



OFFICIAL REPORT  
AITHISG OIFIGEIL

DRAFT

# Rural Economy and Connectivity Committee

Wednesday 1 November 2017

Session 5



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**Wednesday 1 November 2017**

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**RURAL ECONOMY AND CONNECTIVITY COMMITTEE**

**30<sup>th</sup> Meeting 2017, Session 5**

**CONVENER**

\*Edward Mountain (Highlands and Islands) (Con)

**DEPUTY CONVENER**

\*Gail Ross (Caithness, Sutherland and Ross) (SNP)

**COMMITTEE MEMBERS**

\*Peter Chapman (North East Scotland) (Con)  
\*John Finnie (Highlands and Islands) (Green)  
\*Rhoda Grant (Highlands and Islands) (Lab)  
\*Jamie Greene (West Scotland) (Con)  
\*Richard Lyle (Uddingston and Bellshill) (SNP)  
\*Fulton MacGregor (Coatbridge and Chryston) (SNP)  
\*John Mason (Glasgow Shettleston) (SNP)  
\*Mike Rumbles (North East Scotland) (LD)  
\*Stewart Stevenson (Banffshire and Buchan Coast) (SNP)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Fiona Buchanan (Scottish Government)  
Fergus Ewing (Cabinet Secretary for Rural Economy and Connectivity)  
Douglas Kerr (Scottish Government)  
Aedán Smith (Scottish Environment LINK)  
Cathy Tilbrook (Scottish Natural Heritage)  
Jen Willoughby (Scottish Government)

**CLERK TO THE COMMITTEE**

Steve Farrell

**LOCATION**

The Mary Fairfax Somerville Room (CR2)



# Scottish Parliament

## Rural Economy and Connectivity Committee

Wednesday 1 November 2017

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

### Islands (Scotland) Bill: Stage 1

**The Convener (Edward Mountain):** Good morning and welcome to the 30th meeting in 2017 of the Rural Economy and Connectivity Committee. I remind everyone to make sure that their mobile phones are on silent. We have received no apologies.

Agenda Item 1 is our sixth evidence session on the Islands (Scotland) Bill. I welcome Aedán Smith, who is head of planning and development for Scottish Environment LINK, and Cathy Tilbrook, who is head of coastal and marine ecosystems at Scottish Natural Heritage. We have questions for you both; if you catch my eye I will try to bring you in, so that you get a chance to answer at the right moment.

**Gail Ross (Caithness, Sutherland and Ross) (SNP):** Good morning. Overall, do you think that the intent of the bill is in line with expectations?

**The Convener:** I see that Cathy Tilbrook nodded, which is always dangerous, because it means that you have the answer.

**Cathy Tilbrook (Scottish Natural Heritage):** SNH supports the aspirations and intent of the bill to help island communities to achieve their aims for the future.

Islands are such an important and distinctive part of Scotland's natural and cultural heritage that it is very important that we safeguard the assets on which island communities depend. That is an important part of the bill, which maybe has not been much dwelled on yet.

There are aspects of the bill that could be clarified, to better achieve the stated aims. We touched on some of them in our written evidence. Largely, they relate to the marine licensing provisions. We have views on how the provisions could be clarified to strengthen the achievement of the aims of the bill. Do you want me to expand on that just now?

**The Convener:** Not at the moment, because we will come on to that later.

**Aedán Smith (Scottish Environment LINK):** Like Cathy Tilbrook, we welcome the bill, which has a lot of potential to co-ordinate a range of

issues in the context of the islands, but we think that it is a bit surprising that the natural heritage value of Scotland's islands is not explicitly recognised in the bill, given that that is one of the key things for which Scotland's islands are particularly important and well recognised, within the islands themselves and beyond.

The other high-level point about which we are a bit surprised is the focus on populated islands. The bill covers only inhabited islands, although a lot of Scotland's island communities are intrinsically connected with uninhabited islands. The focus on inhabited islands is a bit surprising and we would like it to be broadened out to include consideration of uninhabited islands.

**Gail Ross:** I think that we will touch on uninhabited islands later. Will the bill lead to greater empowerment of island communities?

**Aedán Smith:** It certainly has the potential to do that. It gives specific recognition to the unique circumstances that there can be in island communities and island places—if you like—but where the real difference is made will depend on the detail.

**Cathy Tilbrook:** I echo that.

There are a number of existing provisions, some of which have not yet bedded in, which would help to achieve the aims of the bill. I am thinking about the marine planning provisions, the Community Empowerment (Scotland) Act 2015 and other tools that exist. We are keen to consider how we can ensure that the bill adds value to and is properly integrated with those other provisions.

**Rhoda Grant (Highlands and Islands) (Lab):** My question is for Cathy Tilbrook. Could powers that Scottish Natural Heritage currently holds be devolved to islands? I quite often hear from islanders that things are done to them, especially environmentally, rather than with them—I guess that they think that the knowledge that they already have is disregarded—and that some of those actions have proved to be detrimental.

**Cathy Tilbrook:** I am disappointed to hear that feedback. We are certainly very keen to consider how we can better meet the requirements of the Community Empowerment (Scotland) Act 2015 and work with communities to involve them much more in decisions about things such as protected area management. We are currently doing a lot of work on that, and we are looking at pilot studies to see how we can involve local authorities and local communities in the management of marine protected areas, for example.

The feedback from our recent consultation on marine protected areas around Scotland was quite good: it was that we make a real effort to talk to communities and involve them. The feedback from

a number of stakeholders was that that process has been much more effective in Scotland than it has been south of the border.

However, I know that there are issues. Obviously, we want to work to strengthen the relationship with local communities, so we would be very pleased to try to do more on that.

**Aedán Smith:** On a similar point, there is absolutely no doubt that a lot of Scotland's island communities are custodians of some of the best bits of Scotland's natural environment, and there is often an obligation on island communities to look after that natural environment in a way that benefits the people on the islands and beyond them, because the significance of those areas is sometimes such that it is of value to visitors and people across Scotland and beyond. Communities perhaps need to be helped out a little bit in how they can manage those areas, but there needs to be certainty that there will be a minimum standard of protection for that natural environment and that local communities will be given the assistance to help to manage the areas in the required way.

**Rhoda Grant:** Island communities would argue that things are in place because they have looked after those areas through history. I think that they take it a bit tough that people come in, tell them how they should do what they have obviously already been doing, and impose on them what they see as nonsensical regulation. Could powers be devolved to them so that they could identify features that they know how to look after because of local knowledge? Could designations be handed down to islands?

**Cathy Tilbrook:** We are looking at that and at ways in which that could be made to happen. However, obviously, with designations—particularly the European level of designations at the moment—there are quite strict rules about how to go through the process of selection and quite a lot of technical issues are involved. That is not to say that, with help, local communities could not be a major part of that process; it is just a matter of working out how that could best be achieved. We need to pilot that, test it and see how we can manage to work side by side with communities more effectively.

**Aedán Smith:** I absolutely agree with that. It is really about how we can enable and assist island communities to continue a lot of the good work that they have been doing. Perhaps a good example of that is provided by the machair habitats on the Western Isles and the Uists, which have been managed with support from Scotland, the United Kingdom and Europe. If Scotland's place in Europe changes as we move forward, we will need to really think about how we can keep that support going. That will be critical. That habitat is famous, and it is valued on the islands

and beyond them. Maintaining it and helping local island communities to be able to maintain it in the future will be critical.

**The Convener:** We will move on to the next theme.

**John Mason (Glasgow Shettleston) (SNP):** Mr Smith has already raised an issue that I was going to ask him about, but I will ask him about it anyway. Section 3 of the bill is on the national islands plan, which is, that section says,

“a plan setting out the main objectives and strategy of the Scottish Ministers in relation to improving outcomes for island communities”.

That suggests that the plan will totally ignore islands that are not inhabited, such as St Kilda, I presume. What are your thoughts on that? Can you suggest an alternative wording for if we were to change the bill?

**Aedán Smith:** St Kilda is a good example, because there are strong cultural links to current inhabited islands. Given the interconnectedness of cultural and natural heritage, the bill would draw a false boundary around inhabited islands. We would like to see it broadened out to cover all islands. That would be the simple way of doing it.

**John Mason:** Would there not be a slight danger that communities would be undervalued if we simply look at islands? For example, if we said “improving outcomes for islands” and dropped the word “communities”, might that not be a problem? I am not asking you to rewrite the bill on the spot, but if it said “islands and island communities” would that be a possible answer?

**Aedán Smith:** Sure. It is about not drawing boundaries too tightly. St Kilda has a long-standing cultural and environmental connection to the main part of the Western Isles and to draw an artificial boundary around inhabited islands would seem to go against the spirit of what is trying to be achieved.

**John Mason:** Ms Tilbrook, do you have a comment on that?

**Cathy Tilbrook:** Not really. The uninhabited islands would probably be picked up geographically by the area coverage of the national islands plan. However, the focus of the bill is much more on communities and the challenges that they face. We felt that uninhabited islands and their requirements would be picked up by general planning measures and things such as the regional marine plans. However, I take on board Aedán Smith's points and I would be interested in considering them.

**John Mason:** Let us widen our discussion to the question of the plan. There is really nothing in the bill about what should be in the plan; we have

discussed that quite a lot in the islands and in committee. You mentioned natural heritage, as that is an area that you are involved in, and another suggestion for the plan was population. Should the bill say specifically that we want to raise or stabilise the population? Should there be more in the bill about the plan or should we just wait and see what comes up?

**Aedán Smith:** The plan is the logical place to address those issues. If the bill was amended to state that the plan should specifically pick up those issues, that would be one of the simpler ways to ensure that they were covered. We would support an amendment to the bill to require the plan to specifically address natural heritage issues. That could be a way forward.

**John Mason:** The counterargument is that if you put something in, anything that you have not put in might be considered to be undervalued. If we said that the plan must include natural heritage, population, transport, health and education, is there a risk that another area would feel undervalued?

**Aedán Smith:** Possibly. We would hope that the plan would act as a co-ordinating mechanism across areas of Government policy making. The primary benefit that it would bring would be to co-ordinate that and ensure that there is a single place where such issues are considered from an islands perspective.

Thinking back to what is special about the islands, it is of course the island communities, but also the natural and cultural heritage of the islands. If those things were not addressed in the plan it would be a missed opportunity.

**Cathy Tilbrook:** The bill does not need to be too prescriptive about what is in the plan. There are high level statements about co-ordinating and focusing on what is special and distinctive about living on an island and the challenges facing island communities. That is the kind of high-level steer that needs to be in the bill. The detail will follow in the plan.

You talked about population issues and the sustainability of island communities. I must emphasise that so many of those island communities are very dependent on their natural resources and the surrounding seas, and therefore the sustainability of those island communities goes hand in hand with having a healthy environment.

10:15

**The Convener:** I have read SNH's submission, which very much argued that there should be a strategic plan. We have wrestled with the range of evidence that we have been hearing. Some of the islands with stronger communities believe that

they should have their own plan, and some believe that islands within an island group are very different from the rest of the island group. It appears that some people feel that each and every island should have its own plan, while others do not. Do you think that the bill balances that, and that SNH balances it by saying that the plan should be strategic, or do you think that local people are going to feel marginalised?

**Cathy Tilbrook:** The difficulty is that we are perhaps not yet at the point at which we are with other systems, such as the marine planning system and community planning, of getting down to the level of detail at which local communities can feel that they are making a valid input into planning for their local area. I do not think that the islands plan is the place to do that; the plan is about pulling out the issues that are common to the challenges of islands in relation to things such as service delivery.

We should be using the existing planning process to plan in detail for particular communities and islands. Unfortunately, those systems are not yet developed well enough for people to see their benefits, and it will take time for them to bed in. I see the Islands (Scotland) Bill as being something higher that feeds into the other strategic plans and says, across the board, "Do not forget to focus on these issues".

**Aedán Smith:** I agree with that. There are existing mechanisms to produce regional marine plans under the Marine (Scotland) Act 2010, and the terrestrial land use planning system has flexibility in relation to the area that is covered by development plans. The land use strategy has the potential to provide a bit of a hook for thinking about wider land use as well. Those three mechanisms are perhaps better for setting a vision for local places, whether marine or terrestrial areas, than the islands plan is. The plan is more about the common issues across island groupings.

**Mike Rumbles (North East Scotland) (LD):** I am going to focus on the issue that we are calling island proofing, in shorthand. My questions are really directed to Cathy Tilbrook, as the representative of SNH, which is number 28 of the public bodies that are listed as "relevant authorities" in the schedule to the bill. Section 7(1) says:

"A relevant authority must have regard to island communities in carrying out its functions".

Section 8(1) says:

"A relevant authority must prepare an island communities impact assessment in relation to a—

- (a) policy,
- (b) strategy, or
- (c) service".

The written evidence from SNH says that

“SNH have a ‘Balancing Duty’, through the Natural Heritage (Scotland) Act 1991, requiring us to take account of the interests of local communities. Rather than an additional process, we would prefer to adapt our internal approach to this duty to meet any new requirements”.

so it is saying that you do those things already.

**Cathy Tilbrook:** I hope that we do. We need to look carefully at whether there are any aspects that need to be tightened up. A national islands plan would help with that, by highlighting the kinds of issues of which we need always to remind ourselves. We would obviously still comply with the terms of the guidance in relation to how we report on that and make sure that we are properly monitoring what we are doing, but what we were really saying was that we feel that it would be more efficient to amend an existing process and make sure that we are covering any new duty or requirement, rather than to have another parallel process.

**Mike Rumbles:** My question runs on from what you have just said. How do you island proof your policies, strategies and plans at the moment? The islanders to whom we have spoken on various islands want to avoid a situation in which a tick-box exercise is carried out by public authorities sitting in Edinburgh, Glasgow or wherever they are. The islanders feel that consultation is extremely important.

In your written evidence, you said that SNH wants a system that is

“simple and quick to apply (including any consultation requirements)”.

That rather implies that you are not sure whether consultation is important, but that is not what we are hearing from the islanders.

**Cathy Tilbrook:** Dialogue and communication are really important. I do not know whether there will be a requirement for formal consultation; if there is, we will certainly have that. It is important to remember that we have got locally based staff in a lot of the island groups. They are in daily discussion with their local authority colleagues and communities and are in a good position to flag up when they think that a proposed new policy or plan will be detrimental to their local patch. They already do that—in those situations they are immediately in touch to ensure that we amend the proposal. We may need to ensure that there is a more rigorous, monitored approach in order to meet the duty, but I would say that we are trying to do that already.

Part of our early work in the marine protected area consultation was to work out which locations we needed to go to, for example all the islands that were directly affected by the proposals, in order to talk to local people about the MPAs. The

key thing is to have an early screening process to ensure that you focus on the most relevant policies and plans and are in a position to influence them before they get too advanced. There is a danger with all of these things that you leave such considerations to the end and then fill out a box to see whether you have island proofed. It is too late by that point. You need to do it right from the early stage and ensure that you think about island issues and the issues of remote mainland communities as you develop your proposal.

**Mike Rumbles:** You are telling us that your system is good and that there is a proper consultation process. Do you think that the islanders feel that? You say that you talk to your staff working on the islands, but that is within your organisation. Are you sure that the people who are living on the islands recognise that that is the process that you are going through?

**Cathy Tilbrook:** We probably need to do a bit more to check that that is the case—I am sure that there are things that we could do to strengthen that process. I am not saying that we have got a perfect process at the moment, but there are ways that we can build on it, rather than having to come up with something brand new.

**Mike Rumbles:** Do you have any budgetary concerns regarding the requirements in the bill?

**Cathy Tilbrook:** It is just about allowing time. All of these issues to do with making sure that we are working with communities involve a bit more time, but hopefully we will end up with a better solution at the end of it.

**Mike Rumbles:** I want to clarify something. Whatever happens, whether it is island proofing or whatever, you do not think that there should be a prescriptive system for everybody. You feel that SNH basically does it already. Am I interpreting you correctly?

**Cathy Tilbrook:** Guidance would be helpful—for example, guidance about the screening process. There is some detail in the bill about reporting, but it is not particularly clear who would judge whether you have island proofed effectively. It might be helpful to have some clarity on who would be policing that.

**The Convener:** For the avoidance of doubt, I will declare an interest. I do not think that it is relevant, but I am part of a farming partnership.

My question is about the budgetary concerns. Sometimes it costs more to do things on islands than it does to do them on the mainland. If you are going to make some of your grant schemes suitable for islands, there may be financial implications. The islands might require more



money than the mainland. Is that a concern for SNH?

**Cathy Tilbrook:** To be honest, I do not know whether we have looked specifically at that aspect of funding streams. We would probably just consider an application for funding that included those additional costs and take them on board. That would be valid; I cannot see that we would discriminate on that basis. As I say, we have got a lot of staff based on islands, and obviously we factor in the cost of travel. We are very aware of the additional costs of working and living on islands.

**The Convener:** We will give Cathy Tilbrook a break and move to the next section, because that was fairly intensive for her. I am warning Aedán Smith that he will be the first one up to answer John Finnie's questions.

**John Finnie (Highlands and Islands) (Green):** The bill introduces regulation-making powers in respect of marine development. Do you agree with those powers? How could they be used?

**Aedán Smith:** I agree with them in principle. I guess that my only possible concern is whether their management would result in a requirement for additional effort and resources.

It would be good to introduce a clear ability for island communities to get involved, but it is not entirely clear how that would relate to existing powers under marine licensing or how the two systems would work together without causing duplication of effort on the part of consultees and so on. Some more detail perhaps needs to come out in that regard.

**John Finnie:** You mentioned existing powers, and Cathy Tilbrook talked about the full use of existing powers. Could you say more about that?

**Cathy Tilbrook:** We strongly agree that island communities and authorities should have a stronger role in determining the use of the surrounding seas, but our concern about the proposal in the bill is that the local licensing system would add to the existing national licensing process that Marine Scotland operates. As Aedán Smith said, that risks putting an extra burden on developers, regulators and statutory advisers such as us, as well as on communities, and it might provide only a limited opportunity to influence the outcomes. If you already have the national system, what power does the local system have to influence that?

Our preference would be to formally increase the influence of island authorities and communities on the existing licensing process and to introduce a much stronger requirement for national and local authorities to work closely together. That can be done under the existing regime, and there are

good examples of that happening. A colleague of mine was telling me about the case in Aberdeen harbour, where Marine Scotland, which is the licensing authority, brought in the local authority, Transport Scotland, which has a relevant interest with regard to the port, and other interested bodies, to ensure that the proposal was put together well right from the start.

The other thing that I mentioned that is relevant here is the new system of marine planning, which has not yet been properly rolled out around Scotland's coasts and islands. The regional marine plans should be put together and developed by a group of local stakeholders with community input. They should set out the strategic vision for the surrounding seas, and licensing decisions should really follow that plan—there should be the same sort of plan-led approach that we see on land. Further, under the Marine (Scotland) Act 2010, the local authority and the regional marine planning partnership would be statutory consultees with regard to the marine licensing decisions in that regional plan area. Once we have those regional marine plans in place, that provision will give quite a lot of power and influence to the local authorities and local communities. However, we are not quite there yet.

I feel strongly that, rather than introducing dual parallel licensing systems that might not be that well integrated, we need to think more about how we can ensure that people have proper influence in the national system. It is important to have a national system because it provides consistency and gives a clear steer to developers.

**Aedán Smith:** Regional marine planning is important, as it should provide the framework for individual project consenting and allow things to be considered in a co-ordinated way, with full consultation on the vision for a local area of sea.

Some good work is happening on regional marine planning in some places—Shetland is doing really good stuff—but, elsewhere, things are a bit slower. It is really important to get the planning system sorted out, perhaps even in advance of the licences system being adapted, so that we are able to make decisions in that framework, which allows us to take a wider view of what everything should look like.

**John Finnie:** I will ask you later about how that approach would differ in practice from the provisions that are set out in relation to the Orkney and Shetland, but I will first pursue a bit more the issue that we are discussing.

The perception is that the process is one of devolution, but Cathy Tilbrook seems to be suggesting that it is a process whereby an existing system is supplemented or added to. Is that correct?

**Cathy Tilbrook:** Yes. The policy memorandum makes it clear that the proposal would be an addition to the existing national marine licensing scheme in much the same way as works licences operate in Shetland at the moment. In Shetland, there has been a recognition that the process around the works licences has provided a degree of influence for the local authority and has enabled it to have a say in the national process. However, I do not think that you necessarily need that parallel licensing process in order to achieve that. As we said in our submission, it would be useful to do some work to see what the effects of the Shetland approach have been and what developers think of it, and whether there are better ways to achieve the objectives of having local influence in the licensing processes, which is what we want to see.

10:30

**John Finnie:** If there is duplication, is there the potential to lose the central element and retain the local, devolved element?

**Cathy Tilbrook:** That would be quite difficult. We are still at quite an early stage with marine planning, as I said. The marine licensing system has not been in place for long, and we are still learning the lessons. There is innovative and very challenging development activity in our seas, particularly in relation to marine renewables, and it would be hard for individual local authorities and regional planning authorities to deal with such activity without there being some kind of national overview. It is better—at least for now, until we get to a more mature stage—to stick to the national system, while ensuring that we get proper local influence into the system.

**Aedán Smith:** I agree with Cathy Tilbrook. Her point was very well made.

**Stewart Stevenson (Banffshire and Buchan Coast) (SNP):** In the narrow example of Shetland, the related powers that fishing interests have—they are outwith the scope of the bill—appear to operate successfully. That is my view; it might not be others' view. How does that relate to planning delegation, given the interaction between local exploitation of natural resources and developments that are subject to planning consideration?

My position is that the more communities control—in a sustainable way—natural resources and the necessary interaction with planning, the better. I think that it is good news. However, the witnesses seem to be saying something different. From what you know about the powers that relate to control of natural resources that are available in Shetland but not elsewhere, can you say whether the Shetland model could be implemented

elsewhere? Might the model be particular to island groups rather than coastal groups more generally?

**Cathy Tilbrook:** The model should not be specific to Shetland. The provision there uses a regulating order and is not related to the licensing system—it is separate from it. We would certainly encourage such an approach to be worked on by inshore fisheries groups elsewhere, so that they can come up with sustainable ways of managing their local resource. I am sounding a bit like a broken record here, but it is then about the links to marine planning, to ensure that fisheries management is well co-ordinated with all the other activities in an area of sea, and with local communities having a say in all of that. However, that will not be addressed by any kind of licensing provision.

As RSPB Scotland says in its submission, there is some confusion in the terms in the bill, in that the activities that can be licensed under the bill are a bit different from the activities that can be licensed under the Marine (Scotland) Act 2010. For example, the placing of materials such as pontoons is not covered in the bill. That is creating a bit of confusion about how the two systems might sit together.

**Stewart Stevenson:** I am coming from the position that exploitation of natural resources should be the paramount consideration. Are you suggesting that it should be secondary to planning?

**Cathy Tilbrook:** I am not in any way saying that. I am saying that although there is no suggestion that we would bring fisheries management under a formal marine licensing system, we need to ensure that the mechanisms that are in place for managing fisheries are well co-ordinated with other activities, through planning.

**John Finnie:** Stewart Stevenson has touched on potential deficiencies. To pick up on Rhoda Grant's comments, if I may, there is a perception that it is the suits in Edinburgh who make the decisions. I appreciate that everyone has to be part of what happens in our islands, and that there are obligations that go wider than the immediate community, but we are told that the whole ethos of the bill is about pushing power down. Should marine development be specifically mentioned in, or linked to, the islands plan? I certainly would not support an approach in which all the islands were operating separately with regard to all the protections that currently exist.

Finally, I ask the witnesses to talk about the implications of Brexit, in this context.

**Aedán Smith:** That point highlights the risks of issues being considered in isolation, when in fact they are interconnected.

One of the big potential benefits of an islands plan is that it could bring those sectors together. For instance, terrestrial planning is considered separately from marine planning, and resource use is also considered separately. Something that allows us to think about them together at strategic level could help to co-ordinate matters and set a vision for how we want to make things more sustainable at sea and on land, because there is no doubt that there are connections between them. Fisheries activities are a good example. It would also make things more robust if and when the framework that we currently have within Europe changes. Something that provides a strategic framework would be helpful.

**Jamie Greene (West Scotland) (Con):** For the record, I will press the witnesses a little bit further on the points that John Finnie made. I ask you to clarify whether the provisions for creation of the new marine licences should be in the bill. I am a little bit confused. Probably for the first time in our evidence-taking sessions, I am hearing some negativity about the implications. Should we introduce the licences under existing powers in the Community Empowerment (Scotland) Act 2015 or the Marine (Scotland) Act 2010, for example, or is there a requirement to do that in the bill?

**Cathy Tilbrook:** I am not an expert on how the changes would be made, but rather than setting out proposals for a completely separate new licensing provision, perhaps the bill could make amendments to the Marine (Scotland) Act 2010 to allow that important influence by local communities and local authorities. However, I am not an expert on what would be the best mechanism to achieve that. I am not sure about timescales, but to inform that it would be helpful to reflect on the Shetland experience.

**Aedán Smith:** I do not have much to add to that. Scottish Environment LINK supports the principle of giving island communities the ability to influence individual project consenting decisions, but there is concern about the level of additional work that might be required. We should think about how we can link the two systems more clearly to ensure that they are better connected, to avoid duplication and to ensure that we have as efficient a system as possible.

**Jamie Greene:** Do you agree that the bill creates an unnecessary new layer and that, instead, it should beef up existing regulations and licensing powers?

**Aedán Smith:** That is a slightly different thing. The bill will give to island communities a specific responsibility that will be additional to the existing national consenting regime. It is important to ensure that statutory and non-statutory consultation bodies have one point of contact to ensure that the decisions are made in a co-

ordinated way without an authority having to respond to the two different systems.

**Jamie Greene:** How far down the chain should that empowerment go? Under the bill, local authorities will apply to ministers for the power to give licences to persons who apply for them, but some representations that we have heard have said that that should be devolved even further. John Finnie's point was that the bill is intended to empower islands more. Are local authorities the right place for the new licensing powers to live, given that they do not currently hold that expertise or power? In practical terms, how could it work? How should communities have a bigger say in the issuing of licences for development purposes?

**The Convener:** I will bring in Aedán Smith, then I will take a question from Peter Chapman and give Cathy Tilbrook a chance to come in.

**Aedán Smith:** We do not really have a view about the level at which the powers should sit. The critical thing will be that the decision-making body has access to the specialist advice that is required, and that it is adequately resourced to deal with that. Development decision making can be complicated and can result in significant changes, particularly to the natural environment, but also to communities. Having access to specialist advice is the most important thing.

**Peter Chapman (North East Scotland) (Con):** Good morning, folks. The bill will allow local authorities to decide whether to take up the powers, so obviously there is a chance that some will and some will not, which will inevitably lead to inconsistency and possibly confusion about rules and regulations. Given that, is it correct to allow the authorities to decide? If not, should there be a national licensing scheme so that we have consistency across the board, as regards the powers?

**Cathy Tilbrook:** We have a national system; the devil is in ensuring that we get effective local influence. To go back to the previous question, I say that even if local authorities have influence in the licensing decision process, the question is how to ensure that communities have a voice in that. I do not want to pass the buck, but it is for local authorities to consider carefully how they will achieve that.

On the marine planning process, as I said, the marine planning partnerships, which should be very inclusive, will be statutory consultees on licensing, so they will have a say on national licensing decisions. We must make sure that we end up with a process in which there is some sort of local input—not just in relation to the limited powers that can be devolved under the bill, but in relation to decisions on reserved matters including oil and gas or defence issues. Whatever provision

we end up with, we need to ensure that it covers the broad range of issues that local communities want to try to influence, and not just a narrow range of things.

I take Peter Chapman's point about potential inconsistency. As well as allowing that some local authorities might take up the powers and some might not, the bill allows flexibility on the types of activities that they can include and which would be exempt. That is another layer of potential difference and possible confusion. There are quite a lot of issues to be unpacked.

**The Convener:** I will bring in Fulton MacGregor, because his question builds on that.

**Fulton MacGregor (Coatbridge and Chryston) (SNP):** Yes. My question is about the issue that we have been focusing on for the past wee while. I am interested to hear whether the panel members think local people will have enough say on what goes on in their waters. Where does the balance lie? If you think that people will not have a big enough say, how much more should they have?

**Aedán Smith:** The bill would certainly add opportunities for local people to have a say on some development decisions that relate to local waters, so that is positive for local engagement. To go back to comments that I made earlier, it is particularly important with regard to Scotland's islands, where the natural environment is of particularly high value to the communities there, and to others beyond those communities, that those others beyond the islands can offer a bit of input to decision making.

**Cathy Tilbrook:** Again, I do not have a lot to add to what Aedán Smith has said. There is definitely a need and a real opportunity to increase the level of influence that local communities have on decision making about what happens on their islands and in the surrounding seas. We need to ensure that, at the end of the process, we have a more effective way of doing that. It is all about finding the best way to achieve that. That might partly be by making better use of existing provisions, as well as using anything that we want to add.

**Fulton MacGregor:** At the risk of putting you on the spot, have you an example of how that might work in practice, through a local authority or community council or any other example?

10:45

**The Convener:** I would be delighted if Cathy Tilbrook would like to give us a relevant example, but I will also be happy if you would like to write and send in the example. The option to excuse

you is there, if you do not have one that is particularly relevant to discuss now.

**Cathy Tilbrook:** I would like to reflect on that. I could probably give only hypothetical examples, so it would be good to talk to colleagues about a good example to feed back to the committee.

**Fulton MacGregor:** I appreciate that. Thank you.

**The Convener:** That will be fine. Please send that example to the clerks and it will get round to all the members.

**Richard Lyle (Uddingston and Bellshill) (SNP):** You spoke earlier about what your organisations have done. I want to press you more on what role you think your organisations can play in the future of marine development, with regard to the bill.

**Aedán Smith:** I am here today to represent Scottish Environment LINK and RSPB Scotland, which are non-statutory bodies that engage in the processes. The key ways in which we can be involved are through the expertise and technical knowledge of LINK organisations, and our representing communities of interest. I have mentioned a few times the particularly high importance of the Scottish islands' natural and cultural heritage. Many members of LINK organisations know the islands well and love their environments, which they are keen to see protected and enhanced, with rewards for the local communities that manage them. We can provide the input of specialist advice—sometimes technical—and the views of our membership on the direction of travel.

**Cathy Tilbrook:** SNH's role in the marine licensing process is as a statutory adviser to the regulators and decision makers. We already provide help to communities through engaging in dialogue at local level about developments and decisions that we may be advising on—in particular, to share and explain the issues. Perhaps we could be more transparent or explain in a way that is accessible to people why we make certain comments on development activity. We try to do that, but maybe we could do it better. Our role is to provide advice on the process, rather than to make the final decisions on licensing.

**Richard Lyle:** I see the bill as a bonanza for both your organisations, because of your expertise; you can sit down to bring forward and develop schemes with people locally. Based on that expertise, what is your understanding of how the new licensing scheme may interact with current legislation? Do you foresee any issues?

**Aedán Smith:** I agree; it is great that there will be additional opportunities to engage with local folk—the potential is interesting. There may be

opportunities for both organisations to bring examples to communities of good practice elsewhere. We have talked a wee bit about the risk of duplication, but there is the potential to bring examples of good practice from across different sectors.

**Richard Lyle:** What would be the impact for mainland coastal regions and for islands where local authorities choose not to take on regulatory powers? Your organisations and local community councils could be there, but local councils could say that they do not want to take on the powers. Should they be forced to do so, or should others be able to say they will take them on, if the council will not?

**The Convener:** I will bring both witnesses back in. I ask for short answers.

**Aedán Smith:** I guess that in practical terms there would still be a way of feeding into the marine licensing process, albeit that the decision would be made at national rather than local level. Local communities would not be excluded from having the ability to influence decisions; it is just that the decisions would be made more nationally. That is the difference.

There will be resourcing implications for communities or local authorities if they take up powers, which might be a factor in their decisions. That is for them to decide.

**Cathy Tilbrook:** I echo that. Given the optionality of the provision, there might be a better way to achieve the intention by providing for a more formal linking of the influence of local authorities and communities to the national process. That approach would be more consistent and we would not have to rely on local authorities having to decide whether to go down that route.

**Richard Lyle:** Thank you.

**The Convener:** John Mason has a final question.

**John Mason:** I do not know whether the witnesses went first to the financial memorandum when they were reading all the bill documents. The costs that it sets out are mainly administration costs to do with many areas that we have not touched on today, for example ward boundaries. Are you comfortable with what is in the financial memorandum? Are you concerned about anything in it?

**Cathy Tilbrook:** I have to confess that I did not spend a lot of time perusing the financial memorandum. Our view is that a lot of what is in the bill is good practice, as I said. There will be some cost attached to it, but it is basically about investing time, early on in the process, in good consultation and dialogue.

If the aim is to ensure that decisions that are taken are amended on the basis of what island proofing has identified, there is potentially a cost but, again, it is a cost that should be found, because—

**John Mason:** For clarity, the financial memorandum talks only about the admin side. It does not cover building a new hospital or anything like that.

**Cathy Tilbrook:** I have no basis on which to know whether it is accurate, I am afraid. SNH would make sure that we had the budget to carry out the new duties.

**Aedán Smith:** I had a quick look at the financial memorandum. I have not assessed it in detail, but I think that it looks reasonable and realistic. That is as far as I can go in my comments on it.

**The Convener:** That brings us to the end of the evidence session. I thank you both very much for your evidence.

10:52

*Meeting suspended.*

10:59

*On resuming—*

## Subordinate Legislation

### Land Reform (Scotland) Act 2016 (Supplementary, Consequential, Transitory and Saving Provisions) Regulations 2017 [Draft]

### Agricultural Holdings (Modern Limited Duration Tenancies and Consequential etc Provisions) (Scotland) Regulations 2017 (SSI 2017/300)

**The Convener:** Agenda item 2 is subordinate legislation. We will consider one affirmative instrument, as detailed on the agenda. The committee will take evidence from the Cabinet Secretary for Rural Economy and Connectivity, and the motion to approve the affirmative instrument will be considered under agenda item 3. It would be reasonable for the discussion to also cover any points about the related negative instrument to be considered under agenda item 4. Members should note that there have been no representations to the committee on the instruments.

I welcome from the Scottish Government the Cabinet Secretary for Rural Economy and Connectivity, Fergus Ewing; Jennifer Willoughby, who is head of the agricultural holdings team; Fiona Buchanan, who is a senior policy survivor—I mean adviser; that is twice that I have made a slip of the tongue on agricultural matters—and Douglas Kerr, who is a solicitor.

I invite the cabinet secretary to make a short opening statement.

**The Cabinet Secretary for Rural Economy and Connectivity (Fergus Ewing):** Thank you, convener. My statement is of necessity technical and is important to convey. However, it is a bit long.

I am very pleased to be here to support the committee's consideration of the draft Land Reform (Scotland) Act 2016 (Supplementary, Consequential, Transitory and Saving Provisions) Regulations 2017, which were made by the Scottish ministers in accordance with powers conferred by sections 127(1) and 127(2) of the Land Reform (Scotland) Act 2016. The regulations form part of a package with the Agricultural Holdings (Modern Limited Duration Tenancies and Consequential etc Provisions) (Scotland) Regulations 2017, which are a negative instrument. There is also the Land Reform (Scotland) Act 2016 (Commencement No 6, Transitory and Saving Provisions) Regulations

2017, which are a commencement instrument that is subject to no parliamentary procedure. Together, the three sets of regulations make provision for the introduction of modern limited duration tenancies. I will briefly outline the content of the draft affirmative regulations and touch on the others, if I may.

Modern limited duration tenancies were introduced by the 2016 act as an option for future agricultural tenancies. They replace the existing limited duration tenancy option, which is set out in the Agricultural Holdings (Scotland) Act 2003. LDTs that were already in existence before the regulations come into force will continue to exist, but there will be no new ones except in very limited and specific circumstances.

The draft affirmative regulations make a series of consequential modifications to other acts to ensure that, where they currently refer to LDTs, references to MLDTs are inserted. That will ensure that MLDTs can follow smoothly from LDTs. LDTs are not simply being replaced in those acts because, as I said, those that are already in existence before the regulations come into force will continue to exist.

The 2016 act also introduced the repairing tenancy, which is a further new type of tenancy. That type of long-term tenancy can be used where land is currently not in a state capable of being farmed and the tenant is required to improve the land to bring it up to standard. However, the relevant provisions of the 2016 act that provide for the creation of repairing tenancies are not yet in force. The draft affirmative regulations will insert references to repairing tenancies where they insert references to MLDTs. However, the regulations also contain transitory provisions to ensure that those references are to be ignored until the repairing tenancy provisions that are contained in the 2016 act come into effect. We drafted the regulations in that way to reduce further layers of amendments to the various enactments in the future—so we are thinking about you.

The regulations contain other consequential modifications and supplementary, transitory and savings provisions in relation to the repeal of various sections of the 2003 act by the 2016 act. Again, that is in order to facilitate transition from LDTs to MLDTs. It also ensures that MLDTs can use the existing rent review system, as set out in the 2003 act, until the new rent review provisions in the 2016 act come into force.

All of those provisions are to ensure that LDTs can be replaced by MLDTs in timely fashion and that the two forms of tenure can co-exist until existing LDTs naturally come to an end or are converted—whichever may happen.

The commencement and negative instruments also contain transitory and savings provisions, and the negative instrument also has consequential modifications. Again, they are intended to ensure that references to MLDTs and repairing tenancies are inserted into relevant secondary legislation and that references to repairing tenancies are to be ignored until the relevant provisions come into effect.

The negative instrument also sets out a definition of a new entrant to farming for the purposes of eligibility for a five-year break clause for an MLDT. Constructing that definition has been a lengthy process and has resulted in something that appears quite complex. I have written to the committee separately about that, as I thought it would be helpful to do so. I hope that my letter has addressed some of the questions that members may have. I shall not cover again the ground in the letter, although we will be happy to take questions on it. However, I assure the committee that my officials have worked closely with stakeholders to ensure that the regulations meet their requirements, particularly in relation to the definition of a new entrant.

The committee will be aware that the Delegated Powers and Law Reform Committee has considered the regulations and identified some issues in relation to the commencement and negative instruments. We will lay an amending instrument to address the issues that that committee has raised.

The equality impact assessment, business and regulatory impact assessment and financial memorandum prepared for the 2016 act remain valid for the regulations. I commend the regulations to the committee and I am happy, along with my officials, to take questions.

**The Convener:** Before we go on to questions, some of us would like to declare interests. I declare an interest, which is that I am a partner in a farming partnership and, as part of that partnership, I have a new form of tenancy and a secure tenancy. I also declare that I am a member of the Royal Institution of Chartered Surveyors, which may have been consulted on the instruments, although I have not spoken to RICS about it.

**Peter Chapman:** Likewise, I declare an interest. I am involved in a farming partnership in Aberdeenshire.

**Stewart Stevenson:** I am the joint owner of a very small registered agricultural holding, which is grass let to a neighbouring farm.

**The Convener:** Cabinet secretary, I thank you for your letter, which, as you say, is about a complicated issue. Some committee members found the flow chart at the back of the letter

extremely helpful as a method of tracking the issue through. I want to make an observation, which is that some of the policy notes on the instruments are extremely technical and complicated, and I am thankful that, having studied agricultural law, I have been able to understand them. There may be committee members who have not studied agricultural law and do not understand them. I would welcome it if, in future, there were simpler policy notes that make it easier for committee members to understand what the Government is trying to achieve. I will address that matter at the Conveners Group.

I am not asking you to respond, cabinet secretary; I simply wanted to make that comment.

**Stewart Stevenson:** I have a number of questions, which are probably for officials and are aimed at helping me to understand what the negative instrument that is before us is trying to achieve. The first question is obvious, but it is just to get something on the record. I understand that the starting assumption in regulations 3(2) and 4(2) of the Agricultural Holdings (Modern Limited Duration Tenancies and Consequential etc Provisions) (Scotland) Regulations 2017 is that anybody with an MLDT is a new entrant until otherwise proved. Is that correct?

**Douglas Kerr (Scottish Government):** That is right.

**Stewart Stevenson:** I just wanted to be certain about that.

Does the definition of a new entrant—subject to other things, which we will come to—for the purposes of an MLDT influence or interact with the definition of a new entrant for the purposes of the Scottish rural development programme? In other words, can someone be a new entrant in one but not the other, or do they of necessity have to be a new entrant in both domains?

**Douglas Kerr:** Technically, someone can be a new entrant in one and not the other. This is purely for the purposes of an MLDT and whether someone gets a break clause in their lease.

**Stewart Stevenson:** That was my conclusion, but I wanted to hear it said on the record. Obviously, for grant purposes, people probably want to be a new entrant, but in this area they may not want to be new entrant.

Just to be clear, the five-year break can be put in only if someone is a new entrant and both the lessor and the lessee agree to it. That is the only circumstance in which the five-year break can be put in.

**Douglas Kerr:** Yes, that is right.

**Stewart Stevenson:** Now I want to look at definitions. First, regulation 3 has various provisions under which people are considered not to be new entrants. Looking at one particular omission, I might have expected that to include people who are engaged in contract farming but have never owned or controlled a tenancy. Is it the policy intention that someone who has spent perhaps even 20 years as a contract farmer should be considered as a new entrant for the purposes of an MLDT?

**Jen Willoughby (Scottish Government):** That is correct. That is what our stakeholders asked us to do.

**Stewart Stevenson:** So I am reading that correctly. That is the policy decision that was agreed with the consultees.

Regulation 3(5)(c) refers to

“persons who between them—

(i) hold or control, directly or indirectly, more than 50% of the voting rights in T;”

What does “indirectly” mean?

**Douglas Kerr:** It is designed to cover situations in which someone might hold the right through another legal person, for instance, or the right is not in someone’s name specifically but they still have an ability to exercise it.

**The Convener:** You are going to have to explain that a bit more for me. I do not know about Stewart Stevenson, but I did not understand that.

**Stewart Stevenson:** Me too.

**Richard Lyle:** I thought that it would be what was formerly classed as a front man.

**The Convener:** Does Douglas Kerr want to explain what it means?

**Stewart Stevenson:** Before he does that, can I perhaps refer to regulation 5? It might help to link the explanation to the phrase “dominant influence” in regulation 5, which is of a similar character. I would really like to know what that is going to mean, or who will decide what it means.

**Douglas Kerr:** The provisions are designed to capture the range of relationships that a person might have if they are sitting behind a legal person, and they explain what control there might be. We were not looking so much at who has the rights to the capital or revenues, but at who controls the decisions or directs the will of an organisation. We were trying to make the regulations as expansive as possible, so the term “indirectly” is to cover situations in which a person might exercise a right through someone else—for instance, they might hold the rights in a legal person who has the right to vote in that company.

The term “dominant influence” applies if someone can enforce their will. In essence, it means that they have more influence than others.

**Stewart Stevenson:** What I understand from that is that it is about operational decisions that are related to how farming is conducted, and is quite independent of ownership and financial benefit from farming.

**Douglas Kerr:** Yes, that is the policy intention.

**The Convener:** I want to push a little bit on that. Personally, I am not quite sure how you define “indirectly”. Let us say that there is a son and a father. The father may indirectly control the son, but the son will deny it. Legally, if you took that situation to court, it could not be proved. As far as the law is concerned, I struggle to see how, by putting it into the regulations, you are achieving anything that can be enforced.

**Douglas Kerr:** The intention behind including the term “indirectly” was to cover situations in which someone held the right through a legal person. The father and son relationship might be caught by the provisions on “dominant influence”, but, generally, we were trying to strike a balance between making the provisions work while recognising that there might be situations in which the law cannot capture the specific circumstances.

**The Convener:** Can I push one more time on that? Would you be happy to go to court and prosecute on the basis that you could prove that there was indirect control by another person? “Prosecute” is the wrong word, but would you be happy to argue that case?

**Douglas Kerr:** Our position is that the regulations set out how to determine that but, in the first instance, it is not for the Scottish Government to determine those issues, because it is for the parties to look at that. I do not think that we would be pushing that.

**Fergus Ewing:** As far as I understand it—my officials will correct me if I am wrong—there is no question of prosecution of crimes here. This is a matter of civil law—private law between individuals—and of regulating the proposed facilities to encourage leasing to new entrants. That is where we are starting from, and the work with stakeholders was designed to achieve that policy objective. I do not mean to be critical; I am just saying that it is nothing to do with criminal law, as I understand it.

11:15

**Stewart Stevenson:** No, but we are considering circumstances where the lessor and the lessee both have to agree that there is a break point and they presumably both want a five-year break in the MLDT, and the provisions say that a lessee who is



indirectly controlled or influenced by someone else is not entitled to write that into the MLDT. That is the bottom line of what the provisions are intended to mean. In policy terms, the situation where both the lessor and the lessee want the MLDT to have a five-year break but there is considered to be indirect control is not expected to happen terribly often—it will be comparatively rare. Is that fair comment?

**Jen Willoughby:** Yes, I would expect so.

**Stewart Stevenson:** Right. Sorry—I am feeding you the line in the hope that you will say it.

However, I want to be clear about whether “dominant influence” in regulation 5 is essentially the same thing expressed with different words.

**Douglas Kerr:** It tries to get to the situation where the party can express their will, and their will can determine the operations of the company where they might not have a specific right. That captures the situation of the legal person; that might not be the structure that we normally think of as—

**Stewart Stevenson:** It would be helpful if you could give us an example. Having been involved with companies in all sorts of ways, I sort of get it, but I am not sure that I do. I am a bit like Edward Mountain, who has some legal training, and I have experience, but I still do not quite get the real circumstance.

**Douglas Kerr:** It might be useful if we write to the committee on that point separately to explain our thinking behind it.

**Stewart Stevenson:** The committee is in the position of having to report to Parliament today. If I am correct, the date on which the provisions come into operation is only four weeks away.

**The Convener:** You are right. We have to make a decision on it today if the cabinet secretary presses ahead with the instrument.

**Stewart Stevenson:** This is a negative instrument, remember.

**The Convener:** It is negative, yes. You are right, Stewart—thank you.

**Douglas Kerr:** Sorry, convener—just a second.

**The Convener:** Douglas, are you able to give us an example?

**Douglas Kerr:** Sorry—I was just conferring with a colleague. To refer to the example that you gave earlier, convener, we think that one instance might be if the son has the rights in the legal person and the father is exerting the will. It might be that the father is, in practice and in fact, exercising influence over the son, who has the interest in the legal person.

**Stewart Stevenson:** So the use of the phrase “dominant influence” in one part of the regulations and of “indirectly” basically come down to the same thing.

**Douglas Kerr:** Yes.

**The Convener:** Do you wish to raise something on this point, John, or is it a separate—

**John Finnie:** I have a comment about process, which is relevant to this point.

I understand that the legislation has its genesis in the Land Reform (Scotland) Act 2016, on which there was formal consultation. We are told that informal consultation with stakeholders will continue taking place during the implementation process. I want to understand who was involved in that, and whether some of the issues that Mr Stevenson legitimately raises have been raised by any of the stakeholders.

**The Convener:** Do you want to answer that, cabinet secretary, or will Jen Willoughby answer?

**Fergus Ewing:** I will start with a general answer. The question of who was involved is pertinent. Scottish Government officials worked closely with stakeholders. Reference is made to NFU Scotland, Scottish Land & Estates, the Scottish Tenant Farmers Association, RICS and the Scottish Agricultural Arbiters & Valuers Association to identify the definition of “new entrants” that would be most appropriate.

That is all for the purposes of this measure, which is designed to remove perceived barriers to landlords granting leases to new entrants. As I understand it, the big picture is that there can be concern among landlords that some new entrants might not stay the course and might not exhibit “good husbandry”, which I think is the phrase that appears in the legislation. If that happens for whatever reason—I am not ascribing blame to anyone, but it happens—the landlord might be left with a very long lease and a tenant who is not exhibiting good husbandry in farming. That would be a problem for both of them, because the landlord would have a tenant who was not really doing what they were supposed to do or able to do, and the tenant would be left with an obligation to pay the rent, perhaps for a number of years after a point when it would be sensible to bring things to a close.

In essence, that is the practical problem that the stakeholders and officials intended to pursue. To protect myself, I ask officials to say whether I have got that right, but I think that that is the *causa causans* behind the measure. Is that right, Jen?

**Jen Willoughby:** Yes, that is correct.

**Fergus Ewing:** Everything else follows from that. The aim of the perfectly legitimate focus on

those technical questions is to create anti-avoidance provisions, although one might not expect them to apply in the majority of cases, and the courts are there to interpret legislation.

On the second point that Mr Finnie rightly raises, we intend to bring forward an amendment to deal with Delegated Powers and Law Reform Committee issues, so it would not be impossible to bring forward an amendment if it subsequently emerged after further discussion with stakeholders that there is a technical defect in the anti-avoidance provisions. That is perfectly possible and I would of course be willing to do it should the need arise. I am not convinced that it is needed at the moment, but that is a matter for the committee to opine on.

**John Finnie:** That is helpful—thank you.

**The Convener:** Stewart Stevenson has a question.

**Stewart Stevenson:** I am of course trying to avoid casus belli.

I have two questions, both of which are fairly straightforward. One relates to limited liability partnerships. Despite the efforts that the UK Government is making on the subject, there is still a lack of clarity on ultimate control and ownership in a number of situations where an LLP is involved. What consideration has been given to that issue? We should remember that we are talking about only the ability to put in a break point and not about the fundamentals of the MLDT, which I welcome.

**Fergus Ewing:** Fiona Buchanan will answer that.

**Fiona Buchanan (Scottish Government):** Mr Stevenson will be aware that recent changes have been made to the law across the EU to start to tackle the issues with LLPs. Scottish Government officials are working with colleagues to explore opportunities to ensure that industry is fully aware of its legal obligations in relation to LLPs, particularly in the agriculture sector. We are working closely with Companies House, which has contacted everybody in the agriculture sector with an LLP and asked them to confirm their details. That has resulted in some individuals saying that their LLPs have ended. We are in regular correspondence with Companies House, and we are happy to share that correspondence with the committee as we progress. I will have to confirm this in writing, but I think that there are 504 Scottish agricultural limited partnerships. However, it may be that the paperwork is not in place in relation to LLPs for individuals in agricultural tenancies, which is the issue that Companies House is exploring.

**Stewart Stevenson:** That is helpful and quite reassuring.

Regulation 5(2) refers to “equivalent persons”. One of the categories of persons that I thought that might apply to is proxies who, for the purposes of a meeting only, might exercise deliberative control over decisions while not otherwise having any interest through ownership or influence. Is that the sort of thing that is meant by the term “equivalent persons”, or is there more to it than that?

**Douglas Kerr:** The term “equivalent persons” was used to capture the fact that not all legal persons will have shareholders and share capital.

**Stewart Stevenson:** So you are thinking of partnerships, for example.

**Douglas Kerr:** Yes.

**Peter Chapman:** You have just had some detailed questioning from Mr Stevenson. My question is much broader but, nevertheless, important.

In your letter, cabinet secretary, you say:

“Attracting new entrants into agriculture has been identified as one of the most serious issues affecting the industry.”

I could not agree more and I expect that you feel that the MLDT will go some way to addressing that problem. However, to be honest, I have my doubts and do not think that it will make much difference.

The real problem with the tenanted sector in Scotland is that landlords have lost confidence in letting land for the long term simply because various Scottish National Party ministers over the years have continually raised the issue of an absolute right to buy. Thousands of acres have been lost to the tenanted sector this year alone. Do you agree that the real problem is that the absolute right to buy is still floating around in the background?

**Richard Lyle:** On a point of order, convener.

**The Convener:** I will take the question and let the cabinet secretary answer.

**Richard Lyle:** I have a point of order. I do not see the relevance of that question to what we are discussing.

**Peter Chapman:** I do.

**The Convener:** The link is that Peter is trying to identify the way to increase tenanted land, which is the aim of the MLDT. I take Richard Lyle’s point. I will let Peter finish his question and allow the cabinet secretary to answer it.

**Peter Chapman:** Thank you. I felt that I made the link. It is an important one, and I would like the cabinet secretary to respond. If he unequivocally

took off the table the absolute right to buy, that would do far more for the tenanted sector than anything else that we are discussing.

**Fergus Ewing:** We are focusing on specific statutory instruments and I will address my remarks to them. Of course, there is a much wider debate but I think that I am able to say that I have worked with all stakeholders, including Scottish Land & Estates, in numerous informal and formal meetings and engagements to indicate that we are determined to get the best possible use of land in Scotland and to encourage landowners and tenants to work together. To be frank, the statutory instruments have resulted from that practical working. I am here not to score political points but to address relevant questions on the instruments. That is what I shall do.

I am working positively with landlords and tenants to encourage them to use the vehicles that we have provided, which—after all—they negotiated themselves prior to the 2003 act and in respect of the statutory instruments that we are discussing. We discussed the matters with landlord representatives as well as tenant representatives and introduced the measures after that in the hope that they would be used. I encourage their use so that more new entrants come into farming. I am not saying that the instruments will do everything but, of course, we have solid financial support measures for young farmers and new entrants. That is the principal policy means by which we seek to bring new and younger people into farming.

**Peter Chapman:** So you have no comment on the absolute right to buy.

**The Convener:** Peter, that is straying. I will stop that there and move to Richard Lyle's question on the statutory instruments.

**Richard Lyle:** I read the letter and do not see the concerns that other people have. It says:

"Stakeholders have not raised any concerns with us about this process."

I ask the cabinet secretary to confirm that.

I remind the committee that we are not doomed, as Mr Chapman suggests, and that the right-to-buy in housing was introduced by the Tories 30-odd years ago, so it is not the first time that the right to buy has been used.

11:30

**The Convener:** You have made your point, Richard. I think that you have strayed as far as you accused another committee member of straying, so I will park the matter there.

Do members have any other questions? I would like to ask one question, to sum up my concerns.

**Jamie Greene:** The panel will be pleased to know that I will not go into the wording of the SSI in great detail.

On the issue of long-term leases and landlords' concerns about them, I am a bit unclear about what is new compared with what was in the 2003 act. In layman's terms, is it the definition of a new entrant or is it the five-year break clause that is being introduced?

**Jen Willoughby:** The five-year break clause is new, as is the definition of a new entrant that applies to that five-year break clause. It is a new definition, but only for the purpose of MLDTs, and the thing that is new about MLDTs is the introduction of the five-year break clause.

**Jamie Greene:** Thank you.

**The Convener:** I have one further question that relates to the points that Stewart Stevenson raised regarding "equivalent persons", "dominant influence" and indirect control. It seems to me that you are trying to sweep up a variety of interests that could conflict with the aims of the legislation, but those definitions may not necessarily work. It would be nice to have an assurance from the cabinet secretary that, if the aims are not achieved by those sweeping-up phrases, he will consider introducing further legislation to achieve them.

**Fergus Ewing:** If anyone brings any manifest flaws to our attention, we will study them. That applies to the generality of subordinate legislation. If we are persuaded that there is, indeed, a flaw, we will take steps to correct it. I am happy to give that assurance.

**The Convener:** Thank you, cabinet secretary. Would you like to make any closing remarks? If so, I ask you to make them brief.

**Fergus Ewing:** I simply commend these measures.

**The Convener:** Agenda item 3 is formal consideration of motion S5M-07896, in the name of the cabinet secretary. I ask the cabinet secretary to move the motion formally.

*Motion moved,*

That the Rural Economy and Connectivity Committee recommends that the Land Reform (Scotland) Act 2016 (Supplementary, Consequential, Transitory and Saving Provisions) Regulations 2017 [draft] be approved.—[*Fergus Ewing*]

*Motion agreed to.*

**The Convener:** That concludes consideration of item 3. I suspend the meeting briefly to allow witnesses to leave the room. I thank the cabinet secretary and his team for attending the meeting.

11:33

*Meeting suspended.*

11:34

*On resuming—*

**The Convener:** Item 4 is consideration of a negative instrument: the Agricultural Holdings (Modern Limited Duration Tenancies and Consequential etc Provisions) (Scotland) Regulations 2017. No motions to annul have been received and there have been no representations to the committee on the instrument. Do members have any comments to make on the instrument?

**Stewart Stevenson:** I welcome the approach that has been taken. We should always challenge these technical things. Every politician in the Parliament agreed on the 2003 act, but it ended up—to some limited extent—flawed by technical issues. I therefore welcome the fact that the cabinet secretary is looking at bringing forward another instrument to address the concerns of the Delegated Powers and Law Reform Committee. I also heard the cabinet secretary say that, in that context, he would look at anything that we have said. For my part, I have not identified any changes that I would encourage the Government to make, but I thought that it was important to flush that out from his officials.

**John Finnie:** When there is a switch between two pieces of legislation, the transitional arrangements are absolutely key. I take reassurance from the fact that I have not received any representations in respect of any issues and the fact that there is on-going engagement of the people who should be engaged with on the issue.

**The Convener:** Is the committee agreed that it does not wish to make any recommendation in relation to the instrument and that it welcomes the discussion of the instrument?

*Members indicated agreement.*

### **Common Agricultural Policy (Direct Payments etc) (Scotland) Amendment (No 2) Regulations 2017 (SSI 2017/317)**

**The Convener:** Item 5 is consideration of a negative instrument: the Common Agricultural Policy (Direct Payments etc) (Scotland) Amendment (No 2) Regulations 2017. No motions to annul have been received and there have been no representations to the committee on the instrument. Is the committee agreed that it does not wish to make any recommendation in relation to the instrument?

*Members indicated agreement.*

**The Convener:** That concludes today's business.

*Meeting closed at 11:36.*

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