media post from David Tydeman from last week. He wrote:

"And now the challenge of how the government pays for all the yard overheads and management costs now that the costs cannot be charged 100% to two ferries and only Glen Rosa is occupying the yard".

I am trying to work out how, as a yard, you are budgeting for getting less income from the Scottish Government for those two vessels.

David Dishon: We have what are known as underrecoveries. That refers to anything that is not charged to 801 or 802, or any commercial activities. That covers temporary downtime or cleaning up the yard, which is not charged to a build cost of 801 or 802. Those are underrecoveries: they are a separate pot that we charge the Government for every month, and that pot of money is expected to go up, because 801 has been delivered.

We have to consider different ways to reduce the underrecoveries pot, and one of them is to second staff to other shipyards that have the demand. We have a flexibility arrangement, whereby we have been doing that for several years, and that can temporarily allow us to reduce the underrecoveries while still having the flexibility to bring back the workforce if we win additional work.

We will have to consider the whole structure and the overheads. There are certain things that we can do that we have already started examining. I am looking into the full overheads of the yards to see what we can utilise and where we can bring down the underrecoveries.

Douglas Lumsden: What sort of things are you looking at? How much are the underrecovery charges per month—the amount that get charged to the Scottish Government?

David Dishon: It varies; it depends. For the first seven or eight months of the year, they have been in the region of £1.5 million for the year. Some months, it is £200,000 or £300,000. They were next to nothing the previous month, because we had so much work, and everyone was fully engaged and employed on 801 and 802.

Vessel 801 is now delivered. As we now look to the commercial opportunities, the charges can go past £500,000 a month. We have to consider all our overheads and all our contracts to see where we can get better value for money. We have just put out to tender to Public Contracts Scotland for a piece of work for 802. If we used the incumbent, it would have come to a significant amount more, so we put it out to tender. We have now awarded that contract, which has saved a significant amount of money. We do that across the board as we look at our contracts and overheads.

Douglas Lumsden: What are you forecasting your underrecoveries to be for the end of next year?

David Dishon: For the end of this financial year?

Douglas Lumsden: No—for the end of 2025. Once Glen Rosa is handed over, basically.

David Dishon: We are in the middle of doing the forecast for next year's budget, so I do not have a figure for it yet. We originally forecast somewhere between £8 million and £10 million overall for underrecoveries this year, but we will not be anywhere near that. The significant amount of work on 801 and 802 has allowed us to be gainfully employed, so that we do not have to use underrecoveries. We have also had commercial opportunities, which have allowed us to reduce that amount. We will not be anywhere near that forecast this year.

The Convener: I have just looked at the company accounts from last year. Employee salaries came to £23 million, roughly. That works out at about £50,000 a head for the employees that you have, including your subbies. If you have only one boat, and you had 400-odd people working on two boats, what is going to happen? I do not understand how much it costs to keep the lights on in the shipyard if you are working on only one boat, or how you will balance the underrecoveries at less than £10 million, given that your wages alone are £23 million. Perhaps you can explain that to me.

David Dishon: The original sum for underrecoveries of £10 million included anything that we thought would not be charged if we did nothing. That is the amount that would have been involved if we did not charge for 802 or any commercial opportunities. That would be our delivering only 801—we would not have any commercial work to charge for. Clearly, then, at such a point, we would have to do something to reduce that amount. Wages and salaries is probably one of the biggest cost bases in the company, as it is in most companies, so if nothing was happening we would look at that.

We have already reduced that £10 million: the sum will probably be half of that, this year. It will start off at £200,000 or £300,000 a month then, for the back end of the financial year, it will be higher than that. As I said, we have to look at all our overheads and wages and salaries, and we have to renegotiate contracts.

The Convener: So, what is the total money that is required, currently, to keep the lights on? Salaries and all the other costs for the yard are how much, a year?

David Dishon: I do not have that exact figure to hand because—for example—we have 27 vacancies at the moment, so our salary bill will naturally go down, but we have additional costs because of wage inflation and the increase in national insurance contributions. National insurance alone will probably cost a quarter of a million pounds, based on our current wages and salaries bill. We are currently in the process of doing a forecast—a reforecast—that I will have to put to the board, and we will make decisions on the back of that.

The Convener: So, £40 million is not an unreasonable figure if salaries are £23 million—which, you have said, is roughly your biggest cost.

David Dishon: That is not an unreasonable figure.

The Convener: Will you get £40 million from the Government for the Glen Rosa next year?

David Dishon: Do you mean in underrecoveries?

The Convener: No. Will you be paid £40 million next year for the work that you are doing on the Glen Rosa? I think that we have paid a lot for the ferries already.

David Dishon: We have currently billed about £96 million for the Glen Rosa. We have about £54 million left to go, of the £150 million that we have currently forecast. At the moment, we are going through a replanning forecast. I will have to go through the whole forecast, to look at where we can save money and at the risks.

To go back to the Glen Sannox, I note that I did a forecast in February. I did not like the first forecast, so I put in a lot of risk and delays and looked at the overheads, and I gave the view that it would cost £145 million to £149 million, on the basis that we would deliver in May 2024. I had risk built in for a delay of up to three months, so as it got to August, that £149 million was at risk. As time went past August, I was using up the majority of the risk and we were looking at other ways in which we could save costs and bring the amount down.

I will have to go through that whole process with the Glen Rosa, as well. However, it is about not just the Glen Rosa but what else is out there. We are currently bidding for the small vessel replacement programme and, as the chair said, we have other potential partners. That is a full exercise that we are going through at the moment.

Mark Ruskell (Mid Scotland and Fife) (Green): I want to ask about the role of subcontracting—in particular, the type 26 frigate work for BAE Systems, and future subcontracting work.

John Petticrew: What is the question?

10:00

Mark Ruskell: Where are things at?

John Petticrew: We are negotiating contracts. That is all that I can say just now.

Mark Ruskell: Do you have a likely end point for that?

John Petticrew: Yes.

Mark Ruskell: The Government said in July that discussions between you and BAE about the frigate programme were in their final stages, but it is now almost December.

John Petticrew: There have been hurdles between us. We are at BAE's beck and call and have to wait for it to have units ready. I cannot go into much detail because we have been asked not to, but we are very encouraged by the results that we have had in the past week.

Mark Ruskell: What are the themes of barriers? Are they caused by sign-offs or technical specifications?

John Petticrew: The need to get units that fit our facility is probably the biggest barrier. BAE wants to build the units inside, not outside, so we have to look at what we can build using the method that BAE wants to use. Mr Lumsden asked about improvements in the yard; we have to start those improvements, which means balancing both those issues. We must keep people employed and bring work to the yard while improving the yard at the same time, so we have three balls in the air at once. We are encouraged by the progress that we have made—in particular, in the past week.

Mark Ruskell: Does that relate to what David Tydeman told the committee about the need for a plating line and a grand block? Will the £14 million investment gear you up to take on more subcontracting work?

John Petticrew: We are trying to model the yard and buy equipment in the way that will give us the biggest bang for our buck. We have partners in the area that have overcapacity on certain pieces of machinery, so we must ensure that we have the same information technology as them and can transfer information.

It did not take a genius to figure out that the shipyard was stuck in the 1980s and that we needed to take it into the 21st century. Any half-decent shipbuilder would have walked in and seen the need for improvement, but we need to spend the money wisely. We are a small shipyard—and the only commercial shipyard left on the Clyde—but we are trying to be the best in Britain. I have heard people talking about our being the best in the world, but if we can be the best in Britain, we will be doing very well.

Our first objective should be to get confidence back. One board member said that our reputation has been damaged. It has. We must create confidence in the yard, but we have to accept that we did not do things right. It is easy for me to be the last person sitting here and to blame everyone else, but I am not going to do that because we have to look to the future.

We have to learn that you cannot start building a vessel before the design is finished and you have a plan, and that you cannot start building two vessels at the same time. We have to learn not to bring all the equipment in at the same time, such that we have to rent another warehouse. We should work in the way that the rest of the world works, using just-in-time delivery. We do not have an area where we can store plates, so we need a partnership with a supplier that knows the plates that we need and brings them in in a timely fashion. I have worked in Vancouver in a yard that was not much bigger than ours. That yard partnered with a company that brought in plates if and when they were needed. You need a plan to be able to do that.

Mark Ruskell: Are uncertainties about the pace and scale of investment holding back a decision on the BAE contract, or are you certain that you will have what you need in place at the right time to fulfil that subcontract?

Andrew Miller: That is a good question. A lot has been happening in commercial and military shipyards in the UK. I mentioned—although not by name—the Belfast situation. The Westminster Government is working with another party to try to secure a future for that business. That deal has not gone through, but it is clear that the destabilisation of that business, which was heavily involved in marine and other matters to do with the Falkland Islands, has had an impact. The businesses are swimming in the same pool as some more established players, especially in the military arena. Some of the players—I do not like to mention names—are considering what the risks are, given the contracts that are currently in that yard that they may or may not acquire, especially if that shipyard group is going to be headquartered in another jurisdiction in the European Union. All those things bring about a reforecasting assessment of risk in terms of how those players will move forward.

The positive news is that the naval shipbuilding business is the most buoyant it has been in the past 50 years. However, that is not to say that there is a separation between the military part of the market and our part, because some of the big players require a supply chain for subcontracted work. There is a bigger picture with regard to the sustainability of commercial shipbuilding in the UK as a supplier to some of the bigger military contracts. A lot of people sometimes forget, or ignore, that. It is all about joined-up thinking with regard to what is actually going on just now.

Mark Ruskell: It is obviously a challenging context in which to operate.

Andrew Miller: It is.

Mark Ruskell: I appreciate that, and I think that every member of the committee wishes you well. We want to see the business expand and grow in the future.

Andrew Miller: We appreciate that.

Mark Ruskell: I want to ask about subcontracting more generally. David Tydeman said at the time that 801 and 802 were more complex than a type-26 frigate; I do not know whether you agree or disagree with that.

Is there something about the size of yard and the expertise that you have, and your place in the market, that points towards subcontracting or building smaller vessels being more of an opportunity for the business in the future than very complex bespoke engineering contracts like 801 and 802?

Andrew Miller: John Petticrew will give you more on that.

John Petticrew: I might be a bit controversial here, but I do not find the vessels to be particularly complex. I just think that the work was not planned and designed properly. I think that Ferguson's was, and is, well capable of producing the vessels.

Obviously, a yard wants to get a series of ships to build. If we take on the small vessels replacement programme, for example, we will take on building of seven ships. In general, a shipyard would say that it will be at ship 3 before it starts to make money, and there will be a gap between ship 1 and ship 3 so that it can find out what all the snafus are and they can be fixed for ship 4.

I was involved in building nine frigates, and we were on the fourth frigate before we really knew what we were doing. I am not trying to compare anything that we are building with building a frigate—the vessel is not as complex as a frigate, as an ex-colleague of mine, Andrew Hamilton, commented when it came out. It is a dual-fuel vessel, however, which brings its own particular difficulties.

We have to find a niche market. We—as the board—feel that we need two or three income streams, or three strategies, so that when one is not doing quite so well and there is not as much to do on it, we can lean on the others.

There are various parts to the yard—there is the big shop, the slipway and the shop at the top. You can have a ship in one part of the yard getting ready to sail, and a couple of ships in the shed being built. You could be building pipework for offshore or wind farms or whatever, and you might also be doing some naval work in the yard. That is the mixture—those are the three or four balls that we are trying to keep up in the air. We are trying to get people to think differently about that.

Ferguson's was previously about building one-offs—or two-offs—but, as a yard, we really want to be building a series of ships. A lot of people now want a series of ships, and they give contracts for two plus two plus two, so that they have an opportunity to pull out after two if you are not doing well, and to give the next two ships to somebody else. I think that that is something that we will have to venture into.

I will also make the point now that one thing that we will try is a joint venture with an established shipbuilder. We have not chosen anybody, but we have been speaking to various people.

We need to get out of the business of designing ships. We need to go to somebody who has a catalogue of ship designs and say to CMAL, for example, "Here are six ships similar to what you're looking for. Pick one." It would be a design that is already proven, so all the trials and tribulations that we went through in the design process would be gone—that risk would be gone. We would bring the design in, similar to what happened at the Belfast yard. I was there when we signed such a contract with Navantia. The reason for doing that was to bring in its expertise for project management and get advice on how to lay out the yard and so forth.

We have to be humble enough to realise that we need to do the same thing. We need to take that leap in order to take ourselves into the arena and be competitive in the commercial market. As, I believe, the committee knows and appreciates, being competitive in the commercial market is totally different from being competitive in naval yards. They are two different animals.

We need to get the bang for the buck for our sponsor, and to get ourselves to the point of being an established business. For me, the first thing that we need to do is break even, so that we are not costing anybody any money. Then we can look at trying to make money. Does that make sense?

Mark Ruskell: Yes. Thanks.

The Convener: We have quite a few follow-up questions.

Kevin Stewart: I am interested in what Mr Petticrew said about design—or lack of design. Is the fact that there was no design the major failing of the project?

John Petticrew: We started before the design was finished. We should have finished the design first.

It is not unusual to start a ship before the design is completely finished. However, if I look at the history of the matter—I can comment only on stuff

that I have read about the business and enterprise—based on my experience, I think that we started too early. We also started both ships at the same time, if the history that I have been told is correct.

Kevin Stewart: You said that your ambition was to take the yard from the 1980s to the 21st century. Has that lack-of-design scenario held that back, or are you now on the way to bringing the yard into the 21st century?

John Petticrew: If we spend the monies that have been allocated to us wisely and on the right equipment and technology, and if we partner with and take advice from other people, I think that we can get there. In fact, I do not just think it—we will get there.

Kevin Stewart: You also mentioned a difficulty earlier on, which was—to use your phrase—"passive resistance". Did you mean passive resistance to change, or was it that people have been driven from pillar to post during the course of all that has been going on?

John Petticrew: I think that you just answered your own question, to be frank. The two points that you made are very valid, given the change in, and instability of, the management. We are not talking about personalities here, but just about people moving and leaving the company, or the enterprise. That must be distressing for people. We have a lot of people who have worked there for 20 or 30 years. Some people like change and some people struggle with change, but we have to change. There is no doubt about that.

Kevin Stewart: Does everyone who is working at the yard at the moment recognise that change is required?

John Petticrew: I believe so. They want to see the change.

David Dishon has a person who reports to him who has been working there for six years. When it was announced that we were going to get monies to improve the yard, she was nearly crying, because it was a relief to her.

It was also a relief to our partners. You are asking why things have maybe stalled a little bit, with getting additional work. They were looking and asking whether we were going to be around in a year or two years. That is what the chairman was alluding to.

Kevin Stewart: A lot of pelters have been thrown—

John Petticrew: Really? [*Laughter*.]

Kevin Stewart: —for good reason, in some respects.

From what you are saying, a lot of that is down to the fact that there was no design.

You talked about that lass crying about the investment money. What is morale like among the workforce? Are they positive for the future? Are they up for it, basically?

10:15

John Petticrew: Yes, the ones who have stayed are up for it. A young person with a mortgage has to think differently from someone whose mortgage is paid and who does not have such bills coming in.

We have some good young talent. When the Deputy First Minister came to visit, the three people who showed her round were under 30. She took a picture of people with her on the gangway. I think that their average age was 31.

Kevin Stewart: Are you using those young folk as part of your sales pitch for other work, to show that they are up for it?

John Petticrew: Yes—100 per cent.

Bob Doris (Glasgow Maryhill and Springburn) (SNP): I have listened to all of this with great interest. Potential partners of Ferguson Marine will be listening to your evidence, as will competitors. Therefore, these evidence sessions, which the convener has been so diligent in scheduling, are important to the future wellbeing and prosperity of Ferguson Marine.

I will pick up on something that was said in answer to an earlier question. There was a senior manager in charge of completion of the entire vessel, but the vessel had been broken down into sections. That meant that there seemed to be a lack of accountability on the shop floor—for want of a better description—to ensure that individual sections of the ship were nailed, and that, if a section was not, it was possible to identify who was responsible for the slippage. Is that quite unusual in the shipbuilding industry? It seems to be crazy that one person would be directly responsible for the completion of an entire vessel. I am pleased to hear that the management and accountability structure has been changed. Mr Petticrew, was it a surprise to you when you found that was not already in place?

John Petticrew: It was, somewhat a surprise—yes. You said that it is not the case in other shipyards, but yards further up the Clyde have a delivery director. However, we are not a naval shipbuilder. We are a commercial shipbuilder, so we have to do things differently.

Bob Doris: The point that I am making is about whether it was evident that there should always

have been a senior manager who was responsible for each particular section of the ship.

John Petticrew: The introduction of proper project management procedures was required. We did not have project managers, but now we have project managers who are a singular voice, away from operations. If someone goes to operations and asks it for an end date, it is always going to give the optimistic view. However, if they go to somebody who has skin in the game and has to report to me on where we will be, they will get a different answer. Both answers have to be compared in order to know where we actually sit.

Bob Doris: If the current system had been in place years ago, do you think that we would be in the same situation now, or would performance have been better?

John Petticrew: I have to say no—we would not be in the same position.

Bob Doris: The reason for asking that is that we want all of you to turn Ferguson Marine around. We want you to win more orders and we want you to diversify. I am trying to get you to put on the record where Ferguson Marine is now, so that we can give confidence to people—not to the parliamentary committee that is scrutinising the matter, but to future investors and future partners, because we want you to win those contracts. Could the troubles that you have been through make you better prepared, and fitter and leaner in order to win contracts? How can you assure us that you are now getting it right?

Andrew Miller: We know some of the mistakes of the past. John alluded to the key elements of the shipbuilding business that we would like to work on with other parties. I call it the intellectual property end of the scale—new propulsions, new designs, for which we can rely on the intellectual property of partners. There is discussion with some of those partners about how we can work together with them, whether through a management contract or some form of equity situation.

Obviously, we have to prepare the business for the future—not only by giving value to the current shareholder, but by finding opportunities with other shareholders to deliver what is required for the Scottish economy. I am not wedded to state investment in assets. Clearly, we want to improve how we acquire new capital for the business and how we hit the necessary returns.

As everybody knows, Ferguson Marine is the last commercial shipyard on the Clyde, but we have some friends in the marketplace that we have been talking to about how we could work closely together to achieve a better outcome for the business—one that would, I hope, prepare the business for other investors involving themselves with the enterprise.

Bob Doris: As well as the structural need to modernise the yard, reputation and confidence have come up time and again as the biggest barriers. Clearly, the best way to rebuild reputation and confidence is to meet the new deadlines that have been set, within the cost envelopes that are forecast. Bluntly, that has been the challenge for years. On the basis that, given a fair wind, you nail this, what can others do—not Ferguson Marine—to help to rebuild reputation and confidence and to be a good friend to Ferguson Marine? We want the yard to be a success. The question is not about all the things that we know you need to do internally and that you have to be accountable for as an organisation. What can others do to assist?

Andrew Miller: Nobody will give you an argument with some of the statements that you have made, but I will mention one green shoot. David Dishon has been in the business as finance director for about 12 months. He gave the committee a financial number on 801 in May, which was seven months ago. Although we have not washed up completely, that forecast number is still the number that we are working to. Two or three years ago, we could not have said that we would be confident about that, but we have been building up the skills and expertise of people in management, and we have the help of John Petticrew and other key people who have joined the senior management team and, indeed, the board—Simon Cunningham joined the enterprise about 12 months ago. We have got those key people into the business to help us to plan.

Many of the people whom we deal with are former Ferguson Marine employees, whether they are now in CMAL, CalMac or other enterprises up the Clyde. We have friends, and a lot of people are willing us to succeed. We definitely have to prove ourselves. We have to deliver on time and on schedule and show the market that we can pitch for new work. We have quite a lot of projects in the sales hopper that we are working on, and some are more short term than medium term.

We have received subcontracting work from one of the biggest naval shipyards in the UK, so we have been working closely with it. That is providing engagement, even between me and the very senior principal there—there is dialogue and we have been getting advice on securing more subcontracted work. Some people in the Scottish Government have been very good at helping us to establish communication channels, to ensure that others understand our strategy and where we are going in the future.

Bob Doris: Thank you.

The Convener: Is that you finished, Bob?

Bob Doris: Yes. I will leave it at that.

The Convener: Perfect. Douglas Lumsden has a question, and then I will come to Monica Lennon.

Douglas Lumsden: My question is for John Petticrew. We heard that you have been offered a contract extension until spring next year, and that you are not sure whether you are going to take it yet. Do you not fancy doing the role full time?

John Petticrew: I am doing it.

Douglas Lumsden: Oh, you are doing it. All right.

John Petticrew: I am doing it. We are just ironing out the details—Andrew Miller just takes too long getting the stuff.

Andrew Miller: I have other masters.

John Petticrew: I am going to do it.

Just so you know, my dad used to run Inchgreen. I am from Greenock—I am from the Port Glasgow area, and I am proud to say that. I live somewhere else and, honestly, I do not fly back and forth every weekend, contrary to popular belief. I am here because I want the yard to succeed. The £14.2 million is about the 30 and 35-year-olds; it is not about me. It is about building a future for the young people.

I am not trying to sound like a politician here, but that is what we are all about. That is why David Dishon has joined the company on a full-time basis. That is why this gentleman—Andrew Miller—has taken over as chairman of the board. We want it to succeed, so I am going to stay.

Douglas Lumsden: Do you not fancy doing it long term?

John Petticrew: I would do it full time, but my family situation does not allow that.

Douglas Lumsden: You mentioned travel, so this is probably your chance to put on record what your travel arrangements are.

John Petticrew: I have seen my family three and a half weeks out of eight and a half months.

Douglas Lumsden: You are living almost full time in Scotland?

John Petticrew: Yes.

Monica Lennon: I promise that I want to talk about the future as well, but first I want to go back to a couple of points. It was fascinating to hear you say that the process that was being asked for in terms of the ferries was not particularly complex. Will you explain a bit more what you mean by that? Lots of people across the country see ferries that were massively overdue and over budget, and to them, it feels quite complex and quite messy. Will you explain what you mean by the process not being particularly complex?

John Petticrew: What was the word that was used? It is very congested rather than complex, because of the size of the tank. Monica, have you been to the shipyard?

Monica Lennon: I have not, unfortunately—not yet. Is that an invitation?

John Petticrew: It is an open invitation to everybody here. If you come down with me, I will take you on the Glen Rosa and show you the size of the LNG tank and the space that it takes up. The Loch Seaforth, which is in the CalMac fleet, has a very similar-sized engine room. It is better laid out, because it does not have a huge, big tank that takes up so much space. It is not complex, but it is very congested. There is a difference between complex and congested. It is a very congested engine room space.

Douglas Lumsden asked about the design and planning. The chairman talked about the key events that we could have done better. The design and planning is absolutely paramount. It does not matter whether it is a frigate, a trawler, a patrol boat or a landing craft. If you do not have a plan and a design, you are doomed to failure.

Monica Lennon: To pursue that a bit more, do you believe that the specification for 801 and 802 was right? Was it appropriate, or was it overambitious?

John Petticrew: I cannot really answer that, because I was not here for the discussions on the exact overall end use of the vessel. I know that it took too long, and I know that we let the community down by taking that long, but all I know is that, if you go on the Glen Sannox now, you will see that it is a fantastic vessel. I have been on lots of vessels. If you go and look at the passenger areas and the engine room now, you will see that it is a fantastic vessel.

That is all I can say. I cannot comment on the specifications, because I was not there during the negotiations on the specifications. All I know is that, when I came here, there was a vessel that needed to get finished.

Monica Lennon: Thank you. I appreciate the limitations of your knowledge on that. I will put the question to Andrew Miller as chairman, because it is really important that we are confident that all lessons that can possibly be learned have been learned. Are you able to say whether the board is satisfied that the specifications were appropriate and correct? Were they over the top or overambitious?

Andrew Miller: At Ferguson Marine, we build ships, and we build them to the specification and design that are given to us.

10:30

Monica Lennon: You are up for any challenge. I will ask a different question, then. Has every aspect of the specification to which you were asked to build been fully achieved?

Andrew Miller: Clearly, with a timetable and a budget that were not met over a protracted period of time, there are lessons learned, so it is about absolutely making sure that we learn the lessons and apply them on the second vessel.

Monica Lennon: Okay, but, in terms of the Glen Sannox, has everything been completed that was in the original design and specification?

Andrew Miller: I reiterate what John Petticrew said. At the handover, there were people in tears on the bridge—people from our company and other agencies. It was an emotional time.

That ship is an exceptional piece of kit; it is of very high quality and it performs well in excess of expectations. It is the first vessel to be registered in the UK under the hybrid fuel system. Those are phenomenal achievements, but they are drowned out by the negativity of the past. I can understand that. However, we are looking to the future, and we are fixing a lot of things—including the people at this end of the table—when it comes to the quality and skills that we need. We look to the future with enthusiasm.

John Petticrew: The final sign-off is by CMAL. As you know, we did a two-stage handover. We did a sign-off by the ship classification societies—MCA and Lloyd's—and, a few days later, by CMAL. It had a perfect opportunity if it thought that something was definitively wrong or it was not happy with the vessel—much as that would have been a disappointment to us—but it was happy. The captain of the vessel was on a handover, but he stayed a day and a half late to be the person who put up the ensign at quarter past six that evening. That is how proud CMAL was of the vessel.

Monica Lennon: You will understand why I just want to double-check that everything has been completed. It sounds as though there are no snagging issues, which is good news.

John Petticrew: Look, we are here for the long haul and, if something happens, we are here. We are not going anywhere. That is why it is good to buy at home: you do not have to go to a foreign country to get somebody to come and fix something that is wrong. We are partners with CalMac and CMAL. We are not adversaries; we are partners.

Monica Lennon: I said that we will talk about the future, and I come to the small vessels replacement programme. It was mentioned earlier by David Dishon, I think, and we have heard a lot about potential partnership working. At this stage, are you able to say more about Ferguson Marine's ability to submit a competitive tender and about how important securing the contract is for the yard? You have talked a lot about the workforce and young workers coming through, which is great to hear about. I am interested to hear your thoughts on that.

Andrew Miller: We are still in the running in the procurement process. We are one firm of six that is still in with a chance. The timetable is not controlled by us but by another entity. As John Petticrew said three months ago, we are bidding vigorously.

The big issue for us is the fact that there is one point of governance for the whole enterprise in terms of looking at the communities on the west coast of Scotland. If you think of them and focus clearly on that, there are three parts to the troika, as I call it. There is CalMac, which operates the ship, and CMAL, which specifies on behalf of the Scottish Government. That one point of contact and governance for the communities in the west coast of Scotland is probably underplayed because it splits into different ministerial responsibilities.

We have one asset—Ferguson Marine—that was bought to save jobs for the future, which was a great motivator, but we have another contracting authority that chases, in some regards, 40 per cent of the points and the lowest possible price.

Given that 40 per cent of the marks are awarded on price, it is very difficult for commercial shipbuilders in the UK, which operate at half the margins of military shipyards, to compete when the three assets are owned by the same principal. The fact that the objectives play against one another makes it difficult for commercial shipyards in the UK—not only Ferguson's, but other yards—to achieve the winning points to secure that work, which is very important for the future of Ferguson Marine. Dealing with that is problematic.

I do not want to seem as though I am anti-global competition, but there is a reason why some jurisdictions win contracts that are based on the cheapest price. When we are talking about a country that has 46 per cent domestic inflation and that can fix contracts in any currency that it wants, one must presume that there is a level of subsidy playing in its organisations, which are competing with our enterprise on the Clyde. I am not for subsidy, but we want to have competition that is fair when it comes to how we pitch for the new work. We also want to ensure that some joined-up thinking takes place so that, in owning various assets, we understand the overall objective—the one point of governance—which is to supply reliable and consistent ferry services to support communities on the west coast of Scotland in

relation to both social access and economic access, which is required for the development of some of the industries there, in order that they can export.

Monica Lennon: This question is for John Petticrew. I believe that one of the requirements for vessels that are procured under the small vessel replacement programme is that they have to be electric. We know that there have been issues with the Glen Sannox and the Glen Rosa as a result of the LNG fuel system. Do you have any concerns about that, or have lessons been learned that make you confident that you can handle that specification?

John Petticrew: We are talking about two entirely different beasts. With a battery electric vessel, you would go to a systems expert, who would guide you on what systems to put in, and you would have a systems integrator that would integrate the ship. That is another key element that we might have been missing on the two vessels that we currently have in the yard.

Monica Lennon: Why do you think that that was missing?

Andrew Miller: We are talking about the intellectual property end of the scale. We have working relationships with partners who are well ahead on the new technologies globally, who can advise us on how to make sure that we do not repeat the mistakes of the past. That is what we are undertaking.

Monica Lennon: I promise that this will be my final question, convener. I cannot see you, but you are probably waving your pen.

I declare an interest as a member of the GMB union and a member of the National Union of Rail, Maritime and Transport Workers parliamentary group; I do so because we are talking about workforce issues.

You have given us a lot of anecdotes about how people across the organisation are feeling. Will you say a few words about how you engage regularly with the workforce and what those discussions look like, especially in relation to the future of the yard?

John Petticrew: Are you addressing that question to me?

Monica Lennon: If you can answer it, yes.

John Petticrew: As chief financial officer, David Dishon does not sit in his office; he regularly comes on the vessel with me. I would challenge the committee to find anyone at the yard who does not know me or who has not spoken to me regularly. I was on the Glen Sannox for four to five hours every day. I do not wear a suit. The one that I am wearing came out of the cupboard. I wear a pair of jeans, a T-shirt and a boiler suit, like the principal up at BAE Systems. When Andrew and I met him, he came into his office in a boiler suit. You have to engage with people and tell them what is happening. You have to have town hall meetings. You have to allow people to come to your office, if they want to do so, to have five words. You have to be approachable.

Monica Lennon mentioned that she is a member of the GMB. She can speak to the union members who were in Belfast when I was there, who will say that I behaved in exactly the same way in Belfast.

Andrew Miller: We also have a regular slot for the GMB at the board meeting. That time used to be for Alex Logan and John McMunagle, but we see just one of them now. We take 15 minutes for the board to directly answer their questions and deal with their reservations about the enterprise.

There is also informal contact around the yard. I do not get on to the ship as often as John Petticrew, because I have great difficulty in fitting into my boiler suit, but we are very approachable. People can ask us anything they want to and, because we are approachable, that happens. If people have a grouse about something or want to raise an issue with the board, they can raise that directly with the board of directors, in John's presence. That is what we do.

John Petticrew: I have a meeting with the union rep every Tuesday—although I am here today so I will do that tomorrow instead.

Monica Lennon: I am sure that they will forgive you for missing today.

Thank you for those answers. Before I hand back to the convener, I asked Andrew Miller about project domino. Just to clarify, the paperwork released by the Scottish Government suggests that that was a code name used by the Government in March this year, and that it may have been used only internally. We might be able to ask the Scottish Government about that separately.

The Convener: I am sure that we can ask separately about project domino.

Before we leave the issue of small vessels, I have a question about David Tydeman's evidence. He said that building small vessels would cost 25 to 30 per cent more in Scotland than it would anywhere else in the world. Was he right or wrong?

John Petticrew: That depends on the comparison.

The Convener: It was in comparison to five other shipyards around the world. Was David Tydeman right or wrong?

John Petticrew: He was right: we would be more expensive. I cannot give you an exact figure.

The Convener: Thank you. We move to questions from the deputy convener.

Michael Matheson: I am interested to hear your views on something that you have touched on to some degree. What are your thoughts on the future shape of the company? Do you see Ferguson Marine being a stand-alone company, as it is at present, or do you think that it will be part of a joint venture in which another partner deals with the intellectual side of the business and you offer some specialisms? Mr Miller, you spoke about the potential for external partners to take an equity share in Ferguson Marine as a way of shaping the business.

Andrew Miller: We are trying all those options to see which will be best at giving the yard a sustainable future. Nothing is out of the arena at the moment. We have had some discussions with interested parties—which I cannot name—about possible future working relationships. On the current list, under the SVRP programme, there is an organisation that has a Vietnamese subsidiary company that is one of the six bidding parties.

It is clear to us that organisational structures that give the customer the best possible price, while blending that with an intellectual property component, will be part of the way forward. We know that having a soup to nuts model for Ferguson Marine, starting with metal and rivets and going all the way to creating a whole ship, is not the modern way and is not how the world market now builds ships. It is how naval shipbuilding works, but the margin for naval ships is twice the percentage margin for commercial shipbuilding.

We have to be smart about what we do. The political jargon would be to say that nothing is off the table. We are pursuing a lot of the relationships that we have alluded to in the past. That is the way the industry is going.

Michael Matheson: Would it be fair to interpret from that that the existing structure is not sustainable in the current international shipbuilding market?

10:45

Andrew Miller: Not to be obtuse, but I would say that the whole focus, when building 801 and 802, was on what would serve the communities in the west coast of Scotland—quite rightly. What was really underdeveloped was the longer-term strategy both on acquisition as a state-owned enterprise, and probably for about five years after that. There was very little regard in the board papers to setting the strategy for the future, and the whole intellectual groundwork behind that was missing. It has taken us about 12 months to get up to speed on what we will do with the asset in the future, with the support of the ministers who are involved.

Michael Matheson: As a board, do you feel that you have a better grip on the future strategy?

Andrew Miller: One of the distressing things is the fact that, in the first 12 months that I was at Ferguson Marine, I was responsible to four ministers, as they kept changing. The current cabinet secretary has said that I was being unfair, because she was the first one, so I could not count her twice. We have good on-going support from the sponsoring department and indeed the cabinet secretary, who is willing to help us and have meetings, and talk to people to advance our cause, which is a great credit to the lady who occupies that position. I very much enjoy working with her, in the same way that I did when I was the chairman of Prestwick airport for seven years. In fact, Mr Matheson was one of the ministers whom I reported to in years three, four and five of my tenure, before the DFM took up the position.

I am pleased about the working relationship, but it is a tough assignment. It is probably one of the toughest assignments that I have had in my career of turning around organisations and state assets such as Prestwick airport. That enterprise has been profitable every year for the past five years under the auspices of state ownership. It is possible with the right amount of application, drive and energy.

The Convener: If there are no other questions, I will come in with a few, as well as a comment. Having first visited 801, as it was then, when it had wooden windows and dummy stanchions on the back to secure it to the harbour, which had to be taken off, and a bulbous nose and all the rest of it, it is interesting to see the vessel coming into service six years after it was first launched. I have also seen Jim McColl, Tim Hair, David Tydeman and now John Petticrew in the chair all saying the same thing, but slightly differently. Tim Hair swore that taking on a new warehouse next to the yard would save the day and that he would know what inventory he had taken over. I am still as confused, having been looking at the matter for six years, about where all the issues lie.

One issue that concerns me is that we have ended up paying £82.5 million against a £96 million contract for 18 stage payments on the two boats, where 15 of those payments had been made when one of the boats had not even been built. I am slightly confused about where we are going with this, and I am slightly confused about who is learning the lessons. There are a lot of lessons to learn.

I have a quick question for David Dishon. When the Glen Sannox was recently undergoing its sea trials, I am assuming that the vessel was insured. Could you tell me how much it had been insured for?

David Dishon: Under the Scottish Government contract, we have to insure the vessel for the full built price. We regularly have to top up the insurance, which eats into my risk calculations. We have had to ensure it for the £150 million built price.

The Convener: David Tydeman told us that it would cost £48 million, or nearly £50 million, to replace it. Have you overinsured or underinsured? What would it cost to build the ship today, if it had been done properly?

David Dishon: I honestly could not say what that would cost, but, obviously, it would not be £150 million. When I first looked at insurance, the replacement value was something in the region of £70 million; however, as I said, under the contract with the Scottish Government, you have to insure for the full build price. Until last Tuesday, it was insured for £150 million.

The Convener: If I was a marine broker, I probably would not have taken on the risk for a build at maybe three times the value that it would cost to replace the vessel, so well done on finding somebody to do that.

Andrew Miller, you made a comment about David Tydeman's evidence being inaccurate at certain stages, which you would have to write and apologise for. Will you please provide the committee with information relating to that? It would be helpful for us to see whether the reports that were given to the committee by David Tydeman were factually correct.

Andrew Miller: Sure. On one occasion—

The Convener: I am happy to take that information in writing.

Andrew Miller: I was just trying to give you an example, but that is okay. To answer the question—yes, I can provide that information.

The Convener: Thank you. We all hope for a successful outcome; however, I am not sure that I can see it. Unless there are any other questions, I will leave it there.

Thank you for giving evidence. In future, when it comes to giving the committee reports on problems, it is helpful for those to be as detailed as possible. I do not think that we were aware of the anchor chain incident from any of the reports that we have been given. Perhaps I am mistaken—perhaps I did not read a report properly.

John Petticrew: I will send it again.

The Convener: Thank you very much.

That concludes the evidence session. I ask members to be back at 11 o'clock for the next evidence session. I suspend the meeting until then.

10:51

Meeting suspended.

11:00

On resuming—

Land Reform (Scotland) Bill: Stage 1

The Convener: Welcome back.

Agenda item 3 is an evidence session on the Land Reform (Scotland) Bill. We will hear from a panel of legal experts, and our focus will be on part 1 of the bill.

I am pleased to welcome Malcolm Combe, who is present in the room and is a senior lecturer in law at the University of Strathclyde. I also welcome Calum MacLeod, who joins us online and is a solicitor in practice in Inverness. Calum, we understand that you are speaking in a personal capacity as a specialist in this area of the law, and not on behalf of your firm. You have nodded, so I am sure that you agree with that.

I also welcome Rhoda Grant MSP, who is online. She will get to ask some questions at the end of the session.

I remind members of my interest in a family farming partnership in Moray, as set out in the register of members' interests. Specifically, I declare an interest as an owner of approximately 500 acres of farmed land, of which 50 acres is woodland. I also declare that I am a tenant of approximately 500 acres in Moray under a non-agricultural tenancy, and that I have another farming tenancy under the Agricultural Holdings (Scotland Act) 1991. I also declare that I occasionally take on grass lets for my cattle.

We have allowed an hour and a bit for this part of the meeting.

We will now go to questions. I get to ask the first one, which is the easy one at the beginning. Malcolm, I ask you to say a little bit about your experience in land reform, so that people are aware of it.

Malcolm Combe: Thank you, convener. I have been a land reform watcher for a while, I suppose. I did my undergraduate dissertation on the first Land Reform (Scotland) Bill when I was studying for an LLB at the University of Strathclyde. After that, I took a traineeship and then qualified into the law firm Tods Murray LLP, which no longer exists, unfortunately, so I could have no conflict of interest there. Then I took up an academic post at the University of Aberdeen. Shortly after that, I became an external adviser to the land reform review group—some committee members might remember that ad hoc group.

As it has been threaded throughout my own legal research and projects, I have developed a bit of a specialism in land reform. I teach a property law course to undergraduate students, and I have taught honours courses on the subject. I also teach a housing law subject at the University of Strathclyde.

Like Calum MacLeod, I am appearing before the committee in a personal capacity—the University of Strathclyde knows that I am here, but I am here in a personal capacity.

Also, I am one of seven members of the Scottish land fund committee, which grants awards from the Scottish land fund. Technically, in that capacity, I am a civil servant. Again, I am not speaking in that capacity and I do not regard that as a conflict of interest. However, I will not speak about anything that is embargoed or privileged in that capacity.

The Convener: Thank you. We move on to Calum MacLeod.

Calum MacLeod: First, thanks for the invitation today. I offer my apologies that I cannot be there in person. I am a rural property solicitor. I act for and advise landowners and community groups alike.

I have a special professional interest in community ownership and community buy-outs; I have advised on around 30 community buy-outs. As was stated earlier, although I am not giving evidence on behalf of my firm, my evidence is certainly based on my own professional experience of land reform and community ownership.

The Convener: Again, I have another simple question. We seem to do land reform around every 10 years. Is it time for further land reform? [*Interruption*.]

I do not know what has happened to the screens. Is Calum MacLeod still there? I can see everyone again now—it was a temporary flicker.

Just in case you did not get that, I will repeat my question. We seem to do land reform every 10 years. Do we need to do it again? Will the bill improve transparency and the right to sustainable development for communities and ensure the adequate supply of land? That is a very simple question.

Malcolm Combe: I am a little bit confused as to who goes first on that.

The Convener: I was just looking at that. This is how it will work. When I ask a question, if either of you looks away, I will probably come to you first. Neither of you did, so Malcolm, you can go first, followed by Calum.

Malcolm Combe: There you go—that is my legal training to maintain eye contact.

I should also say thank you for the invitation, convener, so that I do not seem ingracious; Calum said thank you, and I did not.

I do not have a view on that question. I am not necessarily here to push any particular agenda in that sense; I am relatively agnostic on the substance of what the bill is trying to do. My view is that I would like it to work as a piece of law when it is passed, and I am quite happy to give evidence and views on that. I am happy to offer some thoughts about whether provisions might be workable and what have you.

Broadly speaking, land reform can be an end in itself, or it can be a means to do something. With regard to whether land reform is needed as an end in itself, the Scottish Land Commission has been doing some work on the concentration of land ownership, so it might argue that that points towards an increasing need for diversity of land ownership. There may be other views on the importance of economies of scale and that type of thing; I know that the committee has had evidence from representative groups to that effect.

I offer no view on whether land reform as an end in itself is needed. I might offer the view that we have two land reform acts—the Land Reform (Scotland) Act 2003 and the Land Reform (Scotland) Act 2016—and there have been some issues with certain of the existing provisions to do with community rights to buy. Calum MacLeod probably has some war stories or at-the-coalface stories that he can share in that respect, whereas I have been more comfortable sitting behind a desk offering critiques. I was instructed by Community Land Scotland to do a little bit of work in relation to some of the buy-outs that may or may not have worked, and what happened when court challenges arose. That work has been published on the University of Strathclyde's website—I can pass it to the committee, if that would be helpful.

However, in a way, that has been compartmentalised and taken away by the separate review of the existing community rights to buy, which I know that the Community Land Scotland team is looking at. On whether that should have happened, and been concluded, first, I am, again, not necessarily offering a view. It perhaps means that some of the issues around tidying up aspects of the community rights to buy are not on all fours with the text of the Land Reform (Scotland) Bill that is before the committee.

In that regard, that is another way for me—unfortunately—to strategically sidestep the question. I will pause there and see whether Calum MacLeod wants to come in. I will regather my thoughts as to whether there is anything else, and I am happy to take any follow-up questions.

The Convener: I call Calum MacLeod. [*Interruption*.] I do not know whether the system is confusing. I think that everything is done for you, and you just have to sit there and start speaking—I hope, if broadcasting has got it right—so fire away.

Calum MacLeod: I hope that you can hear me. I am going to sidestep part of that question because I am not here to give evidence so much from a policy perspective. However, if we take as a starting point the fact that Government and, perhaps to a lesser degree, Parliament support greater community ownership and that, to a degree, Government and/or Parliament is trying to support greater diversity of land ownership, it is probably generally accepted that, in order to achieve those two things, land reform, as a policy aim, will be an on-going process that needs to be looked at from time to time.

For example, you mentioned that land reform seems to happen every 10 years. Ten years ago, we had the land reform review group. Quite a number of that group's recommendations were never taken forward in any substantive way. I make no comment on whether that was right or wrong; it just goes to show that it is very much an on-going process.

From my personal and professional experience of acting for community groups, I know that they are finding it harder to acquire land, especially under the various community rights to buy. I think that it is generally accepted that community rights to buy are in need of reform. As Malcolm Combe said, there are proposals to review the existing community rights to buy. They are long overdue a review, and I think that that should have been done first. The bill would have been a perfect opportunity to look at that.

Some issues might not be addressed by the bill. For example, the extended community right to buy, which I am sure that we will discuss later, might be impacted by a lack of review of the existing community rights to buy measures. Community Land Scotland, with some input from me, published detailed proposals that advocated modest reforms of community rights to buy. There would have been merit in looking at those proposals, and I am happy to forward the details to the committee. However, to answer the question, yes, I believe that there is a need to look at further land reform. What shape that should take is not for me to comment on.

My focus in answering the question has been on community rights to buy, which I am interested in from a technical and legal perspective. However, you mentioned transparency surrounding land ownership and the question of whether the bill will achieve that, which I think that it will, to a degree.

That is part of the wider land reform process; it is not just about community ownership.

Mark Ruskell: Was there anything that you were surprised not to see in the bill, given that, since the previous land reform act, new issues have arisen, such as natural capital investments?

Malcolm Combe: That is an interesting question. I thank Calum MacLeod for mentioning the land reform review group—I promise that I did not put him up to that. There are a few points to mention in relation to the group's recommendations. Compulsory sales orders have been discussed for a while. David Adams, one of the Scottish Land Commission's former commissioners, was particularly keen on that proposal, but there is no sign of that in the bill.

With regard to prior notification of sale, in a broad sense, the bill might, as a by-product, lead to certain amounts of prior advertisement of land transfers when the lotting provisions could be engaged. It is maybe a bit about-faced with regard to how you get to that position, but there is an element of that.

Whether the bill would have been the vehicle for natural capital, I am not sure. There was wildlife legislation relatively recently, for example.

Natural capital is one of the key new dimensions in the land market. I say that as someone who is more a legal practitioner than a land agent, but, whether it is the most recent trend or big thing, that is clearly a difference from the situation in 2003. Could people have been a bit more alive to that? Sure—but, again, we are talking about this bill and what it does.

11:15

I was not necessarily expecting the bill to look at lotting. With regard to what is regulated, I was more expecting the recipient to be given a stress test and a bit of a shake in relation to whether such a transfer was in the public interest for them as an individual, and for them to look at what else they owned and what the result of the transfer for them would be, rather than looking at the situation of someone who was transferring. It is possibly a technical point, but I am happy to come back to it. There might even be human rights aspects as to why that approach could have been a bit better than the other approach. However, be that as it may, the bill is what we have.

Mark Ruskell: Calum MacLeod, do you have any thoughts? Was anything missing from the bill? Did anything surprise you?

Calum MacLeod: I mentioned the need to review and reform the current community rights to buy, which people are finding difficult. For example, the late application provisions under the 2003 act are now essentially defunct. There are also the two newer community rights to buy for abandoned and neglected land and rights to buy for sustainable development. Again, those rights have been proven to be very difficult to use. A review of the existing legislation was needed.

Like Malcom, I was expecting something around compulsory purchase to be in the bill.

Natural capital is still very much a developing and emerging sector, so I tend to agree that the bill would not necessarily have been the place for regulation of natural capital.

There might be some interesting things to come in relation to community engagement and management plans. That might shine more of a light on natural capital and natural capital plans for certain landowners, which, in turn, will allow communities to engage with landowners, particularly in relation to community benefit.

For example, the Scottish Land Commission is doing interesting work on structures for communities benefiting from natural capital. Certainly, the land management plans will increase opportunities for engagement—

Mark Ruskell: We will come back to land management plans later, because a number of committee members, including me, are interested in them.

The Convener: I thank Mark Ruskell for stopping that line of thought before he trod on somebody else's toes.

Monica Lennon has the next questions.

Monica Lennon: Right on cue, I will ask about land management plans. We honestly did not rehearse this before the witnesses came along.

From the written evidence, we know some of Calum MacLeod and Malcolm Combe's thoughts on the issue. So far, the committee has taken a fair bit of written and oral evidence on land management plans. We have heard from witnesses about a number of concerns, including cost and administrative burden, lack of reference to crofting and commercial sensitivity.

I want to give you the chance to say a few words about the level of detail that should be in the land management plans. What would be appropriate? Is anything missing from the bill in that respect? I can see Calum MacLeod, so I will come to him first. All that I can see of Malcolm Combe is the back of his head.

Calum MacLeod: I generally support the idea of land management plans, but I think that the level of detail will vary from landowner to landowner. You mentioned crofting. The level of detail that might be expected of, say, a large crofting estate will probably be very different from that expected

of a non-crofted estate, given that it is crofting tenants who principally have the occupancy rights. As a result, I think that the detail will vary from landowner to landowner. I am aware of concerns that have been expressed about certain things being commercially sensitive, such as future plans for sales or succession, and I can see why landowners have those concerns.

I am not entirely sure about the costs of producing the plans. I am not well placed to advise on this, but I have heard figures of £5,000-plus. That might take us into the question of compliance, if the fine for not producing a plan was roughly the same as the cost of producing it. There might be specific concerns about that.

To go back to the detail in the plans, I mentioned natural capital earlier, and I think that it would certainly benefit landowners and community groups alike to include that. There tend to be a few myths surrounding the money that can be made from natural capital projects, so it would be appropriate to put that type of thing in the plans.

Monica Lennon: Do you have an opinion on whether that level of detail or that sort of requirement—with regard to, say, natural capital—should be in the bill or addressed later in secondary legislation?

Calum MacLeod: I do not have a view on that.

Monica Lennon: Your written evidence says that the size of the landholding for the management plan threshold is “arbitrary” and requires “further explanation”. Given that we are at stage 1, what explanation would you like from the Scottish Government? What is your view on the threshold size?

Calum MacLeod: As a starting point, I find it quite curious that the lotting provisions, for example, apply to sales of only over 1,000 hectares. That seems to be slightly inconsistent. I would have thought, even for simplicity’s sake, that having the same threshold for the plans and lotting would make more sense. There seems to be a bit of a disconnect, given that lotting arguably interferes with individual property rights, and yet the threshold at which it applies has been set lower than that for the land management plans. I find that a bit curious.

This is perhaps an obvious point but, in some communities, a smaller-scale landholding might reflect a greater concentration of land ownership and, ultimately, power. The Scottish Land Commission has undertaken work that looks at considerations other than just naked acres and hectares; it looks at local monopolies, for example, and how much employment is connected with a particular landholding. Such considerations are also relevant.

Monica Lennon: Malcolm Combe, do you agree with Calum MacLeod? I note that your written evidence says that your inclination would be to reduce the trigger value to 1,000 hectares. Have I got that correct?

Malcolm Combe: Yes—you have. I will circle back to some of the other stuff that Calum MacLeod spoke about earlier, but I agree with that point. However, whatever figure you choose is a bit like putting your finger in the air. I say that as someone who teaches in a higher education institution rather than as someone who is directly engaged in land management, but there will have to be a line somewhere.

What I do not necessarily see from the outside looking in—again, this might be my ignorance about land management—is why there needs to be a difference between the 3,000 hectare threshold, which is 1,000 hectares on an island, and the 1,000 hectare threshold. It could be easier for all parties if there was a degree of uniformity. I am not sure that I have seen anything particularly convincing to explain that difference. There might be an islands-related reason—I know that there is islands legislation—but it could perhaps be a bit easier to have a single figure for all regulatory effects. However, I have no strong views, and I do not think that I am qualified to say what the figure should be.

Monica Lennon: That is helpful. Would it be helpful for the Scottish Government to clarify some of the rationale behind that?

Malcolm Combe: It certainly would not be harmful.

Monica Lennon: I have a final question for Malcolm Combe. I wanted to talk about natural capital, but that has helpfully come up already. In your written evidence—[*Inaudible*.]

The Convener: Hold on, Monica—we lost your sound. We heard you say, “In your written evidence”. If you would like to, you can continue your train of thought from there.

Monica Lennon: My apologies, convener. I am not pressing any buttons, but I have been muted and unmuted a few times. I will go again.

Malcolm Combe, in your written evidence, you highlighted the concern that the proposed scheme for composite holdings might lead to some difficulties in application. Will you please set out your concerns?

Malcolm Combe: It is complicated. The gist of it is that there needs to be a means of preventing someone from patchworking their holdings to dodge regulation, essentially.

There have been some concerns about the way in which the definitions have been put together. I

know that a retired solicitor, Neil King, has commented on the way in which the bill has been informed by the register of persons holding a controlled interest in land regime, and it is quite tricky to get your head around that. I say that with complete respect to the bill team, because it has had a difficult task, but the issue is just about whether there are other ways.

There is also a query about whether the scheme will be about contiguous holdings only. If someone had one lot of land in the west and another in the east, and if they had another holding that was relatively proximate but not actually abutting, would that holding be included in the composite scheme?

As I said, the question is tricky. I have certainly not come here with a drafting solution—apologies for that. However, there are perhaps accessibility issues, and then there is the effect of the scheme when it comes to pass.

11:30

Monica Lennon: It feels as if this might be an area of the bill that needs further work and amendments. However, to reinforce the point, do you believe that the Scottish Government needs to be clearer in setting out its aims and objectives in relation to land management plans, including what their purpose really is, what value they will add and who they will benefit? Do we really understand that, based on what we have right now?

Malcolm Combe: To come back to the land management plans and tie in with some of the stuff that Calum MacLeod said, I note that the plans seem to be driving towards land being used in a more sensible and pragmatic way. Some landowners in Scotland have certain obligations that they need to aspire to—they are community groups that have already negotiated the right to buy under part 2, part 3 or part 5 of the 2016 act. They will already have acquired land in the public interest, they will have sustainable development built into what they do and they will have local accountability and what have you. In this time when we are considering the climate crisis and various other issues around natural capital or whatever, it seems sensible to consider having certain nice things—that is a simplistic way of describing it—in relation to, or putting obligations on, other landowners that might not otherwise be there.

I appreciate that a regulatory step will need to be taken that is not there currently. That comes back to the very first aspect of the initial question that you put to Calum MacLeod. When we go from nothing to something, and when we are introducing whatever level of detail there is, we need to make sure that we do not burn any good will too quickly. It is therefore important to pitch the approach at the right level.

On that, Calum MacLeod pointed to the idea that, if the cost is going to be £5,000 and the fine is also £5,000, that raises the environmental law concept, or wicked problem, of the rational polluter. If someone saves money by polluting, as compared with the fines that are being levied, we end up with someone who does not bother complying with the law. A degree of interaction is therefore needed between whatever penalty applies and whatever costs are expected.

I am sorry to once again shunt back to something from earlier in the conversation; I have no doubt that Calum MacLeod wants to say tons of things, too. You asked what the level of detail should be and whether that should be in the bill or in regulations. I know that delegated lawmaking has been an interesting discussion point of late. I think that I said on record that some of the provisions on secure, or 1991 act, tenancies in what became the Land Reform (Scotland) Act 2016 should have been on the face of the bill. They were saved for regulations, and I am not sure that that was the right way to do it.

However, I am quite relaxed about the finer details of what is to be in a land management plan being in delegated legislation. That level of detail may be something that should be thrashed out in a specific, more focused consultation exercise, if that could be run.

I apologise for giving a wide-ranging answer. I am happy to trammel some of my thoughts as required.

Monica Lennon: No—that was really helpful; I thank Calum MacLeod and Malcolm Combe. I noted down the term “rational polluter”, which sounds as if it will be helpful for my endeavours on ecocide law. I will hand back to the convener.

The Convener: That is perfect. Thank you.

Time is always against us, and I think that we are only on question three of very many and only on the third committee member who wants to ask a question. I am looking for brevity from now on.

Before I come to the deputy convener, though, I have to say that I am slightly confused: I think that you are both suggesting that the land management plans and lotting ought to have the same threshold—unless I have got that wrong. However, I cannot work out whether you are suggesting that the threshold needs to be less than 1,000 hectares, or whether 1,000 hectares for both is right. Can you comment very briefly, Malcolm, and then Calum?

Malcolm Combe: I have no view.

The Convener: You have no view. Calum?

Calum MacLeod: I do not have a view either. It just made sense for there to be some consistency.

The Convener: Okay. So it is about keeping it simple.

Deputy convener, over to you.

Michael Matheson: Good morning. Having considered the provisions in the bill, are you sufficiently clear about the intent of the land management plans?

Malcolm Combe: To the extent that you can glean it from the bill, I think that the only thing that will definitely need to be in the regulations is the duty to engage and to consider any request by a community to lease land. Unless I am mistaken, I think that that is the only active steer in the skeleton of the bill. There are nods to other important documents such as the access code and deer management plans that might give you something of an idea of the flesh that might come later.

As for whether there could have been more elaboration, perhaps so, but I am not sure what the drafting would have looked like at this stage. It would probably need someone else with different expertise to tell you exactly what the drafting would be, but the tenor of what the provisions are getting at is not something that discomforts me at the moment.

Calum MacLeod: I do not have much to add. Clearly, more detail could have been included, but I understood the tenor of what the bill was trying to get at.

Michael Matheson: Malcolm, I take it from your earlier comments that you think that some of the detail with regard to the land management plans might be better dealt with in secondary legislation. Is that correct?

Malcolm Combe: Again, I am comfortable with that in this context, yes.

Michael Matheson: Do you think that the intended five-year timeframe for land management plans is the correct one?

Malcolm Combe: Again, this is possibly a bit of a finger-in-the-air moment, but I see no particular reason why not, although others who are having to deal with this might well say that it is quite a sharp turnaround. I know that, again, that is probably not the most satisfactory answer, but I think that it is more for people who disagree with it to explain why than anything else.

Michael Matheson: Okay. Calum, do you have a view on the timeframe? We have had some evidence that a five-year timeframe for a land management plan is quite short, given how long land management can take.

Calum MacLeod: I would defer to those with experience in preparing these types of things. The timescale seems reasonable, but I do not really have the qualifications to comment.

Michael Matheson: Sure. I appreciate that you are a lawyer, not a land manager.

Malcolm Combe: I would add that the five-year period marries up with the length of time that a community interest in land stands under part 2 of the 2003 act. If a community body has to face the same churn every five years in order to keep a registered community interest alive, that might be why this timeframe was chosen, although others might say that that was a false analogy.

Michael Matheson: Okay.

Let us say that the land management plans are for five years. Given that they contain obligations that the landowner is responsible for taking forward, do you think that, if the land changes hands and is sold and purchased by someone else, that person should inherit the obligations in the land management plan, if the sale happens before the date when the plan was due to expire?

Malcolm Combe: That is a very interesting conceptual question. In property law terms, you would not expect to take on the obligations of your predecessor in title unless there was some kind of registered title condition on the land or something else that was showing up on the public register. I guess that that means that the land management plan would have to be suitably publicised in a way that would allow anyone to have fair notice.

You would also probably need to consider having a scheme that is akin to the Lands Tribunal for Scotland's oversight for variation and discharge of title conditions—which is in part 10 of the Title Conditions (Scotland) Act 2003—to deal with any such situation. However, I have not thought about that particular question. It is a right good question, if you do not mind me saying so, and I will give it some thought.

Michael Matheson: Calum?

Calum MacLeod: I agree with Malcolm. It is hard to see how you could make those types of obligations automatically binding on successors, as that would be against the general principles of property law. It might also depend on the nature of the land management plan. It is an interesting concept, though.

Michael Matheson: It may go against the existing perception of how property law is managed or is traditionally taken forward, but that does not mean that the law cannot be changed. For communities that have been engaged in a

land management plan with a landowner, and with which a significant amount of time has been spent to identify their priorities, to find that the land is sold two years later—and that the new owner has decided that they will do something completely different with it—makes them feel quite disenfranchised and that the process is worthless.

Malcolm Combe: I completely agree with what you have just said, but there are ways in law to have designations over land—whether it is a Ramsar site, some kind of tree preservation site or a site of special scientific interest—that will stick for any incoming owner.

I do not mean to undermine the question, but my reading of the provisions in the bill is that penalties would only apply for not producing a land management plan. There is nothing in the bill in relation to not complying with a land management plan—we will wait and see whether that will be fleshed out at the regulation stage.

If someone comes in as a new owner and does not like the current land management plan, they will not face any penalties if they do not abide by it; they will just have to wait until the new one comes along. I am not sure—and I apologise for not knowing this off the top of my head—whether a new owner would just have to do their land management plan at that point or whether they would get to wait for the other one to expire. That possibly makes the question a bit otiose, unless the regulations say that existing land management plans bite or that land management plans bite in a different way.

As I have said, from my reading of the provisions, the penalties only apply in relation to the existence of the plan rather than in relation to compliance with the terms of that plan.

Michael Matheson: Another way to look at it is, what is the point of having a land management plan if the landowner chooses not to implement any of it—

Malcolm Combe: Quite—

Michael Matheson: —and if he produces another one five years later to make sure that he does not receive a penalty?

I will leave it there.

The Convener: I know that Kevin Stewart wants to come in, but before we move on, I will add that, in many cases, land management plans will be based on the principle of people running a business—they will have developed a land management plan to dovetail into their business and meet with the community needs where possible.

If my business was farming, for example—I have already declared that I am a farmer—my land management plan, if I were required to do it, would be about farming. If I sold the land, somebody might buy it to plant trees to meet the Government's objective to plant trees, which might not meet the community's need. By making a land management plan enforceable for a period of time, will you distort the land value? If so, how will you compensate it? I am saying that as a surveyor as well.

11:45

Malcolm Combe: That would have to be thought about closely.

We already have part 4 of the Land Reform (Scotland) Act 2016, with the community engagement exhortation that is supposed to apply when we make such a big change to land use that it will affect a community, so it may be that that aspect is catered for elsewhere, and it is more a case of tightening that up than trying to deal with it here in this bill.

If you were to make it so that someone who came in was unable to change anything that would skew the value of the land, that would need to be thought about closely.

Calum MacLeod: I agree with that point: it needs careful consideration.

I have a further observation, harking back to a point that I made earlier. Could failure to comply with the land management plans tie in with the community right to buy abandoned or neglected land or the right to buy for the purposes of sustainable development? It could be a relevant factor if a community body wanted to pursue an application under one of those community rights to buy as a result of a landowner failing to comply with the land management plans. Could the two pieces of legislation dovetail a bit better?

The Convener: We will get into non-compliance later, but I can see that interfering with the land market will come at some cost, and I am trying to figure out that cost.

Kevin Stewart: Previous witnesses have suggested that there could be a connection between land management plans and local place plans in meeting communities' needs. What do you think about that, gentlemen?

Malcolm Combe: I may sound like a bit of a stuck record, but I am not sure that I have strong views on that. It strikes me that it would be sensible to have some kind of integration with those documents. Obviously, however, that goes into a different regulatory sphere than land governance directly; it concerns the planning side of things more. I am happy for some kind of synergy to be set up; it would just need to work

appropriately, ensuring that there was no duplication of effort and so on.

Calum MacLeod: I, too, will sidestep the question. I agree that it makes sense to have some level of synergy between the two areas of legislation, but that is not within my area of expertise.

The Convener: Mark Ruskell has a series of questions.

Mark Ruskell: I wish to ask about those who can allege a breach of a land management plan. Malcolm, you are saying that there is

"a closed list of who can clype on the owner of a large land holding if there is thought to be a breach".

Do you think that the current balance in the bill is correct? Are there pros and cons in having a bigger list or a smaller list?

Malcolm Combe: We are talking about new section 44E of the 2016 act, with the closed list. There are benefits to having a closed list in managing workload and in things not growing arms and legs or whatever. If who is able to "clype", as I put it in my written evidence, is restricted, that will have an effect by hamstringing what can get to the land and communities commissioner's desk.

Also, unless I am very much mistaken, the land and communities commissioner is not able to do anything of their own motion, so they have to wait for a report. Combined with quite a tight list, that necessarily restricts what can happen. There are benefits to having a short closed list. It brings certainty, it will act as a sift, there will be a degree of quality control and it might prevent duplication and so on. I can understand the argument in one direction but I can also understand the argument in another. As a starting point, maybe a closed list is fair enough, but I would want to be agile with regard to adding to the list if the situation seems to lead to a logjam.

Calum MacLeod: I do not have a view on the correct balance. Malcolm Combe summarised the pros and cons pretty well. It might need to be looked at in the future.

Mark Ruskell: I want to go back to the rational polluter argument. You mentioned the register of controlling interests, and I think that there is a similar fine of about £5,000 in this case. At the time that we discussed that in Parliament, there was a view that £5,000 is not a lot of money. However, there is a reputational concern when someone is hit with such a fine, which might have other implications. What are your thoughts? I am not aware of whether the trigger under the register of controlling interests regulations has actually been applied.

Malcolm Combe: I do not know that it has.

Mark Ruskell: I do not know whether any such cases have come up, so I am not sure whether the fine is a deterrent.

Malcolm Combe: That is a good point. You would hope that public shaming, if that is the correct way to describe it, could lead somebody to change. However, if somebody just wants to tough it out and they are happy to pay the relatively small fine and get on with it, that would be that. In my evidence, I drew attention to the level of fine for private landlords for not registering with the local authority. With regard to compliance with regulations for houses in multiple occupation, you are looking at a fine of £50,000, rather than £5,000. Landlord registration was introduced in 2004 under the Antisocial Behaviour etc (Scotland) Act 2004 and the fine was increased in 2011. There have been unsuccessful human rights challenges to that regime in relation to a landlord not being able to charge rent following registration issues, and that scheme has been fine—in the sense of being okay rather than in the sense of a financial penalty. Therefore, whether £5,000 is the right figure is probably for others to decide, but I wonder whether it could be set a little higher—just in case someone does try to tough it out.

Calum MacLeod: It would be a real concern if the cost of producing the plans outweighed the fines. For some large landowners, public shaming would be enough of a deterrent, but there is a reasonable concern that that would not be a sufficient deterrent for some other landowners. I wonder whether there is an opportunity to look at cross-compliance with regard to agricultural subsidies, which might be a better approach.

Mark Ruskell: Other members might want to come in on that point. Earlier, we talked about thresholds, but, in the evidence that the committee has received, there has been quite a consensus on the importance of sites of community significance. It is not a case of saying, "Here's a threshold. Either you fit within it or you don't," because there are sites that are of huge significance to communities, particularly rural communities, so it is important to provide for the local context. Calum, do you want to comment on that?

Calum MacLeod: Clearly, any thresholds that are based only on hectares will be quite a blunt tool when the situation is a lot more nuanced. There will certainly be sites that are within that particular threshold, but there might be a real public interest, so I think that the matter should be looked at. It is not for me to say whether the bill strikes the right balance, but there is a lot more nuance to the situation than just looking at it in terms of hectares.

Malcolm Combe: I agree with Calum. Obviously, when you draw a line somewhere, some people will fall below that line. A couple of weeks ago, I was speaking to a journalist who was looking at a community in Scotland that has been affected by certain land management decisions that fall below the thresholds that would apply here. That is an issue that the bill would not resolve.

At the start, I mentioned what is not in the bill, such as compulsory sale orders and a reworking of the community right to buy. Maybe such measures could lead to a different way of targeting some of those flashpoints. On the question of whether making huge changes to this bill to address that would be in scope, I would be surprised if you could do something at this stage.

In England, the Localism Act 2011 covers registering assets of community value. That does not force a sale; it is just a pause in relation to transfers. We have our own opportunities to register a community interest in land. There are ways to at least isolate some of those particular strategic resources, but, as I say, I am not sure what more you can do in relation to this bill.

Mark Ruskell: Thank you.

Bob Doris: I will follow up on some of the matters that Mark Ruskell was pursuing, including the narrow list of individual bodies that could make a complaint in relation to a breach under a land management plan. A possible expanded role for the land and communities commissioner, which is to be quite limited at present, was mentioned.

I will split my question into two parts. I want to think about a proactive role that the land and communities commissioner could have in an area of prevention. Would work to encourage best practice in the development of land management plans be something that the commissioner would be well placed to support, perhaps by identifying and sharing best practice where it becomes evident, and by identifying thematic areas of weaknesses in plans? As the bill stands, I am not sure that the land and communities commissioner would be empowered to do that. Would that be a positive thing?

Malcolm Combe: Thank you for the question. It is an interesting one. The Scottish Land Commission has been around for six or seven years now. Under statute, the outgoing tenant farming commissioner had certain roles in relation to promulgating codes of practice. The Land Commission was also able to promulgate certain protocols in relation to other aspects of community land. That perhaps offers a degree of precedent to taking an extra-statutory approach. It is not on the face of the legislation, but the Land Commission was able to use its architecture to allow for guidance to be issued.

I have already mentioned the idea of the land and communities commissioner having a more active role, whether it is doing things of their own motion in relation to investigation. I suppose that that might change the dynamic of the Land Commission to an extent—I know that there was discussion about that in a previous evidence session—and move it away from its current position of not going one way or the other towards being more of a regulator, almost. You would need to think about it carefully, but if you wanted to put that in the bill, you could clearly do it.

That was a bit of a mixed answer again—sorry.

12:00

Bob Doris: You are perhaps suggesting that there would be an implicit ability for the commission to do that, but not an explicit power. We might want to consider having an explicit power in the bill.

Malcolm Combe: You could do that. As I said, the fact that you would have certain protocols in areas where the Land Commission did not necessarily have that explicit power in the past would perhaps allow you to be a bit more relaxed, but it very much depends on the direction that the Land Commission takes.

Bob Doris: Okay. I appreciate that. Calum, will you comment?

Calum MacLeod: Personally, I think that the land and communities commissioner should be given the power to do that. I find it slightly curious that they are not accountable to the Land Commission. I appreciate that moving the Land Commission into more of a regulatory role needs to be thought about very carefully, but I find it slightly curious that the role is being treated as a standalone. It might be more conducive to make the land and communities commissioner fully accountable to the Scottish Land Commission.

Bob Doris: That is interesting. I said that my question would be split into two parts. There has been preventative work to promote best practice and prevent unintended things from happening in order to raise the quality of land management plans, but I am conscious that we have spoken about the benefits and drawbacks in relation to only a very narrow list of those who can allege a breach.

Have you considered whether there should be an explicit power whereby the land and communities commissioner would have a mix of light-touch and deep-delve, proactive approaches to making sure that there is adherence to land management plans, for lack of a better

description? They could randomly pull out five or 10 examples, without any breach having been identified, and go and have a look to see what is going on. Other regulatory bodies take a similar approach. The commissioner could take a risk-based approach to compliance with land management plans. If they become aware of concerns, whether they report them or not, they should perhaps have a duty to investigate them.

I suppose that, in asking that question, I am taking the next step in considering how the power might be exercised, but the heart of it is whether there should be a power for the commissioner to do some proactive investigatory work without the reporting of a breach.

Calum MacLeod: My personal view is that there should be such a power. I see it as one of the powers that should sit with the land and communities commissioner.

Bob Doris: Okay. That is clear. Mr Combe, will you comment?

Malcolm Combe: I am minded to agree with Calum MacLeod. There are different approaches to enforcing such rules. You can have more of a swashbuckling regulator or you can design something that is based on someone applying. As an example, I am thinking of the deposit protection scheme in the housing law field. In that case, someone has to apply if there has been a breach, and nothing will happen if no one applies. It depends on what you think is appropriate for the context. However, I am minded to agree with Calum.

Bob Doris: It is worth putting on the record that I think that all committee members want to see a commissioner who works in partnership with landowners across the country and whose first approach will be not to identify breaches and look at sanctions but to build up the relationship. However, it may be beneficial for them to have that explicit power.

My final question is about whether the obligation on landowners is simply to produce a land management plan, irrespective of its quality or whether it is complied with in a meaningful way. We have heard reference to that already. For clarity, proposed new section 44B(3)(c) of the 2016 act requires the land management plan to set out how

"the owner is complying or intends to comply with ... the obligations set out in the regulations",

and proposed new section 44E allows specific persons to allege that there has been a

"breach of an obligation imposed by regulations under section 44A".

The fact that I am asking this question might lead to the conclusion. Is the drafting adequately clear to ensure that there are obligations to produce and to comply with a land management plan? If not, what suggestions do you have about how we can improve that section of the bill?

Calum MacLeod: I do not think that the drafting is adequately clear but, unfortunately, I am not able to give you a suggestion about how to improve it. That needs to be looked at.

Bob Doris: I turn to Malcolm Combe. Should the provision say not only that a plan must exist and be complied with but that it should be of appropriate quality? I appreciate that that is a hard thing to measure. It would be easy, surely, to develop and to secure compliance with a threadbare plan, but that would not provide a qualitative approach to ensuring that the spirit of the legislation was complied with.

Is that section clear enough? How should it be changed?

Malcolm Combe: I would need to take that away and think about possible drafting tweaks, rather than shoot from the hip on that today. I am happy to think about that.

I agree that we must ensure that it is not simply an empty threat—or, rather, that all aspects of a land management plan must be meaningful. If someone could churn out a threadbare plan, that would not necessarily make much of a difference on the ground.

Bob Doris: I have no further questions, convener. I stress that I do not anticipate that most landowners would produce such a plan, but when we legislate, we have to legislate for not only the best landowners but those who might be remiss in meeting their obligations in that regard. It is important to put that on the record.

The Convener: I am sure that you are right. Landowners of all stripes, whether they are private landowners, public landowners or community landowners, must all fall under the same obligations.

The next questions come from Douglas Lumsden.

Douglas Lumsden: We move on to section 2, "Community right to buy: registration of interest in large land holding". As the bill stands, if a landowner owns 1,000 hectares and he wants to sell all or even part of that land, he will have to go through a process to give communities the right to buy that land. Even the sale of a cottage on part of the land would trigger that process. Do you think that that is right, or do you think that the bill should be changed to allow smaller chunks of a large landholding to be sold?

I will come to Malcolm Combe first, as he is here.

Malcolm Combe: I would not mind there being some kind of de minimis, or small exception, subject to the relevant community also having the chance to say, "Actually—no. While you think it might be de minimis, we really like that bit of land. That site could be strategically important."

From the point of view of regulatory burden, it seems as though it would be quite a burden to mobilise everything in relation to something small that was unlikely to be of interest to local community groups, but I am conscious of the risk of allowing something that really mattered to be missed out on because of someone playing on that, if that makes sense.

Douglas Lumsden: Yes. Even if it was possible to sell only 1 per cent of a holding without going through the community right to buy process, the community might want that 1 per cent. I guess that the issue is how we strike the right balance. What could we put in place to accommodate small transfers without making it an overburdensome process?

Malcolm Combe: Quite. Perhaps a notice or a counter-notice could be used. If someone were to do something below some threshold or de minimis level—whether that be a percentage, a fixed figure or whatever—they could, if they would otherwise have been able to benefit, get some kind of counter-notice. I am not sure what that would look like, but I think that it could be workable. There are examples of counter-notice approaches in different types of legislation—landlord and tenant legislation and so on—so it could work.

Douglas Lumsden: Calum, do you have a view on this?

Calum MacLeod: I agree with what has been said. I can see the argument for some de minimis level or exception, as well as for what Malcolm Combe has suggested of having the ability to serve a counter-notice if the site really is of special interest. Most of these smaller things are unlikely to trigger a counter-notice, so I could see something along those lines being quite workable.

Douglas Lumsden: You have both talked about the community right to buy process being under review. Do you think that the bill adds complexity to that side of things, or does it provide an opportunity for the Government to get both things hand in hand and working seamlessly? Calum, I will come to you first on that one.

Calum MacLeod: I made my views on this issue known earlier. The community right to buy review should have been in place by now, and I think that it would have been much more helpful had it been well under way.

I do think that this is complex; indeed, I had to read and reread the provisions myself a few times. On the specifics, I said earlier that communities are finding that the late registration provisions surrounding the community right to buy are not working for them, so the bill will potentially address some of the concerns in that respect. For example, for community groups concerned about not being able to use the community right to buy at all, whether late or otherwise, they will receive prior notification about certain sales and a potential opportunity to exercise a right to buy.

However, I think that this particular amendment to the community right to buy legislation is only going to allow for a community purchase in certain very limited circumstances, and I think that community groups will find it pretty difficult to use for a couple of reasons. For a start, as I mentioned earlier, the late registration provisions have not actually been used since around 2017. There is an understanding that almost every late registration under the community right to buy is not going to be held to be in the public interest and, in effect, the mechanism can be used only when a community body is already compliant with the community right to buy provisions—that is, the application has been drafted, but the community has almost had no time to submit it. In any case, the process will be well under way. What it means is that most late applications are actually defunct.

What I might query about this new proposal to modify community groups' ability to be given this opportunity is whether it will be treated almost as a late registration. If so, I question whether, in reality, there will be many opportunities for community groups to be successful. Also, will ministers have to be satisfied that there is a reasonable prospect of the application being registered, which effectively means that they will be almost prejudging it? I am not sure, but perhaps there could be some clearer statement that, under these new provisions, ministers would be able to invite a community body to submit an application, and that would, for the purposes of the final decision making, almost be an acceptance that there was greater public interest in such an application. I would be concerned that the public interest threshold might otherwise be too high to meet, as is currently the case with late applications.

12:15

My only other comment is on timescales. I am not saying what the appropriate timescale should be, but it strikes me that 40 days for a community group to submit an application from a standing start, where ministers might think that there is a real public interest in a community group submitting such an application, could be challenging, to say the least, especially where funding is an issue. I appreciate that a balance

needs to be struck in relation to the landowner's rights as well, but the issue should be carefully considered.

My concern overall, without looking at the community rights to buy in general and without aligning that with a wider view of the community rights to buy, is that the new provisions might just be another community right to buy that community groups find too difficult to use.

Douglas Lumsden: I was going to ask you about the—

The Convener: Sorry to cut you off in mid-flight. I see Rhoda Grant sitting quietly on the screen, as she has done for this whole evidence session, and I am really worried that, as the clock ticks down, she will not get to ask her questions. I would then have to deal with that. Therefore, I would be grateful if we could have succinct questions and answers where possible, then no one will be upset.

Douglas Lumsden: On the timescales, the bill has 70 days—40 plus 30. Calum, you were not sure whether you could give a view on what the timescales should be. Malcolm, do you have a view on that?

Malcolm Combe: Not particularly. I fully agree with everything that Calum said, which has saved me from repeating any of it. The timescale could possibly be a bit longer to allow the community a bit more breathing space, but I am not sure just how long that should be.

Douglas Lumsden: Thanks.

The Convener: Thank you. Sorry, Douglas—I should have waited until you had finished. I apologise.

I bring in Michael Matheson.

Michael Matheson: Does the transfer test, as proposed in the bill, adequately take into account public interest?

Malcolm Combe: I have not thought that it does not at any point, and I am now suddenly doubting myself because you have asked the question. I think that it does. I will scrabble through my notes to see whether I have anything to counter that, and I will let Calum come in. That is my succinct answer, anyway.

Calum MacLeod: I think that the test refers to the wider sustainability of the community rather than the public interest. The transfer test is perhaps a step away from the previous public interest test that was considered during the consultation. I do not think that the bill defines or refers to public interest as clearly as, for example, the community rights to buy.

Michael Matheson: Would it be helpful to have a clear and explicit term in the bill, which states that the transfer test is actually a public interest test, in the way that the Land Commission recommended?

Calum MacLeod: I think that it would. If that is the Government's intention, it would make sense to be a bit more explicit about that.

Malcolm Combe: I will add that I do not object to that, but even if it was not in the bill, article 1 of the first protocol and the deprivations controls should be allowed only when they are in the public interest. The meaning would be teased out by a different means anyway, but I would be happy for it to be in the bill as well. I thank Calum for reminding me of that provision.

Michael Matheson: Calum, you mentioned the provision of community sustainability, which I suppose begs the question of what community sustainability is.

Calum MacLeod: Indeed, that might be a difficult thing to define. That is part of the reason why I think that an express reference to public interest there would have been more helpful.

The Convener: I need not have been worried, because we have now got to Rhoda Grant. It is time for your questions, Rhoda.

Rhoda Grant (Highlands and Islands) (Lab): That evidence was really interesting. Both of you spoke about a compulsory sale or compulsory purchase test. Would that help to deal with some of your concerns about late registration and the community right to buy?

Calum MacLeod: It is certainly an issue and, based on previous consultations, I was a bit surprised that it did not find its way into the bill. It would address some of the concerns that community groups have around not being able to organise themselves quickly enough or use late registrations, so the Government might wish to reconsider.

Malcolm Combe: For brevity, I endorse Calum's comments again.

Rhoda Grant: Thank you—I appreciate that. Would anything else make late registrations easier? I appreciate that some communities do not want to register until they see land changing hands. Could something be done that would simplify that process and make it easier?

Calum MacLeod: Community Land Scotland published proposals that the committee might be aware of—I am certainly happy to share them. It suggested that the community right to buy could perhaps be turned into a two-stage process, with a lighter pre-registration step and then a secondary step that would allow for a late registration. There

could be an express provision that the fact that the community body had already taken the earlier pre-registration step should be taken into account for the purposes of determining whether there was public interest in the late application.

As the committee might be aware, the issue with the community right to buy is that it is a pre-emptive right. Almost all the work is effectively front loaded for what is a very hypothetical situation, unless you do a late registration, and the evidence is that late registrations almost always do not succeed. Community Land Scotland put forward proposals that are worth looking at.

Malcolm Combe: Just to jump in on that, I have had the benefit of speaking to Calum and Community Land Scotland, along with the Scottish Land Commission, about some of those proposals. I thought that they were workable and could have worked in relation to the part 2 scheme as it stands.

As has been mentioned, there is an occasional perception that a community registering a part 2 right to buy could be seen as inflammatory and changing existing relations with the landowner. However, given that the community must do that, it perhaps find itself painted into that corner. Therefore, having something that could operate as a salve in that situation would be beneficial. I do not know exactly what that could look like and whether it could be catered for in the bill or whether we have to wait and see how the community right to buy review, which is happening at the moment, pans out.

Rhoda Grant: Could I ask one final question, convener?

The Convener: Of course.

Rhoda Grant: You both spoke about whether buyers would take on land management plans. We also talked about community purchases, which must have sustainable development at their core. Do you believe that private buyers are being held to different rules and regulations? Would their having to sign up to sustainable development and a land management plan before they purchased land make things more equal, or would that be too unwieldy?

Calum MacLeod: Do you mean community landowners who have purchased under the community right to buy?

Rhoda Grant: Well, they are being held to a certain standard, in that they have to show that their development is sustainable and in the public interest. Should private landowners be held to such standards to the same degree, and would doing so level the playing field between community and private buyers?

Calum MacLeod: I do not necessarily have a view on that policy point. I guess that the community right to buy is a form of compulsory acquisition; of course, most community buy-outs do not take place under the community right to buy, so perhaps not all community landowners will be subject to the public interest test. I do not necessarily have a view on whether there is a two-tier system in that respect.

Malcolm Combe: I agree with Calum. The issue, in practical terms, is that if a community landowner that had benefited from a buy-out under the land reform legislation were to slip from their standards, clawback provisions would operate. The sort of sanction that was applied would depend on other landowners, as I imagine that you would not be able to have the same practical sanction. However, just looking at the bill in front of us and given how important land can be to so many people who are not its owner, I would certainly not be agin having something else in the land management plan or, indeed, in the regulations that follow. That could be worth while, but I will leave it at that.

Rhoda Grant: Thank you.

The Convener: I have a few quickfire questions to end with. Mark Ruskell said that a £5,000 fine did not seem very much, but I think that it might be a huge amount to very small farmers and landowners. Is there an argument for scaling the fine against the assets held and the size of the management plan? I am just thinking of ways around that, because £5,000 is going to be a massive amount of money to small-scale landowners, though not to some of the bigger investment companies. Would you go for scaling—yes or no?

Malcolm Combe: My answer would be, “You could do that, but”. I remember the shaggy-dog story of a rich footballer who was quite happy to park his car wherever in the city that he was working in, because he had money and was happy to pay whatever the fine was. You could have a scaling system, though—Switzerland has done that in relation to fines for speeding—but it would depend on how you fancied doing it and then making it workable.

The Convener: Calum?

Calum MacLeod: Again, I am not sure about that. I can see the attraction, but I do not know whether having a scaling system is just another way of adding complexity.

The Convener: Some people get fined according to the size of their assets. Indeed, I think that speeding fines, in particular, are graduated.

Anyway, I will move on to lotting. We have heard lots about small-scale sales being stopped, and about how the move might affect crofting estates where a house under a crofting tenure or, indeed, a croft itself could be sold and purchased under the statutory procedure. Could small sites that are not on the register of community interests in land still be transacted? Would that allow people to buy plots for, say, their horses or their garden ground that owners regularly look to sell?

Calum MacLeod: What do you mean by smaller sites in terms of lotting?

The Convener: I mean that selling a couple of acres—or 10 acres—to allow somebody to do something that they might want to do might trigger a lotting process. If the plot was not subject to community interest or in the plan, surely that sort of sale should be encouraged and allowed to go on to allow the community to flourish.

Calum MacLeod: Are you talking about situations in which larger landowners are looking to acquire land?

The Convener: No, I am talking about larger landowners divesting some of their holdings to allow communities to flourish. When we visited Atholl Estates, we heard that it was worried about what would happen with small-scale transactions, and we heard the same from Buccleuch Estates.

Calum MacLeod: I may have misread the provision, but it is my understanding that a lotting decision would be required only in cases when a transfer was over the threshold of 1,000 hectares.

The Convener: We are saying that lotting would be triggered if land was to be sold. I am worried that that would stop small-scale transactions, and I am asking whether there is a way around that.

12:30

Calum MacLeod: We mentioned a de minimis threshold for that type of situation. I certainly think that there is a good argument for that. Malcolm mentioned the idea of a counter-notice being served if it turned out that land was of real community interest. Something along those lines could be workable.

Malcolm Combe: I am happy with all that Calum has said. The only other thing that I might throw in is the concept in insolvency law of gratuitous alienations, which refers to a situation in which someone has alienated property in a way that has been designed to defeat creditors, or something like that. You might want to consider whether there could be something in the bill to prevent abuse in the sale of land, although I am not sure what that would look like. Gratuitous alienation is far more calumnious than the situation that is at hand, but if someone were genuinely to try to defeat the policy goals of the legislation by engaging in a series of those transactions, that could be problematic. You might want to have some kind of safety valve for that.

The Convener: I do not quite understand whether the proposed land and communities commissioner would fall within the Land Commission, or whether they would have a separate role. Calum MacLeod suggested that it might cause some problems if the Land Commission took on a regulatory role. Are you in favour of keeping the role of the land and communities commissioner completely separate?

Calum MacLeod: I am not sure that I said that it would cause problems. I do not think that it should be kept as a separate role. In my view, it would make sense for the proposed new commissioner to be ultimately accountable to and part of the Land Commission, but I accept that any pivot in the role of the Land Commission would need to be looked at quite carefully.

Malcolm Combe: I can understand why the proposed land and communities commissioner would be set up on similar terms to the tenant farming commissioner. In pure drafting terms, that probably makes sense, but it will mean that it is sui generis—unique—although the tenant farming commissioner is also unique. The proposed commissioner must also be able to be held to account.

The Convener: The tenant farming commissioner has specialist skills as part of his role. What specialist skills should the proposed land and communities commissioner have? Should one of the requirements be that they have not been a large landowner, and do you agree that we should exclude someone on that basis?

Malcolm Combe: That is a tough question, especially given the suggestion that someone with a current big landholding should be disqualified. Clearly, special skills are involved in the role. People would be stress tested in the public appointments process. Making it a requirement for the commissioner not to have been a large landowner could lead to a perception that you were sculpting the pool.

The Convener: It would never work to force someone to sell their landholding just to take on the role. Would you exclude them or not?

Malcolm Combe: I am not sure. I do not think so.

Calum MacLeod: I am not sure that I would exclude large landowners from the role. I think that the role would require specialist skills, although it is much more difficult to define what those specialist skills should be in comparison with the tenant farming commissioner. For that reason, I

think that it would be unhelpful for the role to stand apart from the Land Commission. There could be a case for making the proposed commissioner accountable to the Land Commission and not quite as standalone as the tenant farming commissioner is, because their job and the skills required for it are much easier to define.

Malcolm Combe: Proposed new subsection 11(3A) of the 2016 act, which is brought in by section 6 of the bill, states that there is a necessity for "the person appointed" to have

"expertise or experience in—

(a) land management, and

(b) community empowerment."

I would be happy enough for something else to be added to that, but I think that that should probably be okay.

The Convener: So it should be the best person for the job, whatever they have done in the past, and whatever their politics?

Malcolm Combe: I would be happy with that.

The Convener: Perfect.

That brings us to the end of the session. I apologise for the quickfire questions at the end, but the clock has been ticking all morning. Thank you for giving evidence.

We now move into private session.

12:36

Meeting continued in private until 12:58.

Official Report
Room T2.20
Scottish Parliament
Edinburgh
EH99 1SP

Email: official.report@parliament.scot
Telephone: 0131 348 5447

The deadline for corrections to this edition is:

Wednesday 25 December 2024

Published in Edinburgh by the Scottish Parliamentary Corporate Body, the Scottish Parliament, Edinburgh, EH99 1SP

All documents are available on
the Scottish Parliament website at:

www.parliament.scot

Information on non-endorsed print suppliers
is available here:

www.parliament.scot/documents

For information on the Scottish Parliament contact
Public Information on:

Telephone: 0131 348 5000
Textphone: 0800 092 7100
Email: sp.info@parliament.scot

The Scottish Parliament
Pàrlamaid na h-Alba