



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# RURAL AFFAIRS AND ENVIRONMENT COMMITTEE

Wednesday 9 February 2011

Session 3

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**Wednesday 9 February 2011**

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**RURAL AFFAIRS AND ENVIRONMENT COMMITTEE**

**4<sup>th</sup> Meeting 2011, Session 3**

**CONVENER**

\*Maureen Watt (North East Scotland) (SNP)

**DEPUTY CONVENER**

\*John Scott (Ayr) (Con)

**COMMITTEE MEMBERS**

\*Karen Gillon (Clydesdale) (Lab)

\*Liam McArthur (Orkney) (LD)

\*Elaine Murray (Dumfries) (Lab)

\*Peter Peacock (Highlands and Islands) (Lab)

\*Stewart Stevenson (Banff and Buchan) (SNP)

\*Bill Wilson (West of Scotland) (SNP)

**COMMITTEE SUBSTITUTES**

Rhona Brankin (Midlothian) (Lab)

Jim Hume (South of Scotland) (LD)

Jamie McGrigor (Highlands and Islands) (Con)

Sandra White (Glasgow) (SNP)

\*attended

**THE FOLLOWING GAVE EVIDENCE:**

Stuart Ashworth (Quality Meat Scotland)

Peter Cook (2 Mennie Cooks Ltd)

Professor Roger Crofts (Royal Society of Edinburgh)

Derek Flynn

Patrick Krause (Scottish Crofting Federation)

Dr Calum Macleod (University of the Highlands and Islands)

Dr Isobel Macphail (University of the Highlands and Islands)

Jackie McCreery (Scottish Rural Property and Business Association)

Vicki Swales (Scottish Environment LINK)

Scott Walker (NFU Scotland)

Dr Tony Waterhouse (Scottish Agricultural College)

**CLERK TO THE COMMITTEE**

Peter McGrath

**LOCATION**

Committee Room 2



## Scottish Parliament

### Rural Affairs and Environment Committee

*Wednesday 9 February 2011*

[The Convener *opened the meeting at 10:00*]

### Decision on Taking Business in Private

**The Convener (Maureen Watt):** Good morning. I welcome everyone to the Rural Affairs and Environment Committee's fourth meeting in 2011. I remind everyone to switch off their mobile phones and brambles, as they impact on the broadcasting system.

Agenda item 1 is to decide whether to take items 4, 5 and 6 in private. Item 4 is consideration of a European Union proposal that may raise subsidiarity concerns. Legal advice from the Parliament's solicitors will be considered, and it is customary to consider such advice in private. However, if we agree to do anything substantive under that item, it will be done by way of a letter that makes our views public. Under items 5 and 6, we will discuss the evidence that we will hear today on the Land Reform (Scotland) Act 2003 and the future of agricultural support in Scotland respectively. Do members agree that we should take in private those items and any future discussions of evidence and draft reports in relation to the future of agricultural support in Scotland inquiry and the post-legislative scrutiny of the Land Reform (Scotland) Act 2003?

**Members** *indicated agreement.*

## Land Reform (Scotland) Act 2003 (Post-legislative Scrutiny)

10:01

**The Convener:** Item 2 is—at last—post-legislative scrutiny of the Land Reform (Scotland) Act 2003. We have wanted to have this item on our agenda for a long time. We will take evidence on the research that the committee commissioned into post-legislative aspects of the act.

I welcome to the committee three people who were involved in that work. Dr Calum Macleod is deputy director of the centre for mountain studies, Perth College, University of the Highlands and Islands; Dr Isobel Macphail is a researcher at the University of the Highlands and Islands centre for remote and rural studies; and Derek Flyn—who is not known to the committee at all—is a croft consultant and retired crofting lawyer. I bet that he is back here with some trepidation, and is saying, "What am I letting myself in for this time?" I thank you all and everyone else who was involved in conducting the research on behalf of the committee for producing such an informative report, which we read with great interest.

To make the most of the time that is available, we would like to move straight to questions. As time is limited, I ask members and witnesses to keep their questions and answers reasonably short, if possible.

**Stewart Stevenson (Banff and Buchan) (SNP):** I want to ask about the access part of the act. My questions come in four parts, which I will deal with separately, if I may.

What recurring and regular research would be reasonable to understand how well or otherwise the access provisions are working, given, in particular, that there is very varied terrain and there are very varied situations in Scotland?

**Dr Calum Macleod (University of the Highlands and Islands):** I thank the committee for the invitation to participate in the session.

There is probably a significant need for research into the access part of the 2003 act, not least because the research that exists is relatively piecemeal. The Scottish Natural Heritage recreational survey, which takes place periodically, is important but, from other perspectives, the academic community has largely left statutory access rights untouched. That is in sharp contrast with the community right to buy part of the legislation in particular.

On the areas of research that would be useful and beneficial to find out whether the legislation is being effectively enforced, one issue is the

enforcement processes, how they are being undertaken in practice, and what the implications of those processes are in the context of the act's aims. That is fundamentally important. We should bear in mind, of course, that the ethos of the legislation is, generally speaking, about enabling and effecting a cultural change.

Another aspect is the links between the access legislation and wider public policy objectives. That is fundamental in relation to the transport, health and planning agendas. If, to a large extent, the 2003 act was about achieving sustainable development in different contexts, we must ask how that will happen in practice, what evidence we have that it is happening, and where links that are potentially weak can be strengthened. Consideration of the three areas that I mentioned would be of benefit in that context.

**Stewart Stevenson:** Do you have evidence of difficulties with core paths plans? If so, how have difficulties been overcome? Also, given that the act added to existing access rights, will you talk about the interplay between the access rights that previously existed and what is in the act?

**Dr Macleod:** We touched on core paths planning relatively briefly in the report, as you are aware. It is an important aspect of how access rights are implemented in practice. You might be aware that SNH commissioned research, which will shortly reach the public domain.

There are significant issues in relation to the planning of core paths and the implementation of the approach. Part 1 of the act placed a statutory duty on access authorities to undertake the core paths planning process and gave authorities the power to manage and maintain the core paths networks.

Among the groups that we surveyed—access authorities, the national access forum and local access forums—a big concern, which emerged strongly in the research findings, was about where funding is to be found to manage the process in practice. There is strong concern among a variety of stakeholders that, to some extent, expectations have been ramped up to a significant degree by the process, which we should not forget has been time consuming and resource intensive for a variety of actors. The ramping up of expectations has implications for how the core paths approach is implemented and how the networks are managed. Where are the resources to be found, given the current difficulties for the public sector in Scotland? What are the issues to do with joining up the core paths? There is a bit of fragmentation in that regard. The issue is fundamental.

**Liam McArthur (Orkney) (LD):** I am aware that funding was originally allocated on a per capita basis but, of course, there is not necessarily a

direct correlation between head count and the location of core paths. Has that issue been fundamental to the problems that you talked about, or is it more complicated than that?

**Dr Macleod:** We touched on the matter. The data that we have suggest that some of the issues have been to do with where the core paths are situated. Some local authorities received more significant objections than others did about where the paths would be—that is still an issue for some authorities.

An interesting finding came through on the impact of core paths planning on the dynamics of the relationship between access takers and landowners. I would not want to overstate the matter because, on the whole, the core paths planning process has been regarded as a useful collaborative exercise among a wide variety of stakeholders and, to some extent, the local access forums have been important in helping to facilitate that collaboration. However, we were interested to find that, for some landowners, the process of engaging in planning for a core paths network seemed to destabilise their relationship with access takers. They were quite happy for people to have informal access to their land, but having formal core paths has had implications for how they view the process. That is an interesting vignette.

**Stewart Stevenson:** Does that mean that other processes outside the 2003 act were used previously and are continuing to be used, or is all access now within the context of the act?

**Dr Macleod:** Different processes with regard to what?

**Stewart Stevenson:** Access and the resolving of issues around access.

**Dr Macleod:** It depends on what the access issues are and whether they are contentious. The access authorities have statutory responsibilities, but the local access forums are statutorily framed as entities that help to resolve issues and offer advice, when asked, on how to resolve particular conflicts relating to access.

One of the challenges is that we have a legislative framework that is founded on people exercising their access rights in a responsible way. There is a social contact there, and the reluctance, for a variety of reasons, of access authorities to take formal enforcement powers means that it can sometimes be difficult to find resolutions to conflicts—although, more broadly, there is a cultural aspect to how that process is undertaken.

**Stewart Stevenson:** Are you suggesting that the access code does not adequately define “responsible”? That was something that the

Parliament and its committees were considerably engaged in.

**Dr Macleod:** I am not suggesting that but, notwithstanding the fact that the access code is well regarded by a range of different stakeholders, it has been suggested—and we document it in the report—that “responsible” is seen as something of a moveable feast. It is not clearly defined, but that was anticipated in the run-up to the legislation. There will be grey areas in the legislative framework which, to some extent, will begin to be filled in by case law, although that has been limited up to now—I think that seven cases have gone to judicial determination.

There are grey areas, and we document where some of those are through the changes that have been highlighted by stakeholders. Responsibility is one, privacy is another and curtilage is another. What constitutes responsible behaviour when someone takes their dog for a walk might be an extension of that. There are grey areas in which there is not necessarily consensus on what is meant in practice.

**Stewart Stevenson:** The Parliament and its committees deliberately decided not to seek to define curtilage, in particular. Every time we looked at it, we found that we would be likely to create more problems than we would solve. You are nodding quite vigorously. Was that decision by the Parliament a correct one? Was the Parliament also correct not to explore in greater detail and put into the bill any definition of privacy?

**Dr Macleod:** I sometimes nod even though I do not agree with what is being said, but I maybe do in this instance.

Given the nature of the legislation, we cannot have a tick-box approach that defines every eventuality. Inevitably, as the case law builds, if it comes to that, there will be decisions on how privacy and curtilage are viewed that will create precedents. Equally, to a large extent, the legislation is framed around ideas of cultural change, which will take time. At least one respondent to our survey said that it could take two to three generations to come through, so it is a long-term process. That is significant, but so is common sense and having negotiation and dialogue. To be honest, many of the general indications are that most people who take access for recreation find it a straightforward process, although there are exceptions. I hope that that begins to address your question.

10:15

**John Scott (Ayr) (Con):** I have two questions. First, you say in your report that stakeholders have suggested that the act should be amended to

place a duty on local authorities to maintain core paths. How would that be financed?

**Dr Macleod:** Access authorities are exploring various ways in which to finance such activities. One way would be to get funding through mechanisms such as LEADER. Highland Council, for example, is looking at that as a possibility. There may be other mechanisms for doing that, potentially through the Scottish rural development plan, although the take-up is quite low. Fundamentally, if access authorities took on such a duty, there would be significant financial challenges. I understand that such a duty was not included in the bill because of the financial impacts that it would have. There would be strong challenges for the allocation of budgetary resources, and there would be priorities to be addressed. Another aspect would be the use of mechanisms such as LEADER or alternative sources of funding.

**John Scott:** Have you had any discussions with the Convention of Scottish Local Authorities about that?

**Dr Macleod:** No. The remit of the study was very much about identifying changes that have been identified by stakeholders, as opposed to our making recommendations.

**John Scott:** My second question is about irresponsible access. I am particularly concerned about free-running dogs. When the bill was introduced, I was concerned about dogs running among cattle and people being hurt or even killed. There have been quite a few instances of that since the legislation was implemented—thankfully, more notably in England and Wales, although it is regrettable wherever it happens. Are there any proposals for how such irresponsible access can be addressed?

**Dr Macleod:** I cannot comment on that in detail. The national access forum will consider a discussion paper on issues relating to that at its next meeting, which will take place next month. I agree that access with dogs, whether they are under control or not, is a contentious issue, but I do not have any feedback on the cattle issue.

**Elaine Murray (Dumfries) (Lab):** I want to return to the issue of funding for local authorities and the desire of some stakeholders that local authorities should have a duty to maintain core paths. Do you know whether any estimate has been made of the financial cost of maintaining the paths throughout Scotland?

**Dr Macleod:** I do not have any figures, as it is difficult to get reliable data on that.

**Elaine Murray:** I presume that, especially at the moment, stakeholders are concerned that, if maintaining the paths is not a duty, not doing so is

a potential saving that local authorities could make reasonably easily in times of financial restriction.

**Dr Macleod:** Indeed. In these times of constrained resources, there is concern across access authorities about the implications of that for the whole infrastructure of delivering on the access agenda, the statutory framework and the access rights contained within that.

There are issues about access authority posts and the ability to deliver. It is probably fair to say that there are criticisms in some quarters of the priorities that access authorities have and the types of access issues that they are seeking to resolve. The issue is that some of the more problematic aspects are not being addressed as rigorously as they might be, for all sorts of reasons. The issue of how the framework is resourced has significant implications.

The 2003 act is seen as a flagship piece of legislation and the access component is seen as a touchstone for progressive access legislation. We are rightly proud of that in Scotland, and it attracts a great deal of interest from elsewhere, with countries considering how the framework could be introduced in other contexts. However, taking on board Mr Scott's point about resources, I think that the important and clear challenge is to ensure that we do not simply tick the access box and then fail to move beyond that and provide resources, find innovative approaches and engage stakeholders to push forward the progressive agenda and ensure that the framework functions as effectively as possible, albeit with the strides that have been made by introducing the legislation in the first place.

**Bill Wilson (West of Scotland) (SNP):** Is there a great deal of variation among local authorities in taking forward the agenda on access? If so, does that tend to be because of internal problems, such as a lack of enthusiasm in the authorities, or because they have attempted to take forward the agenda and have had so many problems that they have just thrown up their hands?

**Dr Macleod:** As I did previously, I add a caveat to my answer by saying that the issue was a small element of our work and that further, more detailed research will be done on it. Our finding on the data is that some authorities appear to have taken a lighter touch, shall we say, than others in the routes that they included in the core paths plans. We mention that in a couple of quotations in the report. Some authorities kept their plans to well-established routes with hard-top paths, whereas others took a more progressive approach. I cannot name names of particular authorities because, apart from anything else, I do not have that information. The rationalisation from our findings generally is that some authorities have taken a more progressive approach than others. That

might be down to funding issues or there might have been disputes about particular proposed parts of a network being incorporated in a plan. We are aware that some authorities had substantial objections to their proposed plans. There is a mix of issues.

**The Convener:** We will move on to the community right to buy.

**John Scott:** I turn to part 2 of the act. You are aware that, of the proposed purchases under the community right to buy, seven have purchased, 10 have failed and some are on-going. Why have more community bodies failed to complete purchases than have been successful? What are the barriers?

**Dr Macleod:** Are you asking about how the legislation works in practice in going through the process?

**John Scott:** Why have 10 failed? Of 17 in total that set out with that aim in mind, only seven succeeded. I want to know what the barriers are.

**Dr Macleod:** Some of the barriers are financial and are to do with getting sufficient resources to finalise the purchase. Some barriers relate to technical aspects of going through the community right to buy process.

Some people have gone outwith the act and purchased beyond that process. One of the key challenges in relation to part 2—this is hardly a secret—is that its processes are seen as being extremely complex and bureaucratic. The community right to buy is enshrined as almost a touchstone of the act itself, so when we tell people outwith Scotland that only 10 organisations have purchased using the process, it is viewed with some surprise. A lot of organisations are in almost a stacking formation and are looking for permission to land that they might never get. There is a whole set of issues around being able to purchase the land when it has not come on to the market, and there are also some bureaucratic issues and issues with the process.

**John Scott:** I am very aware that we have not heard from Derek Flynn or Isobel Macphail. Do you have views on this point?

**Derek Flynn:** I am sorry—could you say that again?

**John Scott:** I was just saying that neither of you has had a chance to say anything thus far. Do you have views on the process? Is it too complex and are there examples of its complexity? I am perfectly happy if you do not want to say anything, but I wanted to give you the opportunity so to do.

**Derek Flynn:** My experience is with the crofting community's right to buy.

**Dr Isobel Macphail (University of the Highlands and Islands):** The complexity is significant. It helps if you imagine the burden of voluntary activity that is involved in pursuing that path. As you will see from the report, and as Calum Macleod has just mentioned, the creation of the legislation was pivotal to the Parliament and its journey, and it is known outwith Scotland for that. The apparently low use of the process in the act in purchases should not obscure the broader significance and purpose to which the act has been put.

As you will see in the report, many respondents noted that the existence of the legislation has raised the issue of what purchases are for and how to manage them. The catalytic impact of the legislation should not be overlooked, although the numbers going through the process are small because of the complexity of the process and the huge burdens that it involves.

There have also been action and impacts outwith the legislation that were influenced by it. The context is what is happening, what is changing and how people engage with the process.

**John Scott:** So, you think that some purchases that were made outwith the act can be regarded as successes that are attributable to the act.

**Dr Macleod:** Yes—in the sense that the act had a catalytic impact in starting the process in the first place.

To give you a fuller response to your question, on page 70 of our report, there is a table that details the reasons for purchases not being successfully completed. Six of those come down to the prospective purchasers being unable to find the funding within the registration period. That is a significant issue for a lot of community groups. One failure was put down to competition with another group, so the registration was deleted. There was also an issue around ineligible land being applied for. In the final case, the landowner withdrew the land from the market. There are therefore specific reasons.

**John Scott:** If I have understood you correctly, the problems are more to do with funding than with the complexity of the process.

**Dr Macleod:** In one case, there was an issue with how eligibility was interpreted in practice, but you are quite right. The bulk of the unsuccessful attempts at purchase were because of funding issues.

10:30

**John Scott:** I am trying obliquely to ask whether the legislation is fit for purpose. If funding is the issue, it is not the complexity of the legislation that

is the deterrent but the lack of available funds to carry out the purchases.

**Dr Macleod:** Indeed—but it depends on what the purpose of the legislation and of part 2 of the act is. Is the act supposed directly to enable community organisations to purchase land and assets? In 10 cases it has done that to a significant degree. Alternatively, is the act acting as a sort of shadow to encourage community purchase through non-legislative means? Some reports, which we mention in our findings, suggest that that is the case and that the primary aim of the act is not necessarily to have a direct impact. You might argue that that is certainly the case for part 3.

The fundamental issue is funding. The Land Reform (Scotland) Act 2003 is significant high-profile legislation, but it is only a small part of the jigsaw when it comes to community ownership. Rightly, all the rhetoric about community assets and community ownership ties in well with notions of community and of communities empowering themselves and achieving what they want to achieve. If you look around the Western Isles and the Highlands and Islands you can see that that has happened in practice, but a great deal of it did not happen in the context of the 2003 act; in many instances it happened before that.

The key issue that is articulated by stakeholders across the board is the notion that to some extent the momentum and the political momentum has drained away from community land ownership and asset ownership. Integral to that are funding and where the resources come from, and the relationships between community groups and how they interact with each other.

That is why I think that the creation last year of Community Land Scotland, partly in response to the feeling that the impetus had drained away from the process, is welcome. It has an important role to play in bringing together good practice in community ownership and in articulating and amplifying the views of stakeholders from the bottom up, both to Government and to other stakeholders.

To answer the question, funding is clearly important.

**Stewart Stevenson:** Does the panel agree that a key thing that the system of community purchase of land has done is to create an environment in which people acquire new skills, become much more engaged in what is going on in their communities so they can ramp up, and that therefore having at the outset a relatively complex bureaucratic process for taking on ownership of land is necessary in order to test whether there are the necessary commitment and skills? If people end up owning land without having the

skills to manage it, they will not necessarily be any better off, so it is important that the process ensures that people have the skills, or are motivated to acquire them.

**Dr Macleod:** It is very important that members of communities have the skills to undertake community asset ownership and community land ownership. The North Harris Trust and the other organisations would not have undertaken the process lightly. That is fundamental. Our report indicates that there are sometimes issues around capacity and the available skill sets. Some communities are fortunate in that they have those skills readily available, but others do not.

The skill sets and the process being too complex to manage in practice are two different issues, however. It is important that communities have access to the support that will enable them to build up the necessary skills, and an important aspect of that is crossover and community groups being enabled to learn from each other. Highlands and Islands Enterprise has an important role to play in that process through what was the community land unit and is now the community assets unit.

I see no particular logic to having in place for organisations a process that is onerous to the point of exhaustion, even bearing in mind all the issues of transparency, probity, human rights, accountability and so on.

**Stewart Stevenson:** How should we test capacity?

**Dr Macleod:** Capacity is tested already to some extent, in the context of how the application is put together and the business planning process, which is important. It is tested in other contexts, too. There are parallels but, for example, the national forest land scheme process is less bureaucratic.

**Liam McArthur:** I was interested in your point about momentum and your response to Stewart Stevenson's question. One of the concerns that was raised with us previously was that identifying the community and establishing the settled will of the community in support of a community buy-out can be quite a testing process. With it not being a pre-emptive right to buy, you are in a sense trying to pull all that together without necessarily knowing when you might be able to initiate a process to buy. Across the Highlands and Islands now there is far greater population in-flow and out-flow than there has been historically. Therefore, the settled will might change, or might need to be reasserted periodically. Certainly one of the concerns that has been expressed to us recently is that that part of the process is almost made more difficult than it needs to be. Is that something that came out of your research?

**Dr Macleod:** That came out in relation to the registration process in part 2 of the act and the re-registration of community interest in particular land.

**Liam McArthur:** I know that you are not making recommendations in the report, but do you think that there are things that we could be doing to improve the situation?

**Dr Macleod:** Our report makes a suggestion for changing the re-registration process. Re-registering every five years is seen as being an exhausting process. Organisations have to go through the various elements of the process again quite soon after having done so initially. The committee might want to think about lengthening the process, just to cut communities a bit of slack.

**Karen Gillon (Clydesdale) (Lab):** One of the frustrations for those who do not represent constituencies in the Highlands and Islands is the failure to get momentum on community land buy-out into other parts of Scotland. I represent a constituency in southern Scotland, where we have not really managed to get that momentum. Can any lessons be learned? Does Highlands and Islands Enterprise play a pivotal role in the process? What do we need to be doing? There is obviously land that communities could be buying. There is a case in point in my constituency at the moment.

**Dr Macleod:** I think that I have said already that HIE has been pivotal in building capacity, which goes back to Mr Stevenson's point. There is an issue in relation to the social aspect of HIE's, which Scottish Enterprise does not have. HIE, like every public sector organisation in Scotland at the moment, has been going through a challenging time in relation to its budgets and how its resources are deployed. This point was echoed by HIE's chief executive and chair during the committee's inquiry into the organisation. HIE has very much refocused and consolidated its strengthening communities function. The community land unit—or, as it is now called, the community assets unit—has been very important in that context. That source of advice on funding—and, indeed, of funding itself—has been fundamental and unique compared with what has been available from Scottish Enterprise.

Of course, Karen Gillon is right. I speak as someone who is from the Western Isles—the Isle of Harris. I agree that community land and asset ownership are not the preserve of the Highlands or the Islands: far from it. Moreover, one might argue that it is not necessarily the preserve of rural communities. What about assets that could be used in, for example, Easterhouse? There are other communities that want to engage with the process, take control of their own environment and

get benefits that are both tangible and in line with sustainable development.

**The Convener:** You have noted that late registrations have been more successful than timely ones and that a lot of people have had to re-register. Through timely registering, the community makes a statement to the landowner. Have you been able to uncover any evidence that timely registration dissuades landowners from putting the land on the market?

**Dr Macleod:** I do not have any specific empirical evidence on that matter, but the point about the distinction between timely and late registrations is fundamental. The guidance to part 2 of the act makes it clear that communities should submit timely registrations and that late registrations should be the exception, will be subject to additional public interest and will have to be accompanied by evidence. However, the fact is that the majority of successful purchases have come from late registrations. In one sense, part 2 is significant in that it acts almost as a catalyst—or, perhaps, as a buffer—to allow communities to progress their applications. I am not clear why late registrations by community bodies should be subject to more onerous criteria than timeous applications.

The dynamic of community group and landowner relations is also significant. A point that comes through strongly in our report is that a community body will probably be reluctant to use part 2 of the act with a locally based landowner, because such a move would unsettle the dynamic and everyone will have to live with a lifetime's worth of pettiness and difficulty. It is telling that in almost all the cases in which part 2 of the act has been invoked and late registrations have come to fruition, the land in question has been bought from public or absentee landowners. In such cases, there has not been the same local dynamic. Of course, there might well be other reasons that have not come up, but it is an interesting set of issues.

**The Convener:** Peter Peacock has some questions on the crofting community right to buy.

**Peter Peacock (Highlands and Islands) (Lab):** My questions are for Derek Flynn. It is nice to see him back at the committee—I think.

Given that part 2 of the act covers broad community purchase, why was part 3 needed to cover crofting community purchase? What is so distinct about that issue that it needed to be provided for in the act?

**Derek Flynn:** Why do we have part 3? There must have been a reason for it, given that it was put in the Land Reform (Scotland) Act 2003 instead of being addressed in the crofting reform legislation. Of course, had the issue been left until

then, our deliberations might have been lengthened somewhat.

It is difficult to combine the two issues. The committee well knows the debate over the distance a crofter may live away from his croft. In the 2003 act, the crofting community still means tenants who live within 16km of their croft, so perhaps that provision needs to be tidied up in the future.

10:45

The committee is aware that someone who owns and uses a croft is now required to live within 32km of it and to look after it, but no such rules apply to estate owners. That is a big conflict. Estate owners criticise crofting, but the rules of crofting are now clear. Land reform should address such issues.

The development function has moved away from supporting individuals, as has crofting law. HIE is charged with helping crofting communities, but its resources will be limited. The potential of the Crofting Reform (Scotland) Act 2010 for communities would be increased if the Scottish Crofting Federation were allowed to discuss the mapping requirements with the communities. Members will recall the debate about individual crofters having difficulty producing maps and the federation's desire to involve the whole community in the mapping process, which would allow the community to sit down together. Getting the community to think about the possibilities is a big part of the process.

The provisions of the Land Reform (Scotland) Act 2003 have acted as a catalyst for some estates changing hands, where there is a willing landlord who can be persuaded that communities taking on ownership in the crofting context is a good thing. However, the whole purpose of the 2003 act was to deal with situations in which there is an unwilling landlord. It is failing in the crofting context; in fact, it is the last way in which a crofting community would go about trying to acquire its landlord's interest. The experience of the Pairc Trust is that, where there is an unwilling landlord, few communities will even consider on embarking on the process. At the moment, fewer communities are looking to purchase, where there is any chance that the landlord is unwilling. As Calum Macleod said, stating an intention creates tension between tenants and landowners.

The crofting community has been widened to take in people who are not crofters; that is how the crofting community body must identify itself. Mapping has also been made very difficult. It is nonsensically difficult to look at an estate; as Simon Fraser said, in many instances of which he knows, it would cost more to create the maps than

to buy the estate. Those factors, combined with the lengthy process and uncertainty, where there is an unwilling landlord, mean that people are not even considering trying to buy.

**Peter Peacock:** The political purpose of this part of the 2003 act—in fact, of the whole act—was to make it easier for people to get access to the land and, in the crofting context, to mineral rights and so on. Given that the structure of the act is getting in the way of that, as you have indicated, are there things that could reasonably be done to make the process easier? In the final analysis, there will still be situations in which there is an unwilling landlord. The Parliament's intention was to equip crofters nonetheless to obtain their land in those circumstances. Presumably, some legal provisions need to continue, but is it possible to make the process significantly simpler?

We could look at the issue in another way. It is almost like a compulsory purchase, so—arguably—it impacts on individual human rights. There must, therefore, be some protection for the landowner in that context, although I would not want to stress that. Does having such protection inevitably lead us to where we are, with the degree of complexity that now exists, or is there a simpler way of proceeding?

**Derek Flynn:** It seems to me that the more detail that you put into statute, the more chance there is of challenge. For instance, it is almost impossible to obey the mapping requirements completely. A willing landlord may accept the map—in fact, the Registers of Scotland might accept a map with just a red line around the boundary—but that is not what the act says. It requires so fine a detail that an unwilling landlord would find many objections to any map. The more detail there is, the more open the process is to objection. I am not a valuer, and to some extent we are really talking about valuation, but an unwilling landlord is taking a political stance and that is what we must overcome.

**Peter Peacock:** Would it be perfectly conceivable to simplify the mapping requirements of the act while still protecting the interests—to the extent that the act must do so—of the landowner? Is it the case that there is a happy medium to be struck, but we have just not got there yet?

**Derek Flynn:** I do not understand what protection the landlord would have through having a detailed map.

**Peter Peacock:** It is interesting that the majority of the crofting purchases have been outwith the terms of the act. What has given rise to the success of those, given that the act has not been triggered? Does it simply come down to the landowner's willingness to negotiate? Does the

fact that the act is sitting there in the background assist the process, or is that not the case?

**Derek Flynn:** The fact that the act is sitting in the background is helping the landlords to persuade themselves. It is a political decision to oppose it. A landlord of a crofting estate who is told that the crofters can buy the land might accept the position, but someone who does not like that idea and can find ways to stop it happening will do so, as we seem to be seeing.

**Peter Peacock:** You touched on the Pairc Trust situation, which is on-going. The lengths to which the landowner is going to frustrate the community are really quite extraordinary and appalling in many respects. I guess, from what you say, that the structure and the technicalities of the act empower him and give him more weapons with which to frustrate the community's ambition. Is that the case?

**Derek Flynn:** That is my understanding.

**Peter Peacock:** So part 3 could be having entirely the opposite effect to that which the Parliament intended when it legislated.

**Derek Flynn:** The purchases that have taken place happened before the act came into force. Now there is a sea change, in that the act has encouraged landlords to see that that is the way that things are going. At the moment, yes: if we have to use the statutory procedure, it is difficult.

**Dr Macleod:** To add to that, it cannot be emphasised enough that the outcome of the Pairc Trust case will have a pivotal impact in terms of how part 3 of the act will be used in practice.

An interviewee in our study said that part 3 is the only radical part of the act, because it gives an “instantaneous” solution to a problem. My god, if the Pairc Trust experience is testament to an instantaneous solution, I am living in a different time zone. It is testament to that community that it has had the tenacity to keep going with it.

There is an example of where the implied stick of part 3 has been a significant aspect in crofting community ownership—it is in Lewis too, and concerns the Galson Estate Trust. You should read the account in our report: it is exhaustive, and exhausting in terms of the process.

If the process can be simplified, why should it not be? There are human rights, but everyone has human rights.

**Peter Peacock:** I raise the point because I took part in a discussion on Lewis on those issues. I think that Derek Flynn was there too—in fact, we were all at that event.

The civil servant who was there argued in defence of the structure of part 3 by using the analogy of compulsory purchase. In that context,

one must make provisions that fully test the validity of making that compulsory purchase. There is a context in which that is arguably required, but you seem to be saying that the current hurdles in the act are too high even to protect that interest. I see that you are nodding, so I take that as assent.

**Derek Flynn:** Yes.

**Dr Macphail:** It is worth noting, if anyone is not clear about this, that in terms of protection and balancing needs and rights, the mapping requirements in part 3 are very far in excess of anything that we have required for any other type of normal transaction involving assets of any sort.

Let us not forget that in the south—or any part—of Scotland, it may not always be big estates that are involved. The requirements go way beyond anything else, but they could easily be adjusted to be proportionate and reasonable and far more balanced.

There is another element that will inhibit the use of part 3. As was explored via Galson, and as is being experienced—painfully and not instantaneously—in Pairc, you must bring to bear in going through all those efforts a huge amount of expertise on mapping and searches.

There are all sorts of searches to do: the footprint of the lighthouse and foghorn on the butt of Lewis was one such issue. If there is one mistake, in the landowner's view, the case will be thrown back out. The process is enormously circular and in excess of what would normally be required from any legal team that is looking for a fair settlement in any sort of sale.

**Peter Peacock:** That is very helpful. I have one last point to make. Given the evidence from the experience in Pairc, which is being discussed in communities in the Highlands and Islands, would your judgment be that without reform to part 3, you would simply not get involved because of the drain on your community and your assets and resources?

**Dr Macleod:** That would be a very strong conclusion to draw from the Pairc case, which, as I said, has implications in terms of how part 3 operates.

**The Convener:** I think that the questions have been exhausted. I thank all the witnesses for their attendance. If you have any further evidence that you think that you have missed, please forward it to the clerks as soon as possible.

10:58

*Meeting suspended.*

11:07

*On resuming—*

## Agricultural Support

**The Convener:** We will now take further evidence for the committee's short inquiry into the future of agricultural support in Scotland. As this is a round-table session, I ask the members and witnesses around the table to say briefly who they are and what organisation, if any, they represent but to resist the temptation to say more at this stage. We will ask questions shortly.

I am Maureen Watt MSP and I convene the committee.

**John Scott:** I am the committee's deputy convener.

**Peter Peacock:** I am a Labour MSP for the Highlands and Islands.

**Jackie McCreery (Scottish Rural Property and Business Association):** I am the director of policy and parliamentary affairs at the Scottish Rural Property and Business Association.

**Karen Gillon:** I am the Labour MSP for Clydesdale.

**Dr Tony Waterhouse (Scottish Agricultural College):** I am from the Scottish Agricultural College and I am a lead researcher in upland livestock systems.

**Elaine Murray:** I am the Labour MSP for Dumfries.

**Patrick Krause (Scottish Crofting Federation):** I represent the Scottish Crofting Federation.

**Bill Wilson:** I am a Scottish National Party MSP for the West of Scotland.

**Scott Walker (NFU Scotland):** I am the policy director at NFU Scotland.

**Stuart Ashworth (Quality Meat Scotland):** I am the head of economic services at Quality Meat Scotland.

**Liam McArthur:** I am the Liberal Democrat MSP for Orkney.

**Peter Cook (2 Mennie Cooks Ltd):** I am an agricultural economics consultant and farmer from Aberdeenshire.

**Vicki Swales (Scottish Environment LINK):** I am the head of land use policy for RSPB Scotland.

**Professor Roger Crofts (Royal Society of Edinburgh):** I represent the Royal Society of Edinburgh.

**Stewart Stevenson:** I am the MSP for Banff and Buchan.

**The Convener:** I welcome all to the meeting. To maximise the time that is available, we will move straight to questions. We arranged to have a round-table session rather than a panel of witnesses to encourage direct discussion among all who are present. However, to allow me to keep order, I ask people to try to catch my eye before responding to a point. I remind everybody that they need not respond to every question—if you agree with someone else, you can simply say, “I agree,” which will be recorded in the *Official Report*.

Liam McArthur will start the questions.

**Liam McArthur:** Before we go into the detail of how we divide the cake in the future, it would be interesting to hear the witnesses’ expectations of even maintaining our current common agricultural policy budget post-2013.

**Scott Walker:** The biggest problem that we face in Europe is the financial pressure that each member state is under. It is fine to talk about clear objectives for the CAP in the future but, until we establish the budgetary framework, that pressure will be critical. The consensus that appears to be emerging from the European Parliament and the European Commission is for a fairer redistribution of funding between member states. Scotland might not necessarily fear that, as we have a good argument for maintaining at least the budget that we have, and some suggest that we have a good argument for increasing our budget share. However, the United Kingdom’s first negotiating position should involve defining the key for distributing funding and maintaining the UK’s share.

Thereafter, we in the UK will have a strong political argument about how to distribute that funding. I expect strong pressure from each devolved Administration to protect what it has in the first instance. Scotland has the lowest share of the distribution per hectare that is available to each region of the UK. We have a good argument for increasing that share, but I would certainly expect strong political pressure from the Northern Irish not to redistribute funds in the UK. Perhaps the best argument is for Scotland to maintain its share of the budget. Thereafter, we can look to take that forward.

What I have said relates to pillar 1. As we consider any redistribution of pillar 1 funds, we must consider the key of allocation for pillar 2 funding for rural development. It is clear that, if member states are willing to entertain a redistribution of pillar 1 funding, they must be willing to do the same for pillar 2 funding. As the UK has one of the lowest shares of that among all

EU member states, we have a good argument for increasing that budget.

**Professor Crofts:** There is another way of looking at the situation. Should we talk about the CAP’s future or about a much broader policy instrument that satisfies a range of existing European policies and which is agreed at the UK and Scottish levels? If we bring in issues such as climate change, the role that the land plays and the use of the land—if we remember the land’s role in delivering quite a lot of European environmental policies—should we cast the policy instrument much more widely than agriculture? Doing so would help Scotland and the UK.

It is clear that that approach would meet resistance from the normal sources, shall we say—particularly French and German farmers—but it would help us to get away from our long-standing bugbear that far too much money is in the CAP and from the pressures that the NFUS representative talked about. The redistribution arguments will all be about farmers rather than providing for the wider set of public goods that help to deliver the wider responsibilities.

Scotland is in a leading position because of legislation that the Parliament has enacted in recent times, particularly on climate change, and because of our responsibilities as a result of EU directives on water quality and biodiversity. That argument is good.

As we pointed out in our report of a couple of years ago, Scotland is bottom of the league table for pillar 2—Pack picked that up in his graphs. That position is quite scandalous. The big question is why we need the two pillars. The arguments in the Pack report are quite off-beam if we accept that we are talking about not just the future of agriculture but the future role for farmers in stewarding the vital asset that is the land.

11:15

**The Convener:** It might be helpful if the witnesses say whether the challenges that have been identified in recent reports are challenges that they also identify.

**Stewart Stevenson:** Will Scott Walker clarify what he meant when he talked about maintaining the share? I was unclear as to whether he was talking about the share of the overall CAP budget at European level or the share of the UK’s allocation. It seemed that the argument is that it is perhaps the quantum, rather than the share, that we seek to maintain.

**Scott Walker:** As it says in the Pack report, if we consider the UK share per hectare in relation to the situation across the whole of Europe, we find that, roughly, we are sitting in the middle.

Therefore, as any redistribution effects take place across Europe, the UK as a whole probably has little to fear, albeit that the key that the EU uses to distribute the funds might be slightly different. Many commentators think that the UK's overall share might reduce by a certain percentage.

I break the argument down into two parts. The first issue is for the UK, as negotiating lead in Europe, to agree what share the UK gets. Then we have to have a political debate in the UK about the share that each devolved Administration gets from the UK budget, because of course from a European perspective the money is allocated to the UK and how the money is divided is up to the UK.

Until now, our share has been based on the sums that the devolved Administrations were allocated from 2000 to 2002. As we move away from the historical model for the single farm payment, there is a strong argument for considering a new means of redistributing the money among the UK regions. Scotland can make a good argument for a bigger share of the UK pot, whatever the pot is.

**Stewart Stevenson:** In essence, it is about maintaining the amount.

**Scott Walker:** Yes.

**Vicki Swales:** Whenever we talk about the CAP and agriculture support we end up having an argument about money. That is not surprising, given that the CAP takes €56 billion throughout Europe and we spend £670 million in Scotland to support the agriculture sector every year. We are likely to face a cut in the CAP budget. Most commentators agree that that is what will come out of the EU budget review. The figures that are being bandied about vary, but people are talking about cuts of 20 to 30 per cent. One way or another, the CAP budget will take a hit.

We should be talking about our objectives in spending the money. We need to start with a clear rationale as to why there is public intervention in the sector and what we want it to deliver. The previous Commissioner for Agriculture and Rural Development, Mariann Fischer Boel, said before she stepped down that we need to see the policy leading the budget rather than the budget leading the policy. She was right, in as much as we need to start by considering what we want to deliver.

In our view, the rationale is about the delivery of non-market public goods. Food is a private good; it has a market, and supply and demand determine the price—there is some degree of market failure and the public sector can address that to some extent. The primary reason for spending CAP money is to deliver the things that agriculture delivers as part of its activity that do not have a price and are non-market goods, in relation to

which there is market failure. I am talking about vital things: biodiversity, carbon storage and good water quality. That is why we need to spend the money. Delivery will require significant amounts of money, but through it we will support a viable farming industry, which is environmentally sustainable and which will help us address issues such as climate change.

**Patrick Krause:** I agree that we need to fight in Europe to get as much as possible for our rural development and I also agree that we need to fight within the UK, which is the member state, for Scotland.

There is a distribution principle in the Pack report with which we do not agree: that non-less favoured areas—that is, the sector that is within the more favoured areas of Scotland—should receive the highest payments. This is a fundamental point. I think that I am right in saying that the report says that, if there is a budget cut beyond 15 per cent, the non-less favoured areas are the best able to cope with that.

**The Convener:** Patrick, may I stop you there? We will go on to discuss LFAs, but at the moment we are considering the headline issues.

**Patrick Krause:** May I add just one point? I agree with the view that we should not be considering only agriculture. We are considering an integrated rural strategy. In the past, it has been clear that the issue has not been considered as an integrated rural strategy. That has been a weakness of the whole plan.

**Stuart Ashworth:** I want to go back to Liam McArthur's original question. Given the financial perspectives for the European budget, the first debate will be about securing as big a budget as we can. I agree with some of the statements that were made earlier: the way in which we can secure that budget is to ensure that the objectives for the common agricultural budget or the rural development budget are clearly specified. That will allow us to secure funds from within the European Union budget.

A second issue is the distribution between member states. That issue has been well rehearsed by Scott Walker, and I agree with what he said.

**Liam McArthur:** Before other committee members come in, I would like to add to the original question. We have talked about a fairer distribution, but on what basis would you build the argument? What would make a fairer distribution? Most of the comments so far have assumed the continuation of a two-pillar approach. It has been argued that that distinction should end after 2013. It would be helpful to hear the witnesses' views on what should happen to the pillar structure.

**Jackie McCreery:** I will pick up on a couple of points that have already been made. I agree with Vicki Swales that you have to think about the objectives and then consider what the budget should be in order to meet those objectives. However, because so much more is being expected of the common agricultural policy, the issue is now much wider. If we considered all the objectives that we want to achieve, we would find that they were totally unaffordable.

The farming industry tends to be on the back foot in justifying the money that it receives—the funding from the taxpayer. However, it is justifiable to spend 0.5 per cent of the gross domestic product of the member states on this policy, because of what it is delivering and the non-market goods. Yes, it should be about paying for the non-market goods that are delivered, but there is more to it than that. There is still a requirement for a safety net because of the market volatility in this particular sector. Also, we cannot ignore that the policy has a social aspect that must be taken into account. There will also be compensation for the regulatory costs that are imposed because of the—quite rightly—higher standards that we maintain.

There are so many issues to consider that it is quite right that we should not call the policy the common agricultural policy. In our documentation, I think that we suggest moving towards calling it a food and environmental security policy—to cover issues that go much wider.

**Peter Peacock:** I just want to express sympathy—or empathy, or whatever the word is—with Roger Croft's position, which I think Vicki Swales, Patrick Krause and Jackie McCreery have all supported as a matter of principle.

I was reflecting that this is my third round of CAP reform debates in my political career, and it has a terrible sense of being the same as the last one. However, if anything is different it is the extent to which the kind of issues to which Roger Croft and others have alluded have intruded on the agenda. It is about biodiversity; water quality; climate change; food security, which as an aspect of agricultural policy has risen up the agenda; the scenic questions that the RSE talked about in its report; population retention; and avoiding land abandonment. Those are all social objectives. I would like to think that Scotland could lead on those arguments, but I have no real expectation that it would win. We must almost think about the next reform process, given the timescale. In your experience, to what extent is that view of wider social objectives completely out of line with the view of other national Governments? Alternatively, is that view beginning to be appreciated as an approach by other national Governments?

**The Convener:** I invite Peter Cook to pick up on that and the other points.

**Peter Cook:** We must have a sense of reality on the budget. Even if the amount of money that comes to Scotland through the CAP is exactly the same, it will be a lot less in real terms, because the world is shifting and we have huge, increased demands, to which various people have alluded. Certainly, everything that I have been involved in tells me that we must prioritise more, because we cannot do it all. The current regime—the SRDP and the CAP—tries to do everything for everybody and deliver everything. Everybody thinks that it is a tool that they can use to deliver everything, but it cannot, and it is failing badly in places. My message to the committee is that you need to decide what the real objectives are and prioritise them in order to have some impact.

I have a technical point on the Pack report. We must remember—I am sure that Scott Walker will keep me right here—that Brian Pack's LFA headage payments to maintain cows and sheep rely on Scotland getting the 3.5 per cent allocation of direct payment from the UK so that we can have 15 per cent direct subsidy support. Basically, that relies on the rest of the UK agreeing to give up their attached payments to us, which is a big assumption. That is something to remember when we consider the Pack report and how to structure things.

Liam McArthur made a point about the two-pillar approach. I feel that there must be evolution; we do not want pillar 1 to disappear overnight. We have had direct support to agricultural businesses for 40 or 50 years. If you removed it overnight, you would have a bit of a bloodbath. There are folk who would say that it would not be a bad bloodbath, but it would be very damaging for Scotland.

The reality is that pillar 1 will decline over time and pillar 2 will take over. The bit of pillar 1 that is important is not direct payments to people to support this or that but maintaining our capacity. The food security approach is not about supporting any particular enterprise; it is about letting the market decide. However, we need capacity to be able to react to food shortages, which means that we need the land to be maintained in good condition and we need the research, the education and, to some extent, the people on the ground. We maybe also need to support livestock directly in some places. Generally, that is not talked about. When we had food security policies in the past, they did not support directly, for example, suckler cows; they maintained capacity. We should think about that as we move ahead.

**The Convener:** Does maintaining capacity include taking into agricultural use land that may

have been so used in the past but which is not currently?

**Peter Cook:** You have hit the nail on the head as far as where the conflict is, because we are trying to deliver a lot of things through policy.

After the second world war, to ensure that land was drained and maintained, we had an entire system of drainage grants and so on. What happened was seen as an environmental disaster, but it was done to maintain capacity to produce food in case of risk. We have a conflict for the future. I think that we can resolve it, but we have to think about it.

A lot of productive capacity in Scotland is declining, and land quality is certainly declining. That is more important than paying a payment on a cow, in my view. The farmers will find a way to use the land. We have to maintain our capacity, at any rate.

11:30

**Vicki Swales:** I return to Peter Peacock's question about whether other national Governments share a wider view about moving agricultural policy further towards public goods delivery. Across Europe, member states' positions are often determined by their budgetary position, unfortunately, and by whether they are net contributors or net recipients of money from Europe.

There are some interesting coalitions. Many of the new member states recently argued, in their grouping, for a much stronger, better-funded pillar 2. Many of them spend significant amounts of money from it, and they come out poorer in the pillar 1 equation, given where they have come from historically, with lower production levels compared with many of the older member states—the EU 15. Other groups share the UK view—I use that term carefully with regard to what is being said by the Westminster Administration about public goods. Sweden, Denmark and other countries have been seen in the past as being pro-reform.

We need only look to the Commission's direction of travel and to what it has been coming out with. Going back to the MacSharry reforms of 1992, huge strides have been taken to move us along a certain path, and it is unfortunate that, under Commissioner Ciolos, we have actually retreated a little bit. The next logical step for CAP reform will be to move further in the direction in which we have been moving over the past 20 years or so. The commissioner is retrenching a little bit, in fact.

**The Convener:** We will hear from Roger Crofts next, and then John Scott, who I missed out—he is biting my ear here.

**Professor Crofts:** I will follow up on what Vicki Swales said in relation to Peter Peacock's questions. In my wanderings around the accession countries of central and eastern Europe, I find a sudden realisation that they have got to do certain things that they thought they could get out of doing, for example under the water framework directive and on Natura implementation. I have seen from going into environment ministries that—by God—reality is suddenly dawning on them. That is a useful lever for those ministries to try to influence the agriculture and land resource ministries, which tend to be separate in central and eastern Europe, unlike here. There will be a gradual change, but not a sea change. It depends, as much as anything, on how tough the environment directorate-general in Brussels is about the implementation of the various requirements.

On the subject of taking land back into agriculture, one of the fundamental changes that we have had, which seemed to sneak through—I cannot even remember it from when I was a civil servant looking after rural policy—was to stop safeguarding the best-quality agricultural land. I think that that was in the early 1990s. It is not so much a question of whether to bring back abandoned land on the hill, although I would love to see that; the focus is on the other end of the spectrum. The national planning framework 2 is gung-ho for development, but without considering what is best for the land resource. We can see that around the city of Edinburgh, and you will also see it in the west and elsewhere. That is a fundamental issue, which needs to be addressed.

On the questions around pillar 1 and pillar 2, we do not have any particular axe to grind, but the RSE feels that getting rid of the pillars could be a long-term objective. I agree, however, that we cannot get there in one leap, because that would be too damaging. Brian Pack gets it right with his map of the distribution of single farm payments. One scratches one's head about the skewed distribution in the north-east and along the east coast, compared with the range of things that we as a society expect farmers to deliver.

However, we disagree with Pack when he says that pillar 1 should be primarily to produce food and a cushion against market uncertainties, and then there are the cross-compliance arrangements, through statutory management requirements and the good agricultural and environmental condition standards. That does not seem to square with Pack's notion of active farming, which we all support. We made a big play about that in our report: why should farmers be

given money if they are not in active farming? However, active farming means delivery of a range of public goods, not just food. Food is important, but why does Pack argue that it is the primary public good? I know that we will come to LFAs, but in some parts of Scotland, where the market opportunity is appalling, farming activity is less about food production than about delivering other public goods and services. Without support, that activity would not continue.

**John Scott:** Vicki Swales said that we should decide the policy first and then the budget. I agree with her up to that point, although thereafter my view diverges from hers. I should declare an interest as a farmer.

Peter Cook talked eloquently about maintaining capacity. We should remember where we came from, which Peter Cook touched on. The reason why the support system was put in place was to produce food for a hungry Europe. That continued until the MacSharry reforms. Through the 1960s and 1970s and until the mid-1980s, we did not believe that we could feed ourselves.

Vicki Swales says that the development of MacSharry through Commissioner Cioloş's work should in essence involve environmental enhancement, but that misses the point, because the world has changed again and we are now back to where we were in the 1960s and 1970s and once again are short of food. That was not perceived to be the case between the mid-1980s and the mid-noughties. The focus has moved back to food security. Most commentators agree that food security is the primary issue, which is why we cannot leave the issue to the market to sort out. In all the papers that have been referred to today, the common theme is volatility, which is linked to capacity. If we lose capacity through overall European policy—as in essence Vicki Swales suggests that we should, to my concern—we will have got the policy fundamentally wrong.

**The Convener:** I will bring in Elaine Murray to move the debate forward a bit.

**Elaine Murray:** I will, but I want to comment on John Scott's point. I have to say that parts of the world are extremely short of food, yet we waste £1 billion-worth of food in Scotland. The issue is much more complex and wider than the CAP—it is about our behaviour, attitudes and land use, among other things.

A case has been made for getting rid of pillar 1 altogether or moving towards doing so. Is there general agreement that the current balance, in which three quarters of the funding is in pillar 1 and a quarter is in pillar 2, is not desirable? Is it the general view that that balance needs to change? I invite comments on the use of

modulation to transfer funding from pillar 1 to pillar 2.

**Vicki Swales:** Elaine Murray partly answered the point about food security. The world is not currently short of food, although we need to increase food production in the longer term. The reasons why people do not have access to food are usually to do with issues such as poverty and conflict. It is a complicated issue. We are fortunate that, even if we did not produce food for ourselves, we would have the economic wherewithal to buy it. Indeed, we trade in food fairly significantly.

The issue of the two pillars is complicated. We sometimes get a bit hung up on it and start arguing about how much money should be in one or the other. That takes us back to the objectives and what we want to achieve. RSPB Scotland, as part of BirdLife International, has set out our idea for reform, which involves a system of tiered payments. John Scott might like to hear that part of what we propose is support for farming through a basic area payment with tiered environmental payments on top of that. We are not saying that we care only about the birds and the bees. We need a sustainable, viable farming industry with the capacity to produce food.

**John Scott:** That is the first time that you have said that.

**Vicki Swales:** However, we also need environmental security and sustainability. We think that a system of tiered payments can be delivered through the current two-pillar structure. A significant amount could be delivered through a greened pillar 1, and some of the more targeted environmental measures that we would like to see could be delivered through a strengthened and better-funded pillar two.

In Scotland, we should get our minds clear about what we want to deliver and the best payments and support measures to enable that. We will probably end up having to think about how that fits into the current two-pillar structure and what comes out of the reforms in Brussels. Ultimately, in the longer term, it is about moving away from poorly targeted, so-called income support payments—which are not equitable, do not deliver very much and certainly cannot be defended to the taxpayer—towards more targeted payments that are aimed at delivering the outcomes that we want to see.

**Jackie McCreery:** I have a small point to make, which Vicki Swales has already touched on. John Scott is right to say that food security has come back into focus a bit more. The difference between now and the position that we were in in the 1960s and 1970s is that it is recognised that farming practices need to be sustainable in the future. Therefore, although food security is important, the

environmental security side of things is equally important.

The issue of the balance of funding and the pillars is like the old joke: if I were asked for directions, I would say, "I wouldn't start from here." However, we are where we are. We have the two pillars, and to start from scratch probably is not a realistic option, so we must use the system as it is to our best advantage.

Elaine Murray mentioned modulation. It makes no sense to allocate funding to the two pillars and then modulate some of it from one to the other. We would like to see an end to modulation in the future.

On HIE, the funding is allocated to the less favoured areas. We would like to see a positive spin put on that. Rather than compensate people for—as Roger Crofts mentioned earlier—what they are unable to produce in agricultural terms, we should maybe pay them for what they do produce in environmental terms. It might make a bit more sense, in the longer term, to talk about environmentally favoured areas rather than agriculturally less favoured areas.

**Dr Waterhouse:** I am very aware that, in the area in which I am interested—in the middle of the hills and uplands—there is a tension between food and environment, which we need to seek a way through. The fragility goes right through the area, and we have proved, since 2005, how we can get it wrong with quite a simple system. To move to a more complex but potentially uneven system would have severe consequences. We see quite dramatic changes in some local areas when we have a nice smooth system that transfers relatively simple amounts of money from point A to point B. The organisation that I represent believes that there is a lot of value in an ecosystem services approach, but the devil would be in the detail and it would be a challenge to move to such a system.

The work that we have done recently for SNH, which will shortly be put in the public domain, has brought farmers and local conservationists together to look at the hill and upland areas. The most fundamental resource that they both said they needed was people. We must maintain that key resource of people working on the land in terms of capacity, skills and ability.

**John Scott:** There is no environmental enhancement in land abandonments.

**Dr Waterhouse:** In essence—or in change that is not sensible. We must stay within some sort of safe area.

11:45

**Scott Walker:** The communication that has come out of the European Commission and the

reports that have come out of the European Parliament show clearly that the two pillars are going to be retained into the future. The pace of change from pillar 1 to pillar 2 will be slower than many people would have thought two or three years ago because of the food security issue, which John Scott mentioned, but also because of the issue of co-financing that is associated with pillar 2 and the inability of many member states to meet their co-financing needs going forward. Therefore, in the short term, a bit of a drag will take place. In Scotland, we will probably see more of the same, in terms of the balance between the two pillars.

On modulation, it strikes us as very odd that, as Jackie McCreery said, money is allocated to one pillar and modulation allocates that money to another pillar. The whole concept of modulation has been largely discredited among most circles in the European Commission. I expect that, in the reform process going forward, we will find the ability to modulate being removed from member states and will look instead at what the financial allocation will be to pillar 1 and pillar 2.

**The Convener:** Before we move on to the specifics of direct payments, less favoured areas and other matters, I have a question for the panellists. We have talked about the main challenges that we face. For example, Tony Waterhouse has talked about the importance of human resources. Do you think that we have the information and analysis to show where we are in relation to meeting those challenges and what the potential contribution of European agriculture—if we can put that in one block—is to that?

**Stuart Ashworth:** Labour resource and skills are crucial to the rural environment at the moment. For years and years, we have heard about the average age of farmers, and so on and so forth. There is a fundamental question about securing the future of businesses with sufficient profitability to encourage young people to enter the industry, to adopt new innovations and technologies, and to contribute to a number of other activities as we know they can. I strongly believe that a core element of the policy must be to secure business activity. There might be fewer businesses, but the businesses themselves must see the potential and capacity to be profitable. If they can do that, they will be able to encourage young people into the industry. Subsidiary to that is the extent to which we must have a training base—whether through the Scottish Agricultural College or Lantra—and a research base to support the industry to go forward.

It goes back to the issue of objectives, which was raised at the start of the session. We must have some clear objectives for what we are doing. As a representative of the red meat industry, I

make no apology for saying that it is partly about ensuring that we have secure and profitable businesses with the capacity to do all the things that Peter Peacock and John Scott have talked about in terms of adapting to market signals and securing raw materials for the food supply chain in Scotland. That raises the issue of the relationship between Scottish Government policies on food and drink, including the targets that are being set for those, and the common agricultural policy and the way in which it will interact with some of the Government's other policies.

**Professor Crofts:** In recent times, we have got bugged that we should never talk about paying for inputs but should think about paying for outputs. I used to think that that was the right approach. However, the more that we consider the decline in employment in agriculture throughout Europe—particularly in Scotland—the more that we see a continuing decline since the second world war. That has been accelerated in the less favoured areas by the removal of headage payments, for which many of us argued for years without thinking about the consequence. The consequence is that we now have undergrazing and undermanagement. What do we mean by an active farmer? It means someone who is looking after the land resource in its many and varied dimensions.

Vicki Swales referred to “a greened pillar 1”. We will not get the sort of shift that some of us would like in the near future. If we think about greening pillar 1, we are surely talking about estimating the labour units that are required to deliver the whole range of public services and goods that require active management and higher staffing levels in those areas. That requires training. We have the training basis in Scotland to be able to do that through the SAC, the three agricultural colleges and the technical colleges. I speak as a former non-executive director of the SAC, so I might have a slight bias, but we have the support base.

However, the incentive to go into the industry does not exist so, as Stuart Ashworth said, there is a continuing decline. We all know that the labour costs are the problem in the cost structures—that is why we have had the reductions—so we need to be absolutely clear that any change in policy will not have the unfortunate side effects that the headage payment removal has had. We must be clearer about our objectives and the means for delivering them.

**The Convener:** I thought that there was an increase in the number of people who wanted to go to the SAC and other places to do land-based courses and that the problem was in farming specifically.

**Professor Crofts:** That is not quite the case. There is a little bit of an increase in agriculture, but

the increases have been much greater in horticulture, tourism and land recreation management.

**Dr Waterhouse:** There is definitely increased confidence and some young people are coming in. There has been a gap in new entrants to active land management—doing stockman or shepherding jobs—and to being a farmer. There is still a generational gap, but an element of confidence is coming through. However, we need to find somewhere for those new entrants to go. The issue will be that there are not jobs for them to move into, which will choke off the confidence.

I agree with Roger Crofts that there is greater vitality across the range of land-based subjects, which is encouraging. At the heart of that, we see strength in agriculture and food production, which is good.

**Liam McArthur:** I am interested in the comments that Roger Crofts just made. With unit consolidation and increased mechanisation of agricultural production, labour units have reduced. I was interested in Peter Cook's submission, which—I paraphrase—said that the historical basis of payments ensured a degree of breathing space to allow businesses to adjust, and justified them on that basis. However, from what Roger Crofts says, we are asking the payments to be more efficient and responsive to the market on one hand, while on the other saying that we need to get the head counts up because there are social and capacity issues—particularly in some of the remoter areas—that require the population to be retained, which is still best achieved through primary production. I am not sure how we square that. Does Roger Crofts have any ideas?

**The Convener:** Can we move on a bit? I would like John Scott to start on direct payments, then we can pick up Liam McArthur's points.

**John Scott:** I will sum up the discussion before I do that. A broad consensus is emerging between Roger Crofts, Stuart Ashworth, Tony Waterhouse and even Vicki Swales. It is a realisation that, if pillar 1 is to continue—my question is whether direct payments should continue—it should be greener than it is. That would be a move in the direction in which we all want to go, but pillar 1 must remain to sustain capacity. However, that is not up to me. I am asking the question rather than telling the witnesses. Should direct payments continue? Forgive me for pre-empting the question.

**The Convener:** I am sorry—I should have let Roger Crofts answer Liam McArthur's question first, so while the other witnesses think about their answer to John Scott's question perhaps Roger can answer Liam's.

**Professor Crofts:** I have lost the thread.

**Liam McArthur:** It is just that there is an apparent conflict. We are requiring our agricultural production sector to be leaner and more efficient, and we have bought it a bit of breathing space to do that through the historical basis of payments. However, having undertaken some of those changes to the business, the sector is now being told that the best way to retain the population in remoter areas is to raise its head count.

**Professor Crofts:** I would be surprised if any of us here, or anyone whom we polled around Scotland, wanted the land to be abandoned, underused or undermanaged. That is fundamental, because it is not just about making the best use of land; it is about the fabric of rural society, which is a fundamental pillar.

**Liam McArthur:** But in a sense, the land can be managed more efficiently and extensively than it is.

**Professor Crofts:** I do not think so. There are lots of parts of Scotland where we could ask, "What are they managing there?" I could take you to parts of Galloway that I am familiar with where virtually nothing happens and the land is threatened with being lost to agriculture and the other services that farmers can provide, such as planting trees for carbon sequestration or renewable energy, or that is the claim.

A much more hands-on approach is required. Such areas have been very heavily managed in the past. You will hear debates there about whether there are far too many raptors, even though they are protected species, but we do not manage some of the bird populations any more because we do not have the resources to do so—the vermin on the hill, and all that sort of thing. How do we ensure that trees are planted sufficiently far away from water courses not to have an acidification effect? The answer is that we are not managing that. I have heard too many stories of senior people in the Forestry Commission saying that the guy in the tractor cab who was doing the ploughing did not have any instructions and was just acting on his own. We need to take a more hands-on approach to land management as opposed to having a light touch.

In parts of Cévennes, you can see the effects of people turning their back on the land. In a curious way—and I say this as an ex-environmental bureaucrat—Natura 2000 is driving us not to go back to nature but to maintain the status quo, whether we like it or not, and that means we have to take a more hands-on approach.

**Vicki Swales:** John Scott's question whether direct payments should continue is interesting. Definitions are important here. What do we mean by "direct payments"? I do not have the Commission's defining legislation in front of me,

but we must remember where direct payments came from. They came from what was price support, which turned into area-based payments or arable payments and moved from headage to area payments in the livestock sector. They were then couched in terms of compensation for price cuts and income support to farmers to reflect that. That has led us to where we are now with direct payments, which we take to mean the single farm payment and which is essentially some kind of income support for farmers, even though one farming family might get £15,000, one might get £150,000 and another might get £1.5 million under the same system. If that is an income support scheme, it seems pretty strange to me.

We have had the argument about whether pillar 1 should continue. Should there be some kind of basic support to farming? Yes, in our view. There should be what we would call a basic farm sustainability payment with certain conditions attached about what farmers must do for that payment. On top of that, we would like to see different levels of support delivered within pillar 1 as it is, particularly to support what we call high nature value farming systems. That would be those hill and upland farmers in the UK and Scotland who are extensive livestock producers. That would be justified on the basis of the public good that such farms deliver. Within that, we might also want to support organic farming systems, for example, which also deliver a wide range of public benefits as well as food. Is there a case for those sorts of payments? Yes. Is there a case for direct payments as they have existed in the past? Not in our view.

12:00

**Stuart Ashworth:** The debate about what a direct payment is is interesting. As long as the agriculture industry has requirements placed upon it that are not common across the globe and which put it at a market disadvantage, however, that needs to be recognised. That is, if we are to respond to marketplaces and so on. Direct payments do some of that and Vicki Swales raises an interesting debate.

I will talk about the extent to which direct payments distort restructuring and, in particular, constrain new entrants. This goes back to some of the issues that Roger Crofts and Tony Waterhouse have raised. People are looking at farming again. Some enthusiastic and innovative people are trying to get into agriculture but, because of the way that the direct payments system works, they find it extremely difficult to raise the sums of working capital that they require. In the debate on direct payments we need to reflect on the ability of the industry to restructure and to allow new entrants to come in—it goes

back to active farming and who receives the payment.

**Patrick Krause:** The SCF is part of the consensus that is forming around the idea that food security, while being primary, is about sustainability. If it is not sustainable, it is not secure, so I do not think that there is an argument between those two objectives.

We have said that we think that pillar 1 direct payments need to continue for now, but that is about direct payments for very clear objectives. I know that I am repeating something that has been said a few times, but it is worth repeating. Within the current structure, there does not seem to be a clear Scottish rural strategy that brings together all the integrated elements of how we produce food and protect our environment in a joined-up way.

If we factored in as good things the management of carbon and the number of labour units used, for example, the way in which we use the agricultural support budget in Scotland would be completely different, as would the distribution of payments. For example, the crofting counties are based on one of the largest peatlands in Europe. I will leave it at that.

**Scott Walker:** I acknowledge and agree with a lot of what Vicki Swales said, but the fundamental difference between the NFUS's view and the view that Vicki puts across is that we believe that the heart of direct payments in Scotland should be about the production of food.

I refer to one line that is in the European Parliament's report so far. I know that the economists in the room will disagree with some of this statement, but the report

"Stresses that food is the most important public good produced by agriculture".

We could have a huge debate about what a public good is but, if direct support continues, as I believe it must, the key component of such support must be for the production of food.

In Scotland, we must go wider than agriculture and look at the whole Scottish food and drink industry and how dependent it is on agricultural production. We must also bear in mind two factors. First, Scotland does not work in isolation from the rest of Europe. Whatever we choose to do in Scotland, we must look at what our competitors are doing in Europe to ensure that we remain competitive in the European market. If we do not, we will lose the food supply chain here in Scotland. It will disappear; others will take it overnight.

Secondly, we must consider what that means for individual businesses. It is all about the pace of change. Individual businesses are structured along the lines of the current support system, and

the NFUS would say that that should definitely change. Much of what we have now is indefensible and will move in due course, but we can never separate that change from the effect that it will have on individual businesses. If we move to a system that fundamentally changes the amount of support that goes to them overnight, that will mean that, in the main, those businesses will have only one decision to make: to cut back on production. That would be quite significant for the economic activity in some rural areas of Scotland.

**Jackie McCreery:** The general consensus is probably that direct payments should continue at least in the short term, although people might have a different view about what should happen in the long term.

To pick up on something that Vicki Swales said, pillar 1 payments—or single farm payments, as everyone would take pillar 1 payments to be—are no longer income support payments. They may have been at some stage, but the issue goes back to the objectives of the policy changing and the justification for spending what is, at the end of the day, taxpayers' money. Why should farmers get income support when other sectors do not? Pillar 1 payments are no longer income support payments in that respect, but they have the attraction of simplicity. The scheme is relatively simple to administer. If we can green pillar 1 payments by adding in some relatively simple actions that must be taken in order for people to receive that money, that would be of benefit.

There has been talk—in the Pack report and other places—of the greater targeting of pillar 1 support. That must be balanced against the idea of simplicity. I suppose that the more targeting there is, the more administration and complexity might be created, so there is a balancing act to be done.

**The Convener:** Peter Cook can come in next, then Karen Gillon.

**Peter Cook:** John Scott asked whether direct payments should continue. The question is whether we need direct payments to maintain food supplies. The direct payments subsidy is not a food policy, however; direct payments do not deliver food production. Most of the subsidy goes to businesses with quite low outputs and, while it indirectly provides some sustainable food production, it is not a food policy. It is great that the subsidy, which was heavily biased towards beef, maintained beef production, but at the same time the Scottish pig sector collapsed, although it has kind of recovered now. There was nothing in that approach about maintaining our capacity and our food security. Why the subsidy is in one place and not the other is simply a historical matter. If people want to turn it into a food policy, it will not

look anything like what it does now. It is clear that it is not a food policy.

If the Scottish food chain needs £500 million of direct payments from somewhere else, it is not sustainable, so we had better do something about it quick, because the £500 million might go at some point.

**John Scott:** I have the greatest respect for you, and I do not want to contradict a man of your expertise and wisdom, but I am going to do so anyway. Although Scotland sustains 1 per cent of Europe's food production, in the CAP as a whole large payments go towards food production in Germany, France and England. Those are the food production areas and they are where the vast majority of the support goes. Scotland, however, is designated 85 per cent LFA and there is nothing that we can do about that. That means that the money that comes here is, on a historical basis, based on headage payments. That is not necessarily hugely efficient food production, but it is food production nonetheless.

**Peter Cook:** I agree that the subsidy maintains a level of food production. If you transfer funds like that, it keeps folk producing food in places where they would not do so otherwise. That is the key point that I wanted to come to. If you remove subsidy, I do not know whether you would see a huge reduction in food production in Scotland—you would certainly see some—but you would see a hell of a drop in the most disadvantaged areas; in fact, you would have none. The policy is to maintain food production in places where it would not otherwise take place in order to deliver other benefits. That is what you have to hang on to.

The example that I always think of is Tiree. There are suckler cows on Tiree, because of which people make silage. Because they make silage, they delay the cutting of the silage, which is good for the corncrakes, so the corncrake population increases. What is the best way to support that virtuous circle? Pay a headage payment on the cows—do not muck about with anything else. There, a direct payment makes sense, but should you make that direct payment to a guy with suckler cows in Aberdeenshire or Perthshire? No—we have options and we will find another way to do it. It is all about targeting—you really have to think about that.

The general argument from the NFUS members is, of course, "I want to keep my money." I do not blame them for that. You need a transition time to allow that to change. The key thing is to get the money targeted and justified. Just paying a chunk of money because somebody historically has had something is not sustainable and it does not deliver food. In Aberdeenshire, 30 per cent of the subsidy money goes to 8 per cent of the businesses. If they are delivering what you want,

that is fine, but you need to ask yourself whether that is actually the case. The existing policy needs to change.

**The Convener:** I have a quick supplementary on that. Where do the LFAs come into that equation in relation to providing the cows and the lambs that the farmers in Aberdeenshire and Banffshire—such as my family—finish to put to the market?

**Peter Cook:** I am very aware of your family—I am thinking about them all the time in fact. Of course the LFAs are important. There are chunks of LFAs that are good and would not need the level of support that might be proposed, but there are other areas that would go totally out of production if they did not receive that support. Such targeting is key. It is very difficult to do. I quite understand why Brian Pack has drawn a line between LFA and non-LFA, because that is easy. However, it is very blunt. The tool should be to consider what benefit the money brings if you give it to certain people. On Tiree, they will have cows, but they are also delivering other things, such as avoiding land abandonment, producing a bit of food, environmental benefit and people on the ground—we are all happy.

**The Convener:** I am conscious that we could stay here all day and probably into the evening, too. John, do you want to move this forward a bit?

**John Scott:** I will let Karen Gillon in.

**The Convener:** Sorry, I did not have Karen down to ask a question.

**Karen Gillon:** You did call me, convener.

**The Convener:** Oh, right. Sorry.

**Karen Gillon:** Peter, your contribution was one of the most refreshing and honest that we have had in the debate. It gets us to the heart of the discussion. We have lots of vested interests in this matter and it is difficult. If we are honest, it is very hard to justify to the man in the street why we pay the amount of money that we do to farmers who would remain in the industry because they would still be profitable and would continue to make money in their sector.

We can debate this, John. Yours is a market-driven capitalist party, but it sees public sector investment as crucial to keeping an industry alive. There are parts of the agricultural sector that would stay in food production because they make significant profit. Peter Cook has pointed that out to us.

What we need to see from this process is which parts of the industry would not survive. That is where we should be targeting the money, not on the parts of the industry that would survive whatever. We should be brave enough to say that

those areas do not need support from the public purse and we should target our support at the parts of the industry that do. We should make that difficult choice.

12:15

Yes, there needs to be a transition and yes, we need to take that difficult step. There will need to be a period of time for that to happen but, if we are to get the most for the public buck in these difficult times, we will have to make difficult decisions. If we are to ensure that public money benefits truly less favoured areas—by which I mean the bits of Scotland that would be abandoned if we paid no public subsidy or where there would be huge environmental consequences if there were no sheep on the hills or cattle in the fields, not the 90 per cent or whatever it is of Scotland that is designated as LFA on the map—we need to take a really hard look at the issue and take some really hard decisions. Perhaps we are ducking and diving away from those decisions because too many of us around this table have too many vested interests and will be relying on their votes come May.

**John Scott:** I am under strict one-syllable instructions from the convener to “Get on.” Nevertheless, I thank Karen Gillon for that contribution and suggest that we take the matter outside and talk about it privately. [*Laughter.*]

The question that I have been charged to ask is whether historical payments should be converted to area payments and, if so, whether there should be a transitional period and how long it should last. If there is anything to learn from the English example it is that, as I think Brian Pack said, it is the one to avoid. How, then, should any move to an area-based payment be carried out?

**Vicki Swales:** I will answer that question, but I will first comment on what the two previous speakers said. Perhaps without realising it, Peter Cook has, as the agricultural economist, put forward the best argument for an environmental reform of the CAP. There is indeed a huge coincidence between the areas that we might want to support—for example, agricultural production on Tiree. Indeed, that is the very place where we would be talking about these high nature value farming systems, which are the vulnerable ones. I might disagree that headage payments for cows is the best way of supporting the farmers on Tiree, but I guess that it is all about outcomes.

It is logical to move from historical payments, which are completely untenable and which fossilise a distribution method based on past production, to area-based payments. It is the next obvious step in the transition, but it is only a step in the transition to the ultimate aim of better

targeted payments to deliver the outcomes that we want. As I said earlier, a basic area payment applied everywhere is a logical step, but on top of that there should be layers of more targeted support to deliver exactly the kinds of things that we have been talking about: HNV farming; organic farming, where appropriate; and areas that must meet management requirements under Natura 2000 or the water framework directive. At the moment, LFA is simply not a good delineator for deciding who gets what—we need to focus on outcomes and targeting payments to deliver what we want.

**Scott Walker:** Speaking as someone who definitely has a vested interest—in agricultural production, though, rather than specific sectors—I think that we have to move away from a historical system for all the reasons that everyone around the table will share. The current system, which is based on what we did in 2000 to 2002, has fossilised.

I, too, believe that the direction of travel should be towards area-based payments; indeed, it is very much the direction of travel in Europe. However, Scotland has a big problem with area-based payment systems that England does not have to the same degree: the livestock production system, which is predominantly within the LFA, varies so much across the area that a simple area-based payment—based, say, on the three-region model that was introduced in England—simply does not work in Scotland and does not maintain capacity to produce. Although I recognise that an area-based payment system must form the basis of payments in future, we must consider a more sophisticated approach. That might involve using labour units as the basis for payment, as Brian Pack has proposed; using specific headage payments in certain areas of Scotland, which Peter Cook has described; or using grassland grazing categories as a way of rewarding and keeping up production. We have to go beyond a simple area payment system in Scotland if we are to maintain agricultural capacity to produce.

**Jackie McCreery:** We agree that the further away we move from the historical reference period the less justified a historical basis for the payment becomes. There was initially a justification for the use of the historical basis, to allow a transition period. We talked a lot at the time about allowing a period for a tenant farmer to retire and use the single farm payment as his pension and so on. I am not sure about the extent to which that has happened in practice.

Whether we should use labour units as the basis for payment is questionable. As Liam McArthur mentioned, encouraging the overuse of labour tends to conflict with the need for efficiency and competitiveness.

**Professor Crofts:** We cannot possibly have an area-based payments system in Scotland that recognises everything as being equal because it certainly is not, in terms of either the capability of the land, which involves all the things that we have been talking about, or the requirements on the farmer.

There is already a separate exercise going on in relation to the land use strategy, which this committee has discussed with the cabinet secretary. I am surprised that the Pack report does not tie all those things together. You may all be asking, "What the hell's he talking about here?" If we are talking about area, we are talking about land and are asking what we want to get out of that piece of land. That is a simple question that probably requires a complex analysis to get to the answer. It goes back to what we have been talking about all the way through this evidence-taking session, which is the question of what the objectives are. We have a range of objectives that vary within the LFAs and the extremely disadvantaged areas and so on. We have masses of data telling us what the characteristics and capabilities of that land are. That is the case not only in terms of food production—thank goodness that Pack finally saw sense and got us away from the land capability for agriculture classification approach.

We need to perform analyses using all the data that are available from the Macaulay Land Use Research Institute, the SAC, SNH and the Scottish Environment Protection Agency about qualities and capacities and try to decide what we would like a farmer to do on his parcel of land. Brian Pack calls that the contract, but he does not elaborate on what he means by that, except in relation to the food production angle. I hope that we can bust the debate much wider open and say that, if we are to move to an area-based system, we should try to deliver a range of public goods by paying the farmer to deliver on that piece of land.

**Dr Waterhouse:** I agree with Roger Crofts, but I am concerned about the complexity of what he says. I have had discussions about the simple matter of grazing and biodiversity. It is not a question of what sort of grazing gives you the most biodiversity; it is a question of what sort of biodiversity you want. That brings you to the big problem of deciding what level of each ecosystem service you might want from this wonderful array of data that you have. Further, is it the farmer who decides that or someone else? How is that contract formed for an individual bit of land?

The issue is incredibly complex. As a part-time farmer for the SAC, I would give up and go away because the issue seems to be too complicated. Even though dividing Scotland up according to each area's capacity to do certain things sounds

like something that we could do, we do not have a mechanism that will enable us to work out what we, as a nation, want. We have a huge array of stakeholders who all want different things.

**Professor Crofts:** I have heard this often. I used to have doodles of boffins in SNH who would say, "It's all too difficult," and they would argue until the cows came home. The cows were deid before they got home, of course. There is no point in leaving it to the experts. The Parliament and the Government are about listening to opinions and coming to a view on what the land is for. That is what the land use strategy should be about. It is a pity that the Scottish Government paper is so stratospheric and ungrounded that it does not deliver any of that. We can rely on experts, but they will not give us the answer. We must do that through the normal political process.

**John Scott:** In defence of the Scottish Parliament, I point out that by and large we are laypeople in this regard. You are here as experts to advise us on what to do, but you are now saying that it is up to us. If so, why are you here? We are asking for your advice. That is why we have you here.

**Stewart Stevenson:** In my previous role, I had some involvement in the land use strategy. It is worth saying that the Parliament concluded that it wanted to put certain timetables on certain productions under the climate change legislation, but was advised that that would constrain the ability to develop strategies to meet full need. In some instances, the constraints of the timetable are more important than the contents of the strategy; the land use strategy is a classic example of that. However, it is clear that the strategy will begin to move forward in its subsequent iterations. It is important that we do not lose sight of the need for subsequent iterations that expand the scope of the strategy and address the reasons for having it and what we expect from it. If the first iteration is somewhat thin—I will not shaft anyone by agreeing or disagreeing with that, but the point is fairly and well made—that may be the result of the exigencies of political debate rather than the needs of land use.

**Jackie McCreery:** I make the small point that the land use strategy is a strategy for land in Scotland; with the common agricultural policy, we are trying to develop a policy that will be appropriate for 27 member states, which is almost impossible. Although we would like to try to make the two tally, that may be a hugely difficult task.

**Bill Wilson:** We have had several things listed as "impossible", so let us see whether we can have another in the next few seconds. Both here and in the Lloyds TSB Scottish agricultural survey there is support for the idea that support should be targeted at active farmers. However, Brian Pack

took the view that it should be focused on farming activity, rather than on active farmers, and suggested that there would be some difficulty in defining “active farmers”. In evidence recently, he singled out crofters as being one group that might be difficult to define, due to their part-time nature, the nature of tenancies or the headage that they have on the land. Would you like to comment on that issue?

**Patrick Krause:** I must comment, given that crofting has been mentioned.

**Bill Wilson:** You must ensure that there is at least one comment.

**Patrick Krause:** I reiterate what I said earlier. If we looked at things other than food production—how carbon, the peatlands and the environment are managed, and how many people are involved in food production, given that we want to see thriving rural populations—the money would be used in a completely different way. I do not think that it is impossible to determine whether crofters, for example, are active. If the objectives are clear, it will be possible to measure whether land managers are producing the outputs that it is envisaged will lead to the outcomes that this country wants from its land.

**Vicki Swales:** The active farmers issue became difficult because of the way in which the relevant European legislation is written. If that definition had been applied, it would potentially have excluded the likes of crofters and small part-time farmers, so there was a shift towards farming activity.

We argue that this goes back to the broader issue of land management activity, outcomes and what we want. There is a broad type of land management activity that can deliver public goods and services. It is primarily agricultural activity, but there are clearly wider land management issues around that, and such activities are already eligible for agri-environment payments under pillar 2. The wording in the regulation is quite clear that those payments are for farmers and land managers. We already have a precedent in that it is not just what we might think of as traditional farm businesses that are the recipients of public support.

12:30

**Jackie McCreery:** I agree with that. We do not want to give money to people for doing nothing, but that seems to be the perception of what is happening at the moment. As Vicki Swales said, we need to recognise active land management. Of course, that will primarily be the growing of agricultural products, but it could also be environmental services. To get bogged down in trying to define “active” and “farmer” and to monitor and enforce that would be unduly complex

if we are trying to keep simplicity as a thread through the whole process.

**Stuart Ashworth:** One important issue that the Pack report tried to come to terms with was the extent to which a market is created by attaching a direct payment as an area payment. That creates a value and a kind of legislative burden around trading in rights for income. Scott Walker will be able to say more about that.

There is a question to be discussed about how to deliver support to activity—I will use that word—while not distorting businesses’ ability to restructure. That goes back a wee bit to the new entrant exercise and so on. How do we get around the challenge of having a support payment that becomes a tradeable commodity? We saw it happen with headage payments and the SFP as it is currently structured. There is a valid debate to be had about how to best minimise that potential.

**Scott Walker:** To follow on from what Stuart Ashworth said, entitlements are bought by some people as an investment opportunity. Brian Pack wants to stop that. Depending on how you look at it, that money is paid out for the physical activity that is taking place on the land. If the reward is bought as an investment opportunity, it misses the point of why the money is being paid out.

If we are looking at having an area-based payment system in the future, it will come down to what people are doing on the land. They must be meeting the land’s requirements and doing things on the land, whether it be producing cattle or sheep, or a cereal farmer leaving field margins to avoid run-off into watercourses. All that type of activity is good enough justification for someone to say that they are being active on the land. People will have to be making conscious decisions if they are to be rewarded with the area-based payments in the future.

**Peter Peacock:** We have touched on some of the territory that I am going to ask about. The European Commission, the European Parliament and the Pack report talk about top-up payments of one kind or another. That rather implies a topping-up of some other basic funding. What do the witnesses think about that? Roger Crofts and Peter Cook have partly touched on the subject already. What should such top-up payments be granted for? Are there priorities? Should they be contractual? Is a specific contract to be struck for a particular payment, with benefits in mind? Do any of you have views on that?

Don’t all rush at once.

**Professor Crofts:** We say in our written submission that we support a top-up payment, but only as a transitional arrangement. It is yet another complication. Everybody has talked about the complexity of the system, but Pack wants to add

more complexities—he talks about headage payments, top-up payments and so on. However, I accept that we need to move slowly and that we cannot totally disrupt the industry, whatever some colleagues have said.

The payment should therefore be conditional and should deliver something. We are pretty clear that it should be for protecting the environment—soil, water, species and habitats—and, in places, for enhancing it. We know what sort of things to do, as we have had various schemes running under pillar 2, but we need to ensure that they are more effective throughout the country. I hope that the top-up payment, if it were approved, would be used for that purpose. It is not ideal and it would be a temporary measure, but it should be used to deliver particular goods and services for the public benefit.

**Peter Peacock:** So, it could involve deploying cattle and sheep, for example.

**Professor Crofts:** That would be a means to that end.

**Vicki Swales:** We do not support the idea of top-up payments that are focused on standard labour requirements, as set out in the Pack report. I talked earlier about tiers of payments—having a basic area payment everywhere and then additional support, which in essence would be the top-up payment. We envisage the fund being used for high nature value farming systems that deliver public goods but are threatened by abandonment or that could become more intensive and specialised and therefore potentially damage the very things that they currently deliver. In a Scottish context, we are talking primarily about an additional payment for extensive livestock producers, who are more likely to be located in the north and west—in the crofting communities and islands.

**Peter Peacock:** Would there be a contract with a specific unit of farming or croft?

**Vicki Swales:** That is where it gets interesting. Roger Crofts had a good idea about having an overall contract with farmers. Within that, farmers would get different elements or tiers of payments for different things that they deliver—from basic support, through higher support right up to the top. We want the current targeted agri-environment payments to be maintained for measures such as habitat restoration and species recovery.

That takes us back to the issue of whether such payments should be under pillar 1 or pillar 2. The Commission argues that pillar 1 involves annual payments and that pillar 2 payments are multi-annual or on a contractual basis. Why cannot the whole thing just be a contract? Why do we need that artificial distinction? However, we are where we are and that is how the pillars are constructed.

We see top-up payments as being part of pillar 1 and as annual on-going payments, although that is not ideal, because a contract system would be better. Then there would be specific agreements through pillar 2 type payments for the more demanding environmental measures that currently operate through agri-environment schemes.

**Jackie McCreery:** I broadly agree with Vicki Swales. In pillar 1, there is a role for a top-up fund of some sort to achieve the targeting that we have all talked about, while retaining the simplicity of pillar 1 payments. There is an issue of blurring the pillars, because the environmental activity that we are talking about will, by its nature, be multi-annual activity, but we will pay for it annually. There is an issue about whether the activity for which the top-up is paid would be mandatory. Would it be almost an enhanced level of cross-compliance and something that everyone would be expected to do, with everyone getting the top up, or would it be more contractual, as Vicki Swales talked about? There are issues to work out, but there certainly seems to be a role for top-up payments to assist with the targeting idea.

**Patrick Krause:** I agree with Vicki Swales, who put it much better than I could. The SCF's reaction was not to agree with top-up funds, because we felt that there is a strange perversity in that it seems at first sight that an extra bit is paid to somebody who is trying to produce food in an environmentally sustainable way. However, the counterargument is what Brian Pack said in his original report. He asked a rhetorical question along the lines of, "Do we produce food at any cost?" The top-up payment implies that the bulk of support will go to food production at any cost, then a little bit will be added for those who agree to produce food in an environmentally sustainable way. That principle is just not right. It should be about having a contract, as Roger Crofts said, to produce food and manage land in a sustainable and environmentally friendly way right across the board.

**Scott Walker:** I disagree with Patrick Krause's point, although I agree with most of the points that were made beforehand. For me, environmental sustainability is all wrapped up in the cross-compliance rules that people must follow. Top-up funds go above and beyond what is required and push people in a different direction. Alternatively, they would deliver something specific in particular areas of Scotland that might have to reach an environmental objective, for instance.

My issue with top-up funds is not the principle, which I can buy into readily, but how complex they would be and whether they could be delivered both for the benefit of the individual who signs up for them and for whoever does the administration, whether that is the Scottish Government rural

payments department or whoever. So, the question is how difficult top-up payments would be in practice.

There are currently problems with the land managers contract menu scheme and with how the rural priorities scheme is being delivered on the ground. My slight fear is about how complex top-up funds would become and how achievable their objectives would be. The question is whether we can achieve the same desired outcomes through simpler means. That is what we should consider at this stage.

**Dr Waterhouse:** We face a choice between a sophisticated land-based way of differentiating between the payments that go into a particular area of land—to achieve a food and environment objective, or a food or environment objective—and another means of differentiating between farms that are incredibly diverse within their boundaries. Contrast the fairly intensive beef and sheep farm on a relatively small area with an extensive sheep farm on a bigger area. How do we decide what the appropriate levels of payment should be? So, should we have a sophisticated means of differentiating that is based on areas of field X, Y and Z, or should we have something that is a bit more to do with activity, which is what the top-up payment is driving at?

**John Scott:** Those who are more expert than I am will recall what Brian Pack said in that regard. I think that he suggested just moving the payment towards the LFAs to try and get a wider range of benefits. There might be less focus but wider benefits in moving money out of the SRDP into the LFA so that more people could access it and provide more benefits as a result.

**Dr Waterhouse:** Without extra payments there would be great unfairness in the area payment system in that very large farmers doing relatively little above a certain minimum stocking rate would get a disproportionate amount compared to a relatively well-managed and productive farm, with all the good environmental benefits that you get from fairly intensive management of beef and sheep, which would not get anywhere near the same level of activity payment for its effort.

**Maureen Watt:** Yes. Following on from that, Brian Pack suggested an enhanced beef calf scheme and even a headage payment per lamb. Should that be increased? Who should be eligible for it?

Last week, George Lyon suggested to us that it would probably be difficult to get EU agreement to allow Scotland to increase headage payments above 3.5 per cent of the single farm payment ceilings. What are the panel's views on that?

12:45

**Vicki Swales:** I will pick up on a couple of issues, starting with the point about headage payments. We should be very careful with regard to World Trade Organization compliance. Production-linked subsidies are a big no-no and, if we are not careful, we will retrench and go back to the days of that sort of production subsidy. I do not think that we are going in the direction of headage payments.

The issue that George Lyon raised was that, for Scotland to get a higher proportion, that would need to come from the UK national block, which would require England to give Scotland some of its allowance, in effect. There is a political issue with that, and there is a wider issue around whether that would be allowed.

Scott Walker was speaking about administrative costs and complexity, with farmers having to apply for top-up funds and so on. It always comes up as an issue, and the argument is always that we cannot adopt such systems because they are far too complicated for farmers. Farmers have become very used to receiving a large amount of money by filling in a fairly simple form and ticking a box for their LFA payment. They have complained about the complexity of SRDP, and Peter Cook's excellent report highlights many of the problems with such things.

This is about public money. Anybody who fills out a grant application form for any kind of public money usually finds it to be pretty complicated. It requires people to jump through hoops and provide evidence. We in RSPB Scotland apply to the Heritage Lottery Fund for money, and it is a lengthy, complicated process—quite rightly—to get the money and justify the expenditure. I do not think that we should stop that or make that a block to moving to a system that requires a slightly more complicated process to deliver the money to farmers.

**Stuart Ashworth:** Vicki Swales has picked up on some of the challenges with headage payments, and we have to recognise the point in connection with WTO compliance and the issue of moving back towards payments that are seen as a direct encouragement for production.

That said, there are other issues to be considered. The idea involving lamb is nice to think about, but we get back to the administration of the scheme, and it is difficult to see how such a scheme could be imposed or effectively operated.

There might be some merit in thinking about another CAP objective, which we have sort of ignored for much of the debate: to improve the quality of the food that we produce, its marketability and the general ability to compete.

There could be merit in considering some aspects of the top-up schemes. Patrick Krause has experience of crofting schemes involving bull hire and so on, which aim to improve the quality of the stock that is produced. There could be merit in thinking about elements of that sort, in relation either to top-up schemes or to a headage scheme.

**Scott Walker:** It is clear from all the points that have been made on the matter so far that there are big problems with paying out sizeable headage payments in Scotland. There is recognition within the European Commission that there will be a need for a headage payment in some of the more vulnerable areas to keep production in certain locations. Targeting the whole LFA scheme would be far too wide. As has been said, we would need to get approval from the rest of the UK to allow us to do it—and that would be problematic.

Should we consider a target headage payment in some areas of Scotland? I would say yes—we will need that if we want to keep some stock in some areas of Scotland. As has been pointed out by many different people, the pure economics of keeping stock means that it will never make financial sense in some areas. However, it still makes sense for a variety of other reasons. The headage payment system might be the best way to proceed, although there will be problems if we try to implement such a system either across the whole LFA or the whole of Scotland.

Stuart Ashworth mentioned the bureaucracy for the sheep system. We have to consider the bureaucracy that would be involved in any payments system that we put in place in the future, because there is a general consensus that we want to reduce red tape and to make things as simple and effective as possible. For that reason, any idea of a sheep headage system will not get off the ground.

**Professor Crofts:** I am told that there is this article 68(1)(c) that might theoretically allow that sort of approach. However, we have been debating for years and years whether the numbers of sheep on the hill and the payments for them are in balance with the grazing capacity of the land. We then threw our caps in the air and got rid of headage payments, so it is rather ironic that we are coming back to them.

What is the issue here? Are we worried about land abandonment, or undergrazing? To come back to my contract idea, Citizen Crofts would like to see a contract between the public and the farmer for delivering certain goods and services. It would be allocated to a piece of land, but the farmer would be the delivery mechanism.

Why are we getting into these abstractions about whether we have a payment for sheep or

suckler cows? That is where the bureaucracy comes in, which I—as an ordinary punter—do not understand at all.

The idea of headage payments seems to be yet another one that adds complexity without simplifying the arrangements that we would like between the farmer and the nation for delivering certain goods, including food. I know that the NFU does not agree with that line, but we need a radical shift on these things, otherwise we just do it step by step, and half the time we do not move forward.

**Peter Cook:** Why is Brian Pack doing this? There is a fundamental problem in that the old direct payments subsidy regime was skewed towards beef and beef producers. If you look at a map of Scotland, you will see that all the single farm payments are concentrated where the intensive beef is. If you make any shift on an area basis—as Brian Pack is trying to do—you are going to hit those folk very hard. You cannot avoid slicing huge amounts of money off them, because the money was going to a very concentrated area.

A typical example is a guy with whom I shared a journey the other day. He got £100,000 under the old direct payment: under Brian Pack's regime, it will go down to £65,000, and that is with the new headage payment. The new regime inevitably redistributes money from those peaks of beef support and spreads it out among everybody.

There is a transitional issue: if there is too rapid a change, you will get rapid reactions that are nothing to do with a sensible market response. You will just get people saying, "Well—the thing's gone to hell, so we'll get rid of them all."

The long-term issue with the headage payment—this is my feeling, and it is very much an economic view—is that it is a terrible thing to use as a general tool. It distorts folks' decisions and keeps stuff where it should not be kept. It is not a way to organise an industry.

The technical efficiency of suckler herds declined sharply in the time that we had headage payments, because everyone was worried about headage in the regime, the extensification premium, getting the second beef special premium and all that stuff, rather than thinking about whether the cow actually produced a calf every year. Everything declined technically, but it is actually going the other way now.

The payment is a bad idea, but I support what Scott Walker says about its use as a localised tool. In some places, if you are looking for a simple tool to keep livestock—not a general tool, but a simple tool that is linked to other benefits—why not use it?

**The Convener:** I am very conscious of time—I want ideally to finish at 1 o'clock, and definitely by 5 past. I am conscious that I skipped a question from Bill Wilson on cross-compliance.

**Bill Wilson:** We have touched on various bits of it time and again. Perhaps you want to go through the rest and see what time is left.

**The Convener:** Okay. Did John Wilson and Stewart Stevenson have their questions on the divide between pillars 1 and 2 answered? I think that we have covered that.

**John Scott:** I think so.

**The Convener:** I therefore invite Elaine Murray to ask some questions on rural development measures.

**Elaine Murray:** I will touch on some of the complexities of the rural development programme. The Pack report does not say a great deal about the issue, but it suggests that member states should perhaps have more freedom to draw up their own rural development programmes and that there should be fewer eligible measures. Would you like there to be changes in the European rules governing rural development? If so, what sort of changes should those be?

**Scott Walker:** A clear issue for us is how much money will be available in rural development, especially from a Scottish budget perspective, given that the biggest part of funding in rural development comes from the Scottish budget. I would like you to say that that will increase massively over the next programming period, but I suspect that something else may be the case. Given that, we have to prioritise what we spend the money on. Instead of trying to give a little bit to everyone, as I think we are trying to do now in rural development, we will have to make some difficult choices about where that money will be spent in the future.

Perhaps not surprisingly, as I am from NFU Scotland, we think that the rural development budget must in the future address how we improve the competitiveness of the agriculture industry—how we go about restructuring the industry and get to a better place—so that we can maximise job opportunities and economic growth in Scotland. We think that that will have to be a big part of rural development in the future.

**Vicki Swales:** The SRDP plays a vital role and there is not a meeting or forum that I go to at which someone does not say, "The SRDP will do that," or, "The SRDP is the place where that can be delivered." Huge demands are made on the SRDP and it is severely underfunded. Notwithstanding all the problems and complexities that there have been around the programme because of the way that it has been set up and the

online administration, it is doing some very important things.

We take the view that you can go two ways: you can either significantly increase the money for pillar 2 and for the SRDP and do some targeted things through that, or you can say that the money is not going to increase, which is the more likely scenario, so we need to do more through pillar 1, as we have already discussed.

Coming back on Scott Walker's comments about needing to do more to restructure the industry, we should do that through pillar 1. That is how we should make farming more competitive, more viable and more responsive to what consumers want. We should not place more demands on pillar 2, which is already struggling to do all that it does, a key part of which is to help us deliver our biodiversity objectives, meet our requirements under Natura 2000 and deliver the water framework directive. In the future, more demands will be made on pillar 2 as a result of climate change, both to help to mitigate and to adapt to climate change, so there are big demands on it.

We would like to ensure that agri-environment measures remain a central and well-funded component of any future rural development programme, both in Scotland and across Europe. Such measures do not get much mention in the Commission communication, but we have been assured by officials that they are still in there and are still seen as a strong component. We would certainly like to see the Scottish Government fighting for agri-environment measures and for a well-funded pillar 2 that can deliver against all the challenges that have been set out, but that means that we also have to do a heck of a lot more through pillar 1.

13:00

**Professor Crofts:** I have never seen so many public servants with headaches as a result of trying to understand the system before they can even begin to advise people who are looking for grants, so it must be ridiculously complex. I have been told by people in the SAC and SNH that they have spent months trying to work it out. Given that there is such complexity, a dose of red tape reduction is important. If advisers are having that problem, what about the poor punters who are looking for the money? I happen to be one of them, wearing another hat.

I agree with what has been said about the cash. It comes down to priorities. I say that I am sorry to Scott Walker, but I have to agree with what Vicki Swales just said. This is not about food—that is pillar 1. We have already had that debate.

In addition to the various environmental obligations, we have to ask—as we did in our report a couple of years ago—what can the money do to help sustain rural communities? There are all sorts of pressures, which you will all be familiar with, and the situation will get worse following the reduction in public money that is available, particularly through local authorities. How will we maintain the viability of these communities when there are threats of school and library closures? Market forces are not helping either, so pubs and local shops are closing and petrol stations are threatened.

Those are fundamental aspects of rural life. Ensuring that we have regionally relevant programmes is important, because needs will vary. For example, what we want to do in Banffshire will be different from what we want to do in Dumfries and Galloway. It seems to me that the priorities are to have regionally relevant programmes that focus on delivering environmental goods and services and on maintaining the sustainability of rural communities.

**Jackie McCreery:** I will pick up on what Scott Walker said about competitiveness. I agree that a well-funded agri-environment scheme should be a priority for pillar 2, but the competitiveness of farming businesses is not only about food production; it is about enabling them to diversify, to move into processing, to create rural employment and to produce all the other benefits that we have discussed. The competitiveness part—the axis 1 part of pillar 2—is crucial and it should be a priority.

**The Convener:** As members have no further questions, I thank everybody for their contributions; it has been a stimulating discussion. Given that you all come from different backgrounds and have come at the issues from different angles, you can see the difficulty that politicians have in satisfying all the demands.

That concludes the public part of today's meeting. I thank everyone in the public gallery for their attendance.

13:02

*Meeting continued in private until 13:07.*



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