



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE

Wednesday 4 November 2015

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RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE
33rd Meeting 2015, Session 4

CONVENER

*Rob Gibson (Caithness, Sutherland and Ross) (SNP)

DEPUTY CONVENER

*Graeme Dey (Angus South) (SNP)

COMMITTEE MEMBERS

*Claudia Beamish (South Scotland) (Lab)

*Sarah Boyack (Lothian) (Lab)

*Alex Fergusson (Galloway and West Dumfries) (Con)

*Jim Hume (South Scotland) (LD)

*Angus MacDonald (Falkirk East) (SNP)

*Michael Russell (Argyll and Bute) (SNP)

*Dave Thompson (Skye, Lochaber and Badenoch) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Richard Lochhead (Cabinet Secretary for Rural Affairs, Food and Environment)

Billy McKenzie (Scottish Government)

CLERK TO THE COMMITTEE

Lynn Tullis

LOCATION

The Sir Alexander Fleming Room (CR3)

Scottish Parliament

Rural Affairs, Climate Change and Environment Committee

Wednesday 4 November 2015

[The Convener opened the meeting at 10:01]

Land Reform (Scotland) Bill: Stage 1

The Convener (Rob Gibson): Good morning and welcome to the 33rd meeting in 2015 of the Rural Affairs, Climate Change and Environment Committee. I remind everybody that mobile phones should be turned to silent so that they do not interfere with the broadcasting system. It will be noticed that some committee members use tablets, which is because meeting papers are now also provided in digital format.

Agenda item 1 is the Land Reform (Scotland) Bill. I welcome our panel of witnesses, beginning with Richard Lochhead, the Cabinet Secretary for Rural Affairs, Food and Environment. Good morning, Richard.

The Cabinet Secretary for Rural Affairs, Food and Environment (Richard Lochhead): Good morning.

The Convener: We also have officials from the Scottish Government: Billy McKenzie is the team leader for European Union rural development programme and agricultural holdings, Andrew Campbell is a solicitor and Angela Morgan is from the land reform and tenancy unit.

I invite the cabinet secretary to say a few words to start.

Richard Lochhead: I am grateful to the committee for rescheduling my appearance to give evidence and I thank you for your forbearance.

In terms of my evidence on the Land Reform (Scotland) Bill and its provisions relating to agricultural holdings, I do not need to tell the committee that tenant farming is crucial to Scottish agriculture and the Scottish economy. Tenant farming accounts for 23 per cent of all agricultural land. It provides a route into farming for new entrants in particular and opportunities for those who do not have the capital resources to buy land.

The sector's contribution is vital to sustaining our economy and, in particular, our rural communities. However, despite previous reforms to agricultural holdings legislation, the amount of tenanted land in Scotland continues to decrease. Since 1982, there has been a 42 per cent

decrease and Scotland now has one of the lowest proportions of tenanted land anywhere in Europe. The agricultural holdings review set out to address that situation.

A lot has been achieved since the review group began its work, back in January 2014. Following the group's extensive evidence gathering from stakeholders, its final report was published in January. The report's recommendations are being taken forward, in some cases through legislation, with measures such as the introduction of a tenant farming commissioner, improvements to how rents are set and an amnesty for tenants' improvements. There are also measures to widen assignation and succession rights for tenants.

The aim of part 10 of the land reform bill is to create a vibrant and modern tenanted sector that provides a range of letting opportunities for those who want to enter and progress within Scottish agriculture, to provide a fair return to both landlords and tenants, and to provide those who want to leave the industry with a route to do so that will, I hope, allow them a reasonable return on their investments of time, labour and finances, while also ensuring that the landlord's rights are respected.

I know that the committee is just as aware as I am of the complexities of agricultural holdings legislation and the relationships between tenant farmers and landlords, and the importance of getting the issues right. We are addressing those issues through the bill and other means.

The future of tenant farming in Scotland is a serious issue. We owe it to the next generation of farmers to introduce solutions that will strike the balance between giving tenants the security and flexibility that they need and ensuring that the rights of property landowners are respected. The provisions on the tenant farming commission in part 2 and the agricultural holdings provisions in part 10 provide such a package of measures. I hope that the bill will dramatically improve the framework for tenant farming in Scotland.

The Convener: Thank you, cabinet secretary. We are going to kick off by looking at one of the innovations—the tenant farming commissioner. At the beginning of the bill process, the bill team suggested that the function of the commissioner is

“an administrative one as opposed to a legal one and therefore it is not appropriate to give the TFC powers which could be seen to cut across the functions of the Land Court”.

Why not empower the tenant farming commissioner to be able to enforce codes that they have drawn up when they inquire into situations and find that the codes have been breached?

Richard Lochhead: I will address the motivation behind creating a tenant farming commissioner in Scotland. In my opening remarks I referred to the fact that we are all familiar with the complexities of agricultural holdings legislation. We are all familiar with the disputes that take place across Scotland and the history of the relationship between landlords and tenants, and the various arguments that can arise from disputes over compensation, rent setting and so on.

The tenant farming commissioner's purpose is to give a focus to sorting out many of those disputes, to get to the root of some of those issues and, I hope, to plug a gap so that fewer cases have to be referred to the Scottish Land Court. Both landlords and tenants would like to avoid going to the Land Court if possible, so we want to find other ways of resolving disputes through addressing some of the fundamentals. We are creating the office of the tenant farming commissioner so that we have an individual who is solely focused on working with all the stakeholders to sort out disputes. I hope that that will move the sector forward.

There is also a naming and shaming element. Individual disputes may be taking place across the country. When the tenant farming commissioner takes up a case—we have an interim tenant farming commissioner who is already looking at some cases—that will shine a spotlight on those cases. I hope that, in some instances, that in itself will deter disputes arising in the first place and lead to much more productive relationships.

On the legal standing of the tenant farming commissioner, there are proposals for powers to issue penalties where information from the parties to help the commissioner to fulfil their duties is not forthcoming. The findings of any report by the tenant farming commissioner can be referred to by the Land Court; they will be a material consideration in any cases that go to the Land Court. There is a legal ramification, although—as the convener referred to—it does not go much further than that.

The Convener: We have been thinking about the relationship between the tenant farming commissioner and the Land Court. Are you giving any consideration to changing the process whereby disputes between landlords and tenants can be resolved? For a start, should certain types of disputes be referred to arbitration, with a right of appeal to the Land Court? After a breach has been found by the tenant farming commissioner, what happens next?

Richard Lochhead: Arbitration is available at the moment, but I have just outlined some of the benefits of creating the specific office of a tenant farming commissioner within the land commission, which is a first. We will have to look at the

performance of the office but, for the reason that I gave, I think that it will make a difference. There is a debate to be had, and if the committee has specific views on how the process can be improved I am willing to consider anything that is brought forward.

As I said at the beginning of the process, we are dealing with quite difficult and complex issues; therefore the Parliament's scrutiny process is very important. If there are better ideas or improvements to our proposals for stage 2, we have a relatively open mind—albeit that we are constrained by how many suggestions we can take forward, given the time constraints.

The Convener: The need to resolve the disputes that you have outlined so graphically leads me to ask whether parties should be required to go to mediation. Can the tenant farming commissioner require parties to go to mediation before going to the Scottish Land Court?

Richard Lochhead: I do not see why the tenant farming commissioner could not do that. If you are suggesting that that should be more explicit in the bill, I will reflect on that.

The Convener: Should a lack of willingness to go to mediation be a consideration when the court is determining costs?

Richard Lochhead: The priority is to avoid cases going to court where possible, and cost clearly is a crucial element in the desire to avoid going down that path. The tenant farming commissioner is just one element in the whole package; many of the other measures are also motivated by a desire to try to avoid disputes in the first place. Where there are disputes, the commissioner may have a role.

The Convener: I wondered about that. What role would the commissioner play in leading, administering or overseeing mediation and/or arbitration? They would be in a lead position to try to solve the problems as well as to name and shame the parties—as you put it—if need be.

Richard Lochhead: As I said, the tenant farming commissioner is one element. There is legislation, and there is the office of the tenant farming commissioner, which is new. Until that office is established and we are able, after a year or so, to reflect on its performance, it will be quite difficult to predict what may help to resolve some of the disputes and whether the commissioner has the appropriate tools available to them. I have a relatively open mind on that, if the committee feels that more explicit powers should be given to the tenant farming commissioner.

The Convener: I will finish on part 2 by looking at codes, which the tenant farming commissioner

will enforce. There is no mention of a statutory code for land agents. The land agents have created a voluntary code, but the committee's experience suggests that we should ask you whether there should be a code of conduct for land agents that can be overseen by the tenant farming commissioner.

Richard Lochhead: I have no doubt, from my experience as cabinet secretary and as a constituency MSP, that on occasion the behaviour and attitude of certain agents in Scotland adds a lot of fuel to the fire in existing disputes and even leads to disputes arising in the first place.

There is definitely a case for considering such a code. One of the reasons for establishing the office of the tenant farming commissioner is to identify where there is a need for a code over and above what exists already and to carry out the work to make that happen.

The Convener: One tenant farmer summed up the situation by saying that they had to earn three wages: one for themselves and their family, one to pay their rent to the landowner and another to pay their land agent. Obviously that is quite a big part of tenant farmers' concerns in considering what they can raise from the units that they are farming, so we press on you the need to think very seriously about a code for land agents.

Richard Lochhead: As I have indicated, I am sympathetic to having such a code. There is a place for that, but it would perhaps be more appropriate for the interim tenant farming commissioner to look at that issue. Once the office is established, the case can be put to the commissioner, because their job will be to create such codes and work with the stakeholders. I am happy to hear representations from the committee, but in due course we will have to make those representations to the tenant farming commissioner.

10:15

The Convener: Okay. Let us move on to the details of agricultural holdings and the question of confidence in the Government's proposals. Michael Russell will kick off.

Michael Russell (Argyll and Bute) (SNP): Good morning. In your opening statement, you made quite a lot of your desire—which I think that we all agree with—of increasing tenants' rights and of giving confidence to landlords that they can let land, which, if it were possible, would be a desirable aim. However, I do not think that we have any evidence to suggest that landlords' confidence will be increased in any way by the measures—in fact, quite the reverse. It seems from the evidence that we have had that one of

those aims has to predominate in the public interest. Which should predominate?

Richard Lochhead: The objective of the bill is to create a vibrant tenancy sector in Scotland. I appreciate where your question comes from, but we need land to be available on the market to let as well as tenant farmers who have the skills and ambition to run their own farms and put food on our tables. If one of those elements is missing, we will not have tenant farming in Scotland.

We have to strike that balance. Clearly, if tenant farmers are not able or do not have the confidence to invest in our farms, and if landlords do not have the confidence to let the land in the first place, tenant farming and agriculture in general will be held back.

I can say only this to landlords who tell Michael Russell or the committee that their confidence is not increasing as a result of the bill. If they want complete freedom of contract, I understand that they might not welcome safeguards or enforcement of safeguards. However, we believe that it is in the public interest to have those safeguards and therefore there is a lot of emphasis in the bill in providing safeguards to tenants. Those with the land tend to have more power than those without it, so we have to go the extra mile to offer protection to tenant farmers in Scotland. Therefore, there is an emphasis in the bill on protection for tenant farmers.

Michael Russell: I certainly do not disagree with you about the need to protect tenant farmers and increase their rights. However, if you are going to do that and landlords are not willing to let land, action will have to be taken if you wish land to continue to be available. There are historical parallels with crofting, when the state intervened and became the crofting landlord. Again, in the context of the Agriculture (Scotland) Act 1948, it was the state that was prepared to see public bodies—local authorities, for example, although I would not recommend that approach—owning and tenancing the land.

If landlords do not increase or maintain the amount of land in tenancy as result of the bill, might we end up with something that does not meet either objective? The changes to tenancies are designed to help tenants, but if landlords are less keen to have tenants, the situation will continue to deteriorate. Would it not be better to look at circumstances that demand an absolute right to buy—and there are such circumstances in Scotland—and thereafter at circumstances in which landlords do not want to let land, and allow the state to intervene and ensure that land is available to let through market mechanisms?

Richard Lochhead: I agree that we need a basket of options and measures in legislation or

other support mechanisms—through the rural development programme or whatever—to promote tenant farming and a diverse agriculture sector. We are discussing taking agricultural measures as part of a land reform bill that is part of an overall land reform programme. That work, along with the setting up of the land commission, as the committee has previously discussed—you took evidence on that from Aileen McLeod in Dumfries—is on-going.

You are absolutely right, however, that we have to reflect on the success or otherwise of the measures that we are taking. I am confident that the measures will have a positive impact. Only time will tell whether they go far enough. Many complex factors influence the future of tenant farming. As well as legislation and the issues that dominate our headlines, there are other issues, such as demographics. Therefore, it is difficult to identify a magic bullet that will get us to where we want to be overnight. We have to have open minds. As you know, we are exploring other options, such as using publicly owned land as new starter units and leases for tenant farmers. The power under the measures that we are discussing today for a right to buy in situations in which a landlord is not fulfilling their obligations is a radical step forward, although, for reasons that the committee has discussed previously, it will not be an absolute right to buy.

We are going in the direction that you suggest, Mr Russell, and I do not dispute the fact that we need to be more inventive in the future.

Michael Russell: I would like to narrow this down to a discussion of human rights, because land reform and tenancy reform are human rights issues. We have seen some alarming cases in recent times in which it appears that the human rights of some tenants are not being respected in the way that they should be—you and I have constituency experience of those issues, cabinet secretary.

However, human rights legislation is being quoted by landowners to make the point that the right to property is absolute. Indeed, it is questionable whether the Crofting Reform Act 1886 could be passed at present, given the way in which rights under article 1, protocol 1 of the European convention on human rights are being interpreted by some.

Do we need to focus more closely on the human rights of those who use and put effort into the land—some tenancies have lasted for up to a century—and of communities, as anticipated in, for example, the International Covenant on Economic, Social and Cultural Rights, and put those into the balance against those who are trying to argue that property rights trump everything? If we take that

approach, we will need a more radical approach to tenancy, as well as to the other issues in the bill.

Richard Lochhead: I absolutely agree that we have to bring the human rights of tenant farmers more to the fore. I believe that we are doing that. For example, landowners criticise some of the measures that we are discussing today because, they say, they infringe their human rights and go too far. Of course, I am here to say to the committee that we are not going too far and that we are doing what is right for the public interest, because property rights are not absolute. They are an important dimension of the debate, because we all have to respect property rights, but the public interest must also be respected.

We are paying a lot of attention to the human rights of tenant farmers, which is why some of the measures are radical. They might not be radical enough for some and they might be too radical for others, but I believe that we are going in the right direction.

I can only reiterate to Mr Russell and the committee that this is not the end of the debate. The land reform agenda is important to tenant farming in Scotland in a general sense; the issue is not just about agricultural holdings legislation.

Mr Russell referred to the 1948 act. I have to say that this is not 1948; it is 2015. That is a challenge for all legislators. We have to take into account the legislative and international environment in which we operate. We do not have the same abilities, legally, as we had just before or just after the second world war. ECHR rights are important, and must be taken into account.

Michael Russell: You and I are old friends, cabinet secretary, but I would be surprised if I had to debate with you the question whether human rights should be more deeply entrenched in 2015 than they were in 1948. Any argument that suggests that people could operate more freely in 1948 might not succeed. We should be doing better than our parents or grandparents were doing.

I want to make one final point, which goes off at a slight tangent but which concerns an issue that has been raised with the committee on two occasions and about which I have received correspondence: the continuing plight of smallholders, who are left in legal limbo. I raised the issue with officials at the start of the process of open sessions and I raise it again today because I do not think that it is right to leave smallholders without redress. It has been pointed out to us that, when smallholders become infirm and cannot operate their smallholding, that smallholding essentially perishes, the land is left to go to ruin and the buildings collapse, because there is no way through to the next stage. It is important that

those people get some assistance, and I hope that the Government will lodge some amendments at stage 2 to begin to redress that situation. A lot of people are suffering.

Richard Lochhead: On the first point, I agree that we have to rekindle the spirit of previous generations in which access to land and the ability to grow our own food, as a country, are seen as national priorities. Again, I believe that we are rekindling that spirit with our very ambitious land reform agenda, of which agricultural holdings legislation is only a part. Although, as I have said, the political and legal environment in 2015 is different from that in 1948, and although these things are not easily changed, we have to be inventive to get to where we want to be in relation to justice and equality with regard to access to land in Scotland and to ensure that we have the next generation of people who will grow food for our country. I have given some examples that I hope persuade Michael Russell and others that we are going in that direction.

As for the second question, which was on smallholders, all I can do is assure the committee that we are looking at the issue. I highlight the recent survey that we carried out—I trust that information about that has been communicated to the committee; we will check that after today's meeting. We got a quite a good response from those whom we were able to survey, but there is still a lot more work to be done. I cannot give the committee a commitment that there will be stage 2 amendments on the matter, but I can give it a commitment that the issue is on the Government's agenda and that we are actively looking at it. Even the self-identification of smallholders in Scotland is not a simple matter, and it is not wise to pass legislation without knowing to whom it applies. A bit more work needs to be done.

Michael Russell: Thank you.

Alex Fergusson (Galloway and West Dumfries) (Con): Good morning, cabinet secretary. It is nice to see you.

Up to now—and you might find this surprising—I have largely agreed with Mike Russell, in that it is very difficult to deliver the objective of recreating a vibrant tenanted sector, which, as you have quite rightly said, is the policy objective of this part of the bill, while at the same time increasing tenants' rights and protections. I believe that it is possible to do both those things, but I do not think that it is possible to do so in the bill.

You quite rightly mentioned the importance of the relationship between landlord and tenant and the need for confidence to be restored between those two parties if this part of the bill is to be successful. I do not think that the landlord side of the issue is simply a matter of "Freedom of

contract—or else"; freedom of contract would be the preferred position, but I do not think that it is a deal breaker. That said, there is a feeling that the bill as it stands bears more similarity to a blunt intervention measure that is seen—if I can put it this way—as punitive.

What I am really trying to say is that, instead of the broad-brush approach that is taken in the bill, a more targeted approach that would effectively address the problems that the land reform review group highlighted—I am not going to deny that we saw some of them in evidence—might help to restore confidence and be a win-win for all sides of the debate. You said that we need to stay open minded as we go forward, but are you open minded enough to change to a more targeted approach in order to address the problems, instead of taking the broad-brush approach that some see as punitive and which is undoubtedly setting minds against what you are trying to achieve?

Richard Lochhead: I will study the committee's recommendations in its stage 1 report carefully, but all I can do is reiterate some of the statistics that we are all aware of. The amount of rented land in Scotland has declined from 40 to 23 per cent over the past 30 years, and the total area of land that is let in Scotland, including crofts but excluding seasonal lets, fell by 44 per cent between 1982 and 2015. I simply reiterate those statistics because, with regard to the debate about Government intervention, it is clear that the market and self-regulation—or lack of regulation in some areas, and poor regulation in others—are not delivering the outcomes that we want as a country. There is therefore a case for state intervention and for the Government to ensure that there is a backstop that protects the rights of tenant farmers while ensuring that the idea of letting land in Scotland is attractive in the first place.

10:30

I do not have a completely open mind on all the measures in the bill—I am not saying that. What I am saying is that we do not rule out lodging amendments at stage 2 if there are specific areas of the bill that the committee believes we can improve. We have an open mind about that.

Alex Fergusson: I may make one or two suggestions as we take evidence.

The Convener: We have debated the statement of rights and responsibilities, which is mentioned right at the start of the bill. We have a strong interest in ensuring that as many people as possible take part in the creation of that statement. I presume that elements of landlord-tenant relationships will be reflected at least in the principles that are stated therein, giving a hint that

it is an area that we are prepared to continue to intervene in until we get it right.

Richard Lochhead: Yes. It all comes down to the rights and responsibilities of land ownership, which relates to the impact on communities or tenant farmers. You are right—the principles apply right across the board.

The Convener: We will see how that pans out. Let us move on to another aspect of that relationship.

Graeme Dey (Angus South) (SNP): Good morning, cabinet secretary. My question leads on from your previous comments. How will you judge the bill's success in this area? Will you judge it on whether it halts the decline in the amount of land that is tenanted, or will you judge it on whether the amount of tenanted land increases and there are more tenancies? Where do you hope that we might be five or 10 years from now?

Richard Lochhead: I hope that, five to 10 years from now, we will have a more vibrant tenant farming sector in which tenants feel more confident about investing in their holdings and in which there is a healthier availability of land to let. As I said, I am confident that the bill will play a role in helping that situation to come about, but it will not be the only factor. For the reasons that I gave earlier, this is a complex issue. The bill cannot control the capital value of land, demographics and our changing society or economics.

Graeme Dey: You use the word “vibrant”. In your opening remarks, you talked about having a modern tenanted sector. What about having a genuinely viable one? In taking evidence on the bill, we have come across examples of tenants who are just scraping a living—in some cases, only by having jobs away from their farms—because of the physical and productive capacity limitations of their tenancies. Are you concerned about the financial viability of many tenancies? If you are, how might the bill address the situation?

Richard Lochhead: The general answer to that question is that I have that concern about agriculture across the board. There are many examples of agriculture in some sectors or in some parts of the country being too fragile, which is an on-going problem for Governments of all colours to address. It is also a European issue as well as a Scottish issue. Some of the tenant farmers to whom you have spoken will be experiencing the turmoil and volatility that are being experienced in agriculture more generally.

As I said, the bill can help by creating an atmosphere in which tenants feel more confident about investing in their holdings because they will get a return from that investment in due course. That will lead to more productive and active agriculture on our farms and, in turn, to better

profitability. The issues are linked, and the bill plays a role in supporting agriculture.

The Convener: To follow on from that, let us look at modern limited duration tenancies.

Jim Hume (South Scotland) (LD): Good morning, cabinet secretary—it is good to see you. There is some concern about MLDTs. The Scottish Tenant Farmers Association thinks that MLDTs are more appropriate as bolt-ons to existing farm businesses, and the point was echoed vociferously by a young farmer at our public meeting in Dumfries who said that an MLDT is more appropriate for a farm that wants to expand, perhaps into a neighbouring farm. Why are MLDTs aimed at existing farmers rather than new entrants? Surely we should be encouraging new entrants.

Richard Lochhead: The modern limited duration tenancy will apply to all farmers who want to take out a non-1991 act tenancy, but an element of it specifically addresses new entrants, as the 10-year modern tenancy can be broken after five years to give new entrants the opportunity of reflecting on their first five years in the farm. Should a new entrant want to change the relationship, they will have the opportunity to opt out. In the new tenancy, we have taken into account new entrants' needs.

Some flexibilities that are not in the existing limited duration tenancy will be in the modern tenancy. There are similarities, but there are just a couple of differences, which relate to flexibility. The review group looked at the issue and recommended that more flexibility was required and that the emphasis should be on encouraging 10-year tenancies rather than five-year tenancies, because that provides more stability for new entrants and any farmer. The five-year tenancies will still exist, but there will be a bit more emphasis on 10-year tenancies to encourage people to go for longer-term leases.

Jim Hume: Could other protections be created for new entrants? Is the Government considering lodging amendments at stage 2 or 3 to address the STFA's concerns?

Richard Lochhead: As I said, I am keen to look at the evidence that the committee received at its Dumfries meeting. We will look at that carefully prior to stage 2, and I have no doubt that the committee will reflect that evidence in its recommendations. The other flexibilities relate to negotiations over fixed equipment on the farm, and I hope that the 10-year lease will make them a bit smoother.

Jim Hume: I think that that is the point.

Graeme Dey: We took evidence from the Crown Estate on its attitude to tenancies and we

heard that, as part of considered succession planning for the next generation, it is issuing tenancies of up to 37 years in duration and which will take tenants up to the age of 65. I would welcome your views on that approach and whether it could be fed into the mix to improve the general situation.

Richard Lochhead: I very much welcome leases of such a term, which represents a career span for new entrants. That is a good incentive for encouraging new entrants, so I welcome the Crown Estate's 37-year leases.

However, what should be in legislation is a separate question, and we are here to discuss legislation. I encourage others to follow the welcome example of the Crown Estate, which had the confidence to give leases of that length of time. I hope that we can find that confidence in other landowners, but what we should legislate about is a different question.

The Convener: Alex Fergusson will look at the next element of part 10.

Alex Fergusson: I will look at the interesting issue of conversion. It relates to the question that Graeme Dey just asked, because the bit that we find interesting about the Crown Estate model is the flexibility that it allows to have not just fixed-term tenancies but terms that are based on the retirement age of the next generation of tenants. The term could be 15 years or 37 years; that flexibility is allowed and why that is in place is clearly defined. I think that people could buy into such an approach and have total faith in it.

As you will be aware, the review group recommended that Agricultural Holdings (Scotland) Act 1991 tenants should be able to convert their tenancies into 35-year leases. The length of a lease has not been included in the bill, but there is a power for ministers to set the duration. We heard in evidence the suggestion that the longer the converted lease was, the harder it would be for new entrants—and we are talking about trying to create churn—to compete with existing farmers for it. Obviously, the longer the lease is, the greater its value.

Is there any chance of the Government providing more details on its thinking in the bill, rather than leaving the issue to future legislation? It is hard for us to comment decisively on the matter without knowing what the Government is thinking.

Richard Lochhead: It is important to note that the purpose behind the measure to allow 1991 act tenancies to be converted into the new MLDTs is to encourage a bigger churn of tenancies, for a couple of reasons. First, if a tenancy were to be lost, there would be one less tenancy, full stop, so to have a follow-up tenancy would mean that that

tenancy was still available to someone else. Secondly, the fact that a tenancy can be assigned for value to a new entrant gives an incentive to those who might be hanging on because there is no other option—although they may feel that their best years are behind them—by allowing them to leave the industry with dignity, which would make a tenancy available.

I dispute the suggestion that the measure will lead to fewer tenancies and more frustration for new entrants. If it works properly, it will lead to more opportunities for new entrants.

Alex Fergusson: The point that was made to us in evidence was that the longer the stated minimum term of the lease is, the harder it will be for people to get a chance. Are you open to greater flexibility in the lease term, perhaps along the lines of the Crown Estate's approach?

Richard Lochhead: I take your point, but I was trying to show that the net benefit of the measure would be an overall increase in tenancies and opportunities for new entrants. I understand your specific question, but we have not yet reached a decision on the matter. I would welcome the committee's views. We are taking the power and there will be discussions with stakeholders in the coming months on how best to implement that through secondary legislation. The review group made one recommendation of a lease of 35 years, but there is a variety of other scenarios. We are working through those options with stakeholders.

Alex Fergusson: On the subject of secondary legislation, it would be inconsistent of me not to mention my normal grumble about the amount of things that have been left to secondary legislation. I appreciate that the approach is similar to previous land reform legislation, but my concern is about not so much the amount as the fact that some substantive matters are being left to secondary legislation. I will put it on the record for about the 10th time that that makes scrutiny of the legislation much more difficult. I know what your answer will be.

Richard Lochhead: For the 10th time, that is noted.

The Convener: We move on to the tenant's right to buy.

Dave Thompson (Skye, Lochaber and Badenoch) (SNP): Good morning, cabinet secretary, and good morning to your team. As you know, section 80 removes the current requirement for tenants to register their interest in the right to buy their holding. That has been pretty widely supported. However, the Law Society of Scotland has raised a number of practical problems that it sees from that.

The Law Society has suggested that the type and extent of a tenancy might be disputed and that the requirement to register allowed such issues to be dealt with early. Once someone registered their interest, any dispute over whether it was a 1991 act tenancy or over what the tenancy's boundaries were could be resolved fairly early. The Law Society also asked what would happen if only part of the subjects of sale was affected. If a landlord decided that they wanted to sell part of a tenancy for development or whatever, what would happen to the rest?

There are a number of interesting potential legal problems. Does any of them have substance? If the Law Society is correct, what consequences might there be?

10:45

Richard Lochhead: We are considering the Law Society's comments and we will have to reflect on the issues that it raises. The removal of the requirement to register has a couple of benefits. First, we understand from anecdotal evidence that some tenant farmers do not want to register in case it harms their relationship with the landlord. Secondly, many felt that the process was too complex and was not needed, so the easiest thing to do was to remove the requirement to register.

The existing triggers are already there. Some of the issues that the Law Society raised with the committee are on-going. The removal of the requirement to register makes no difference in the context of the concerns. The existing triggers that relate to the definition of a farm going up for sale will continue to be there, so nothing new is being done through the removal of the requirement to register that will influence that. Having said that, we recognise that more work needs to be done on the matter and we will look at that.

Dave Thompson: I am reassured by your helpful comments. If a landlord was proposing to sell, they would not do so on a whim or on the spur of the moment. I imagine that most landlords, if they were planning to sell, would probably have given the matter considerable thought. Do you agree that, if a landlord thought that such issues might arise, we would expect them to have considered those at a very early stage?

Richard Lochhead: That is entirely right. You make a good point. Concerns are sometimes expressed to the Government that the legislation does not cater for particular scenarios, but it can be quite difficult to find evidence of those scenarios ever arising. We can work only with what we know happens in reality. Some of the issues are genuine and some are not.

As you said, in the vast majority of cases, a lot of thought is put into decisions and the process is carried out in a respectful way. The landlord speaks to the tenant, so they are aware of what is happening and it is all open and above board. The legislation has to cater for the few extreme examples when things are not like that. That is why the legislation is important, but you are right to say that people are responsible in the vast majority of cases.

The Convener: We will now look at sale when the landlord is in breach.

Angus MacDonald (Falkirk East) (SNP): I apologise for being late, which was because of traffic congestion. Good morning, cabinet secretary, and good morning to your team. On a sale when the landlord is in breach, section 81 contains a process whereby the tenant can apply to the Land Court for an order for sale if the landlord has not complied with an order from the Land Court. In how many cases has the Land Court made an order that required a landlord to make good a material breach of their obligations?

Richard Lochhead: It is fair to say that we are aware of only one case where that has happened. The system is clearly not working too well. Alternatively, maybe there is no need to go to court or people feel that the court is not the best option.

Angus MacDonald: Would you expect that situation to continue?

Richard Lochhead: I am sorry—can you repeat your question?

Angus MacDonald: I will move on. When the committee took evidence on 16 September, the issue was raised of who the buyer of last resort would be if the landlord was ordered to sell but the tenant did not buy. Options that were suggested were local authorities, the new Crown Estate and the Scottish Government. Who does the Government intend would be the buyer of last resort if the tenant did not buy following a successful application to force a sale?

Richard Lochhead: The parties that you mentioned are potential options. We will have to bring forward secondary legislation to define the process for a third party to buy a farm. A bit of work will be needed to get that right, and we will do that.

Angus MacDonald: Will the three options be there?

Richard Lochhead: You give examples of parties that could perfectly legitimately be third parties.

Angus MacDonald: I will move on to clawback. The STFA has concerns about proposed new

section 38N of the Agricultural Holdings (Scotland) Act 2003, which allows a former landlord to claw back some of the increase in the value of the land if it is sold on at a profit within 10 years. In its evidence, the STFA suggested:

“In effect the original landlord should only be able to clawback any increase in value of his original interest in the lease and the land. Section 38N as it stands would”

hinder any attempt by the tenant to borrow to allow

“the purchase of the holding due to concerns regarding the size of the possible clawback.”

Will the provisions on clawback when a tenant sells on exclude clawback of the value of the improvements that the tenant made in the time that he or she had been there?

Richard Lochhead: I will have to reflect on that and get back to the committee on it. As I am sure you are aware, the purpose of the clawback is to ensure that the process is undertaken in the spirit of the legislation, which is to allow the land to be farmed and to allow the tenant farmer to have a better future in cases where the landowner is not fulfilling their obligations. That is why a clawback provision is included. I will reflect on your point and come back to the committee on it.

Angus MacDonald: I would appreciate that. The STFA has a strong argument on the matter, given that it is the tenant who will have made the investment that will create a profit if the land is sold on.

Richard Lochhead: It sounds like a reasonable point to say that that should be deducted from the clawback. I will reflect on the matter.

The Convener: Let us now consider rent reviews. Claudia Beamish will lead on this.

Claudia Beamish (South Scotland) (Lab): Good morning, cabinet secretary, and welcome. Good morning also to the officials.

As you and the committee are only too aware, the issue of rent review has been a very challenging one for tenants and landlords. There has been legislation around it, of which we are all aware. It is important to get the provisions as fine tuned as possible. With reference to section 82, in my view there is quite a lot in the bill that is itemised, although I will not go into that now.

In order for there to be real confidence in this challenging aspect of tenancy, some issues still need to be resolved. One of those issues is productive capacity as the judge of rent. The committee has come across concerns on that issue. The Royal Institution of Chartered Surveyors said:

“in being based on farm productivity, there could be a substantial increase in rents.”

We heard that in evidence, and that would be very concerning.

Also, the definition will be very important, along with its transparency. Some people have argued for simplicity, although those who are working on the matter have what I think is called a non-exhaustive schedule of factors. I am not in any way criticising the fact that the list is quite long already, because the issue is very complex. However, I invite you to comment on how things are progressing in that regard.

Richard Lochhead: The way in which rents have been set in the past has been the source of many of the disputes that we are aware of in tenant farming. My understanding is that the vast majority of stakeholders, if not all of them, support moving away from using open-market value as the main criterion towards using the productive capacity of the farm, which is much more realistic.

We have to have some criteria for giving guidance on how to set rent, and we cannot guarantee that that will mean a reduction or an increase in whatever circumstances apply, as long as fair, open and transparent criteria are used for the setting of rents. That is a good thing, and that is why the stakeholders seem to support what we are proposing. That has come from a lot of work that has been done among stakeholders on the provisions that we are putting into the bill.

A lot of modelling has taken place and will continue to take place in conjunction with stakeholders to define the productive capacity of farms. We recognise that that is important. That work is under way and it will be used to provide guidance. However, it will be very helpful to put the measure in legislation, and that will of course give the Land Court the ability to use different criteria in settling disputes over rent, if those disputes reach the court.

Claudia Beamish: We have received minutes from the rent review template stakeholder meetings, but some of those are not yet public, so I will not comment on them. The fact that agreement has not yet been reached on a number of issues makes things difficult for the committee. That is not a criticism, because I understand—slightly—the complexities that are involved. However, we have to produce our stage 1 report and, with respect, it would be helpful if the group could be encouraged to move on as fast as it can.

Richard Lochhead: I will reflect on that and consider whether there is anything that we can do to make more information available to the committee. I am sure that we can at least ensure that, by the time that you write your report, you are as up to speed as possible on where things have got to on defining productive capacity and the modelling that is taking place.

Claudia Beamish: Thank you.

Alex Fergusson: I have a brief question, although the cabinet secretary might not be able to answer it. I know that one of the sticking points is to do with surplus accommodation, or housing, on farms. Has any progress been made on that?

Richard Lochhead: Some people have raised concerns with us about that issue. I will come back to the committee on that particular point, if the member is happy with that. I have looked into the issue, and it is not the easiest to understand. The arguments on both sides are very complex. I would like to reflect on that and come back to you.

Alex Fergusson: Sure—thank you.

Jim Hume: Mr Lochhead, you say that work on modelling is on-going. It would be good to know when that work will be concluded. Obviously, for our consideration of part 10, which is crucial, we need to understand fully what the effects will be on the ground, and the modelling is crucial to that. Do you have a date by which the modelling will be concluded?

Richard Lochhead: No, I do not have a date. I can only reiterate that the measure is clearly significant and has a lot of support, and the issue has been the source of many disputes over a long time. Therefore, it is important to adopt the principle and the new policy in the bill, even if we have to do the follow-up work on issues such as defining productive capacity afterwards. Everyone agrees that it is important that we get the measure into legislation as quickly as possible. If there is work to be done afterwards, we will do that as quickly as possible.

Jim Hume: Thank you very much.

The Convener: We move on to succession and assignation. Dave Thompson will lead off.

Dave Thompson: The bill proposes to widen substantially the classes of potential assignees or successors. The policy memorandum suggests that part of the reason for that is to modernise succession through the family to younger and more active members. Will you clarify the policy intention of the measure and set out the fundamental reason for dealing with the issue? It is important to set that out, as there may be challenges to the measure under the ECHR.

Richard Lochhead: The review group looked into the issue in detail and it was felt that widening the class of relatives and people who can be assigned a tenancy or who can succeed is important for the future of tenant farming for a number of reasons. The first is to do with demographics. Families today are different from the situation 100 years ago. For obvious reasons, families are now smaller, so we may have to

spread the net a bit wider to include other relatives. The measure will help to address that.

There is also a need to allow families to do more long-term planning. If they have more options, they will be able to plan succession on a much better timescale, which will be good for stability and for the business.

Of course, the key reason is to keep land in tenancies. If it is not possible to assign a lease to someone because there is no obvious person who could take it over, the tenancy could be lost and there would be a reduction in tenanted land. We hope that the proposal will ease land staying within the tenanted sector.

11:00

Dave Thompson: Some people have suggested that open assignation would be a better way to ensure that tenancies are retained because, under that system, tenant farmers could decide who they wished to assign the tenancy to. Will you comment briefly on that?

Richard Lochhead: Again, the review group looked at that. It took the view, I think with reasonable grounds, that in the vast majority of cases, if the net is cast wide enough, that will allow someone else to succeed or to be assigned the lease and the land will continue to be farmed. There is a wider debate within agriculture on how we ensure that we have land coming on to the market and that there is a sense of fairness within the system. According to what the committee has heard, open assignation would give the impression that control of the land had been lost for ever. It would introduce that element of insecurity for landowners.

Again, it is a question of striking the right balance. However, the measure is ambitious in that the net will be cast far and wide to include near relatives and relatives.

Dave Thompson: You have explained open assignation very well. Do you feel that it would strengthen any particular challenge under the ECHR? Scottish Land & Estates has made a supplementary submission to the committee on that, claiming that this part of the bill—or all of it, I think, from what it says—is outwith the legislative competence of the Scottish Parliament. Can you assure us that you feel that it is within our legislative competence?

Richard Lochhead: I would not want to comment on the legal advice on the specifics, but we have to take into account at what stage any measure would infringe on property rights, as we have discussed in relation to other questions. These are factors in our decisions, and no doubt they were factors that members of the review

group had to have at the back of their minds. However, the primary focus of the review group, in recommending that we should not go down the route of open assignation, was the need to maintain confidence within the overall tenancy sector in Scotland.

Dave Thompson: Okay. Thank you.

Alex Fergusson: A point that has been made to us, on which I would appreciate your view, is that responsible landlords of letting estates whose business is letting land need the flexibility, from time to time, to adjust the units to ensure that they remain viable. We have already spoken about the difficulty right across the agricultural sector at present, and farming has changed a lot over the years. Units get bigger or, in some cases, smaller.

How does this part of the bill tie in with the need for flexibility? Are we not in danger of perpetuating non-viable units through the measures in the bill?

Richard Lochhead: We believe that we have struck a good balance between ensuring that there is enough flexibility and ensuring that we can keep land in tenancies for the future of agriculture. At the same time, we have to be careful that we do not allow anyone to place obstacles in the way of those tenancies being assigned, or succession.

There is an argument that the viable unit argument could be used as an obstacle to prevent a farm from being assigned or succession from taking place. We are reasonably sceptical about the argument about viable units, how they are defined and how the argument is used in the debate.

Alex Fergusson: Surely there needs to be a mechanism to ensure that, if somebody makes a case that a certain unit that has become vacant needs to be divided between two other units to make them more viable, there is some flexibility within the system to allow those units to remain viable, on a condition that the land is re-let.

Richard Lochhead: There has been some debate about that; I am just making the point that we need to be careful that we do not allow the viable unit argument to be abused and to become an obstacle to assignation or succession. We are very conscious of that.

Michael Russell: On the question of assignation, I do not want to harp on about the 1948 act—if I do, you might think that I was there when it was passed—but I think that it took a much more flexible view of assignation than subsequent acts have done. The bill takes us back to a more flexible approach.

There is an argument for open assignation—or rather, open assignation at value—which Dave Thompson has put. That would allow landowners to take land back if they chose to do so but would

provide a fairer system of buying out tenancies than presently exists. There are current cases that are difficult in that regard.

Did you consider the question of open assignation at value, tied to a fit-and-proper-person test? A fit-and-proper-person test, whereby a farm could not be assigned to someone who had no experience of agriculture, would offer a strong way of taking forward tenanted land without removing all the rights of the landlord.

Richard Lochhead: You are perfectly correct to say that what the 1948 act provided for was much closer to open assignation than what subsequent acts provided for. For reasons that we have gone over, much of the legislation has changed dramatically since 1948, so it would not be as easy to return to that as we might like it to be if we were to choose that as a policy option.

We considered open assignation only to the extent that the review group looked at the issue, and we have not revisited it by putting it in the bill for the reasons that I gave in response to Dave Thompson's questions. However, I am not ruling anything out. Open assignation is one of the issues in the background, so if the committee has strong views on the matter, we will listen to them closely.

Michael Russell: If we had open assignation and a fit-and-proper-person test, that would provide security in tenure. I certainly support what is in the bill, but I think that you could go a step further. Open assignation allied to a fit-and-proper-person test would create circumstances in which freedom of contract—which is what many landlords seek—could be introduced with greater confidence, because there would be stability in the market.

With freedom of contract, I think that we would have to create circumstances in which there was not only no coercion but proof of no coercion, but freedom of contract is not in itself unattractive to many people on both sides in agriculture, provided that there is stronger support for tenancies and the continuation of tenancies. Is that a mix that you might be prepared to think about?

Richard Lochhead: It is certainly a mix that I think would be essential if we were to go down that road. We are aware of those arguments. The Government's position would be that, if open assignation were to be taken forward or considered in more detail, there would have to be such arrangements around it.

Michael Russell: Thank you.

Claudia Beamish: Following on from the discussion on succession and assignation, are you considering widening the existing categories to include people who have worked on a farm

throughout their working lives or for a certain number of years, such as shepherds? That point has come up in evidence.

Richard Lochhead: That is an interesting point, and I will take it away and reflect on it.

Claudia Beamish: Thank you.

The Convener: We are considering the idea of the countryside being populated and the idea of families being able to farm, and I hope that, despite the variety in the shape of families in this day and age, we still see that as being at the heart of what we are trying to do. We talk about the bare question of somebody being able to farm a piece of land. That is all very well, but people's ability to live on the land is an important issue that we have encountered as we have gone round the country taking evidence. People seem to have real difficulties in living on the land, some of which we will come to later.

Is that a fundamental principle that you believe in when we are talking about the means to transfer farms from one generation to another or to another active farmer?

Richard Lochhead: It certainly is. I reiterate that this is just one part of the debate; there are many equally important parts, such as the common agricultural policy, and we have to find ways of knocking down obstacles to allowing people to farm in all parts of Scotland where that is appropriate and where there is agricultural land good enough to keep people working on it.

The Convener: I just thought that I would make the point, as it seems to me to underpin everything.

Jim Hume has some questions about compensation for tenants' improvements.

Jim Hume: My question is quite simple. Sections 90 to 95 provide for an amnesty period in which tenants can bring up improvements that they have made so that they can be compensated in the future. At the moment, that period is two years, but we have received evidence that three years would be perfectly reasonable. Even Scottish Land & Estates agreed with that. Is the Government minded to leave the period at two years, or is it considering widening it out to three years or even more?

Richard Lochhead: Our initial view was that two years is ample, but other arguments have been made in the consultation and scrutiny processes that the period should be longer than two years. I do not have a closed mind on that. If the committee takes a view on the matter, we will look at it. I tend to think that two years is a reasonable amount of time, but if the committee has other views, please convey them to us.

Jim Hume: That sounded like a, "Whatever."

Richard Lochhead: If any good and substantive arguments are put forward as to why a three-year period would be better than two years, we will, of course, listen to them.

Jim Hume: That is fine. Thank you.

The Convener: We move on swiftly to compensation and waygo. I call Alex Fergusson.

Alex Fergusson: I think that we all agree that the current waygo process is a mess and needs to be smartened up and clarified. Indeed, I think that doing so would help to restore some of the trust that has been lost in the whole system. Are you sympathetic to the two-stage waygo process that the committee has taken evidence on and examined?

Richard Lochhead: Again, we have been looking at this, and we are open minded as to whether it should be a two-stage process. I can see the advantages, but I am just not clear about how essential it is. Again, if the committee has any views on whether the process should have two stages, it should let us know. We are open minded on the matter.

Alex Fergusson: I think—I cannot guarantee this—that we probably all agree that it is only fair that the tenant knows what he is going to leave with before he finally decides to leave, if I can put it that way, and the two-stage process would help to bring that about. However, I am sure that we will comment on the matter in our stage 1 report.

Richard Lochhead: As I have said, I can see some of the advantages of the proposal, but I just do not know whether it is absolutely essential. If an argument is made that it will make a big difference, we might well be willing to look at it.

Alex Fergusson: We have also heard evidence that the list of improvements that are eligible for compensation at waygo might need to be updated. Has any thought been given to including that in the bill, or will that, too, be left to secondary legislation?

Richard Lochhead: I suspect the latter. For the first time, I call for assistance from my colleagues.

Billy McKenzie (Scottish Government): We are aware that the list needs to be updated and improved. Stakeholders have already made some representations on this, including through the rent review work, and we have been looking at some of the issues. The issue needs to be looked at and improvements need to be made, and that will be done over time, likely through secondary legislation.

Alex Fergusson: I just wanted to get that on the record for the 11th time.

The Convener: With regard to leases, a member of the public in Dumfries asked about the repairing lease. Is the Government still considering making it a 35-year lease? Is it aimed at new entrants or at existing farmers to extend what they currently have? The questioner in Dumfries was quite keen for it to be aimed at new entrants.

Richard Lochhead: We support the concept of repairing leases, and we are looking at options for when it would be most appropriate to take them forward. The big benefit would be for new entrants—not necessarily only new entrants, but it is fair to say that they stand to benefit if it makes the lease more attractive in that the new tenant would not have to pay a higher rent for fixed equipment and so on.

11:15

The Convener: Is it likely to be a 35-year lease, or will it be shorter?

Richard Lochhead: We face the same debate with that as we do with the timescales for other leases.

The Convener: Okay. I am glad that we have raised that issue.

Richard Lochhead: Some of these issues can be agreed with two agreeable parties. In legislation, however, we have to think carefully about the timescale.

The Convener: Thank you.

Sarah Boyack (Lothian) (Lab): One issue that we have been grappling with throughout our consideration of agricultural tenancies and wider community issues is the need for affordable social and private housing in rural communities. At our public meeting in Jura, the lack of affordable housing and access to housing was one of the top issues.

It is a particular issue for retiring farmers, but there are also issues in enabling young people to stay and live and work in an area and in attracting them to an area. The committee would be keen to get an update from the cabinet secretary on the Scottish Government's plans to ensure that more affordable social and private housing is made available across rural Scotland in the future.

Richard Lochhead: I am happy to send an update to the committee; as Sarah Boyack says, it is a very important issue.

I wrote to all local authorities in Scotland a few years ago when we were implementing our first new-entrants initiatives, urging them to give priority in planning to homes for retiring farmers and for new entrants. I have to revisit that as quickly as possible as part of my portfolio, but the issue is also at the forefront of the minds of our

housing ministers in their consideration of an affordable housing policy. If the committee would allow me to speak to my colleagues and come back with an update, I would be happy to do so.

Sarah Boyack: That would be very helpful. On your point about writing to local authorities, do you have a sense, from the responses, of what impact that has made in generating opportunities for retiring farmers?

Richard Lochhead: I find it difficult to answer the question because I do not have information on retiring farmers. The picture is quite mixed with regard to planning permission for homes for agricultural purposes. Some local authorities give extra weight to planning applications for houses for those with agricultural jobs, but the situation is patchy. I do not have an analysis to make available to the committee, but I will certainly look into the matter.

Sarah Boyack: That would be helpful. There are a lot of affordability issues not only for farmers but for people who work on farms.

Richard Lochhead: I have dealt with constituency cases in which people have wanted the reverse—agricultural workers have wanted the conditions on their homes relaxed.

Sarah Boyack: That goes back to the point that colleagues made earlier. When tenant farmers in particular stop farming, what are they left with? Do they have a pension or somewhere to live? That is a big issue.

What impact will the legislation have, through the community right-to-buy opportunities, in delivering affordable housing in communities that currently do not have a lot of people living there or do not have those opportunities?

Richard Lochhead: There is no better illustration of sustainable development being hampered than communities that are unable to provide affordable housing for the next generation. That debate is very relevant to the community right to buy. Time will tell to what extent communities want to take advantage of what is made available to them under the new measures to build affordable housing. That is a prime example of why we need to ensure that communities have the ability to acquire land for housing purposes.

Sarah Boyack: That is helpful, because one of the issues that we spoke about with your ministerial colleague on Monday concerned the bill's purpose, and what "sustainable development" means and will mean for communities in the future.

Michael Russell: This is a key part of the bill, but it is not yet in a position in which we can grab hold of it. Further aspects need to come in at

stage 2. All bills change and develop at stage 2, and there are opportunities for that here.

I will ask you to comment on two areas, which are linked. First is the question of the Scottish land commission as a land agency. There is a lot of public land out there and there may be the prospect of more if the issue becomes whether land needs to be purchased for agricultural tenancy. However, the commission does not seem to be able to fulfil the role of the land agency, but if it were the land agency, which has been much discussed, it would then be in a position to consider the use of public land, particularly for housing.

Secondly, and connected to that first issue, is the fact that nothing in the bill gives ministers the right to push forward, for example, the forced sale of land, so that it can become available for social purposes. The initiative lies with communities. That is no bad thing, but sometimes it will not happen. In many communities in Argyll, there is often not the capability or infrastructure to allow such things to happen.

Whatever side we come from, we would be grateful to hear further thinking on that in relation to the bill, so that it can do something to push forward rural social housing in a way that will make some early progress. In the west in particular, we are suffering substantial depopulation, which is not currently being helped by local authorities—certainly not by my local authority. We need some radical action.

Richard Lochhead: Michael Russell's point speaks to an exciting debate. Land reform in Scotland is at an exciting juncture. We are going to have to expend much more effort to take some areas forward, for example, in how we have more joined-up approaches to Scotland's land and publicly owned land.

Although the Scottish land commission is not a land agency, we now have the opportunity of the devolution of the Crown estate—if that ever happens in a way that will make a material difference to Scotland's communities—and the opportunities offered by the Land Reform (Scotland) Bill and the setting up of the land commission. We also have our current functions in relation to publicly owned land in Scotland and the other initiatives that are under way, such as using publicly owned land for starter units for new farmers. We need to join that up a lot more.

The issue of which current agency will perform the role of the land agency, or whether we have to create something new is to the forefront of the Government's mind. We are now in a position where it makes sense to think about the best way forward for managing publicly owned land in Scotland. As Michael Russell says, that could

range from making opportunities available for affordable housing to new starter units for farmers or whatever.

It is an exciting agenda and we are at an exciting place in the land reform and land management story in Scotland, which could open up a lot of new opportunities for communities, for Scotland's economy and for future generations.

My final point is that local government currently has powers that can be used in respect of compulsory purchase of land for affordable housing—I will not delve into local government policy. There are various tools in the box. Land reform legislation will, we hope, provide solutions for many scenarios, but there are some already that are just not being used.

Michael Russell: Local authority and public sector compulsory purchase has had a poor history, from Dr Green on Raasay all those years ago, and onwards—I am conscious that every time I ask a question these days I am acting as a historian. Many would argue that the compulsory purchase powers of local authorities are too slow and cumbersome to be used. We need very clear, targeted powers to solve the housing situation, in rural areas in particular. We also need to see land as a public asset. The other benefit of having a land commission and a land agency would be to change the relationship with land so that we all understand that land is a public asset and should be working for the community, not the just for the good of one or two individuals.

Richard Lochhead: Perhaps the committee should consider putting its ideas to the land commission about what it should be looking at in its early days. We all come across situations in our constituencies where we think, "I wonder whether land reform legislation will cope with these circumstances and, if not, perhaps that is something the land commission can look at soon". There is an opportunity for the committee there.

The Convener: I call Claudia Beamish, to be followed by Jim Hume, Alex Fergusson and then me.

Claudia Beamish: Last but not least, convener. I will focus briefly on tenant farmers' homes. In some cases, frankly, they are dilapidated. We have heard about and I have seen examples of that during my time on the committee and as a South Scotland MSP. In the Scottish Parliament, we consider private landlords from other sectors. If such conditions were under a different form of private landlord—we are looking at such issues in other ways in the Parliament—that would be completely unacceptable. I appreciate that there are different forms of rent and tenancies, but will you look at the issue of modern homes for tenants in your deliberations?

Richard Lochhead: We must ensure that a career in agriculture is attractive, and having a nice house to live in with your family when you are not working on the farm is an important issue. You make a good point. I will look at that and, if you allow me to, I will come back to the committee again on that. It would be good to look at the interaction between the tenancy arrangements for the farmhouse and other tenancy arrangements for private landlords in the country.

Jim Hume: That was more or less the point that I was going to make. I will just re-emphasise that normal housing tenants, whether they are in the private sector or in socially rented homes, are given protection. For example, they have repairs made to their roofs, electricity and gas safety certificates, and carbon monoxide monitors and fire alarms in their homes. None of that is afforded to agricultural tenancies because, as you know, the farmhouses are seen as part of commercial property. We have all seen and been in houses that you would not think fit for human habitation if they were in either the private rented sector or the normal socially rented housing sector.

Richard Lochhead: That is a fair point, which I will certainly take away.

Alex Fergusson: I just want to make a comment. In my experience as a constituency MSP, the lack of rural affordable housing is down far more to infrastructure constraints than it is to lack of land availability. I do not know of any community that has not found land on which affordable housing can be built where the infrastructure has been up to that. The problem is more to do with infrastructure complaints than it is about land availability. I may not speak for the whole of rural Scotland on that.

Richard Lochhead: There is no doubt that that is an issue, but it is one of a number of issues. Many empty homes in Scotland could be used in our rural communities if they were improved. The Government is conscious of the issues and action is being taken. I will get back to the committee about that.

The Convener: I think that you can see that the issue of rural housing, particularly housing on farms, has hit us in every part of Scotland that we visited. Therefore, we hope that your approach to the planning review will be to allow land to be made available and, indeed, to use the existing powers for compulsory purchase and so on. However, there is another part to the issue. When we were in Jura, an estate said that it was setting up seven new crofts, which could not be bought. None of the crofts has been taken up because people were not able to build a house in that part of Jura, so that they could live there and run that piece of land. That is appalling, although at least there was an attempt to create new crofts.

In the past, the department of agriculture had designs for houses that crofters and others could build. Before crofting was separated from the rest of agriculture in 1955, those models were used throughout the country. We need up-to-date, eco-friendly housing models, which are agreed by the agriculture and rural affairs people. Planners must understand that those designs will be given priority when houses are being built. If we did that—if we had eco-friendly prefabricated wooden houses—it might well be possible for more people to have a good house in the kinds of places that I have just described. Those issues seem to me to be fundamental to dealing with climate change and the potential for people to build houses in an economical way. If there was a series of models, we could bring the issue to the fore as an idea that planners have to agree to quickly.

11:30

Richard Lochhead: That is a powerful point. Clearly, the guidance that is issued by the Scottish Government to local authorities is one vehicle by which that kind of initiative could be taken forward. I will raise that with my planning colleagues in local government and incorporate it into my response to the committee after today. There are many members around the table who represent stunning rural constituencies and will be aware that there are fantastic rural designs for homes. There is no reason why those homes should be blocked by local authorities, unless they are in really sensitive locations. We need the support of local authorities in taking the suggestion forward, but the idea of having some designs that show what can be done is a good one.

The Convener: Dave Thompson wants to make a final point.

Dave Thompson: There has been an interesting debate in Highland between the council and various local folk in relation to section 75 agreements and building houses in the countryside. The folk who owned the land won their appeal, which I was pleased about.

I want to talk about the general point of planning. In Ireland, there is a presumption in favour of rural housing, whereas the situation in Scotland is the opposite. I hope that, in the context of the planning review that is going on, the Government will carefully consider encouraging folk in the countryside to build on available land. If there were a presumption in favour of rural housing, it would allow far more houses to be built in the countryside, it would help to cut waiting lists and would free up land for housing in a way that would cost the Government nothing and would enable us to tackle what is a serious housing problem in my constituency and elsewhere.

Richard Lochhead: Again, those are fair points. I am sure that my ministerial colleagues will be happy to come to the committee to discuss rural housing policy.

The Convener: It is a subject that has been endemic.

Richard Lochhead: I have urged local authorities to have rural development policies that enable them to join up their housing policy with their farming policy and so on.

The Convener: We can see that those are the kinds of things that underpin our discussions in this area. People can live in the countryside and we want them to be able to do so.

I thank the cabinet secretary and his team for their evidence, which we will consider. That concludes our evidence taking on the bill. The committee will now consider its views and publish a stage 1 report to Parliament in early December. That will appear on the committee's website.

At our next meeting, on 11 November, we will consider two negative instruments and take evidence from the Minister for Environment, Climate Change and Land Reform, Dr Aileen McLeod, on the United Nations climate change conference in Paris in November 2015.

As previously agreed, we will move into private session to consider evidence taken today and at previous sessions.

11:34

Meeting continued in private until 12:29.

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