JUSTICE 2 COMMITTEE

Wednesday 23 January 2002
(*Morning*)

Session 1

£5.00

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LAND REFORM (SCOTLAND) BILL: STAGE 1 912
ITEM IN PRIVATE 960

JUSTICE 2 COMMITTEE
3rd Meeting 2002, Session 1

CONVENER

*Pauline McNeill (Glasgow Kelvin) (Lab)

DEPUTY CONVENER

*Bill Aitken (Glasgow) (Con)

COMMITTEE MEMBERS

*Scott Barrie (Dunfermline West) (Lab)
*Mr Duncan Hamilton (Highlands and Islands) (SNP)
*George Lyon (Argyll and Bute) (LD)
Mr Alasdair Morrison (Western Isles) (Lab)
*Stewart Stevenson (Banff and Buchan) (SNP)

*attended

THE FOLLOWING ALSO ATTENDED:

Roseanna Cunningham (Perth) (SNP)

WITNESSES

David Campbell (New Opportunities Fund)
Stephen Dunmore (New Opportunities Fund)
Andrew Hamilton (Royal Institution of Chartered Surveyors in Scotland)
Dr Jim Hunter
Roddy Jackson (Royal Institution of Chartered Surveyors in Scotland)
Iain MacAskill (Crofters Commission)
Alistair MacLeary (Lands Tribunal for Scotland)
Shane Rankin (Crofters Commission)
Ian Rideout (Scottish Crofting Foundation)
Neil Ritch (New Opportunities Fund)

CLERK TO THE COMMITTEE

Gillian Baxendine

SENIOR ASSISTANT CLERK

Claire Menzies

ASSISTANT CLERK

Fiona Groves

LOCATION

The Chamber

Scottish Parliament

Justice 2 Committee

Wednesday 23 January 2002

(*Morning*)

[THE CONVENER *opened the meeting in private at 09:35*]

09:52

Meeting continued in public.

The Convener (Pauline McNeill): Good morning everyone, and welcome to the third meeting in 2002 of the Justice 2 Committee. I welcome our witnesses and Roseanna Cunningham MSP to the committee. I ask members to switch off their mobile phones—I have not done so, but I have lost my bag. Apologies have been received from Stewart Stevenson. All other committee members are here.

There is just one item under the heading of convener's report. We attempted to organise two visits yesterday. Ironically, the members who planned to go furthest away, to Stornoway, made it there, whereas the members who planned to go to Gigha did not get there. However, I believe that they salvaged something from the trip. I suggest that we hear a report on those visits at our next meeting, which will be on 30 January.

Two Scottish statutory instruments, concerning police pensions, are included in the papers that have been circulated to members. The Local Government Committee is the lead committee on those instruments, but they have been referred to both justice committees as secondary committees. If members want to raise any issues relating to the instruments, they should alert the clerks. I think that they are quite straightforward.

Land Reform (Scotland) Bill: Stage 1

The Convener: Item 2 is stage 1 consideration of the Land Reform (Scotland) Bill. We will hear from six sets of witnesses on parts 2 and 3 of the bill. I welcome representatives of the Royal Institution of Chartered Surveyors in Scotland. Andrew Hamilton, the chairman, will introduce his colleagues.

Andrew Hamilton (Royal Institution of Chartered Surveyors in Scotland): I introduce Roddy Jackson, who is a member of the institution, and Lynne Raeside.

The Convener: We will go straight to questions. Thank you for your submission, which has been very helpful.

Bill Aitken (Glasgow) (Con): Thank you for your comprehensive submission. There is much that we can take from it. Do you have any views about the scale of the impact that the bill will have on the land market in both the short and the longer terms?

Andrew Hamilton: We have often been asked what impact the bill will have if it is implemented as it is currently drafted. We cannot be sure until we see how the markets react.

We have consulted our members on how they think that the proposed legislation will affect the land market. They have told us that areas of land that are affected by part 3 of the bill, on the crofting community right to buy, will suffer some sort of blighting effect and that, in the rest of Scotland, the areas that are affected by part 2 will also suffer a blighting effect on the basis of two things. First, if a purchaser is considering buying a piece of land and has the choice to buy it in Scotland, England, Wales or elsewhere, he would view the land market in Scotland as being restricted by the laws and, therefore, value it lower. Secondly, members feel that, if there were two similar pieces of land, one of which a community had a registered interest in, the value of the one in which an interest had been registered would be affected. That seems to be reflected in the provisions of the bill, which state that any effect of the community registration on the value should be disregarded when the land is valued. That clearly indicates that it is felt that the value will be affected.

Bill Aitken: According to your submission you represent some 9,000 members throughout Scotland. Have you received any indication from your members that there are likely to be regional variations in the way in which land prices might be affected?

Andrew Hamilton: Not that I am aware of, except in the fact that the crofting counties are geographically separate from those that are not crofting counties.

Bill Aitken: The community ownership aspect of the bill is likely to prove controversial, to some extent. In what circumstances would community ownership be appropriate?

Andrew Hamilton: I am not sure that it is for the institution to decide whether community ownership is appropriate in any given case. We have said that our principal concern is the management of the land; who owns it is of no particular consequence to the management, generally, although it may be in some cases. We do not have a view on whether community ownership is a good or bad thing. We are on record as stating that we are not yet convinced that any form of land ownership is better than any other or that one form should be given a leg-up or advantage over another, as is the case with the community right to buy.

Bill Aitken: Given that caveat, is there justification for considering differently the purchase of small parcels of land, which might be used by a community for a community hall or a football pitch, for example, and of whole estates? If so, should the bill be adjusted accordingly?

Andrew Hamilton: There is already legislation to cover the purchase of small areas of land in communities. Compulsory purchase powers already exist for that sort of thing. I understand that the community right to buy was intended to address rather larger areas than that in most cases, although I may be wrong.

Bill Aitken: There is a difficulty in interpretation, which is why I am probing the issue.

Let us turn to another aspect of your submission, which is related to the same issue. You suggest that cherry-picking could have a serious impact on valuation. Can that issue be resolved?

Andrew Hamilton: At a much earlier stage in the drafting of the bill, it was stated in Parliament that controls would be introduced to avoid cherry-picking. Cherry-picking had been flagged up as a possible problem where a landowner was selling his land but only part of it was of interest to the community, meaning that he might be left with the rump of an area of land that was devalued.

At that point, the institution supported the idea that communities would have to buy the land as lotted by the seller. Our concern about what is now in the bill is that, although the landowner might be fully compensated by injurious affection being paid to him, that could result in the community paying a lot more than the market value for the piece of land in which it has registered an interest. The concept of injurious affection is that, if one is forced to sell only part of an area of land, and the residue is lowered in value because it is no longer connected with the other piece of land, the community—not the Government, if I understand the bill correctly—would pay compensation for that.

10:00

Bill Aitken: Are the mechanisms that are proposed in the bill for the identification of such pieces of land adequate?

Andrew Hamilton: I do not quite understand your question.

Bill Aitken: The bill deals with ways in which the land that is proposed to be purchased can be identified. Are you satisfied that those means are adequate? Would you prefer a different approach?

Andrew Hamilton: I still do not understand what you mean when you talk about identifying the area of land. I understood that it was up to the community to identify the land in which they wished to register an interest.

Bill Aitken: Yes, but the problem is that the appropriate section of the bill appears to be somewhat loose. An argument could be advanced that there should be a tighter definition of how the land is to be identified.

Andrew Hamilton: I am afraid that I have not studied that part in detail. I understood that the land would be identified by a map that showed the boundaries of the land in which the community had an interest. I am not aware of any further details.

Bill Aitken: In an informal discussion that we had away from the Parliament, we were told that other forms of identification might be involved. However, I quite understand why you might not be acquainted with the relevant section.

Andrew Hamilton: A perennial problem with any form of land sale is the identification of exactly which piece of land is being described. When some pieces of land are sold, there are no maps and the parties must rely on description. I would hope that the best possible means of identifying the land would be used. The Land Register is proving to be quite useful in identifying land sales.

George Lyon (Argyll and Bute) (LD): You said that you believe that the crofting community right to buy will create a blight on the land value. However, crofters have had the right to buy for many years. What impact has that right had on land values and what further impact will the new right have in percentage terms?

Andrew Hamilton: I have not studied the

impact of the previous introduction of the crofting right to buy. However, it is known that, generally, the value of the crofting estate is based on what will be paid if the crofter chooses to buy, which is 15 times the rent plus any sporting value. That value is less, in many cases, than it would be for land that is not crofted. We can already see that the value of crofting estates is limited by statute and one could assume that the same would happen as a result of the new right.

The blighting effect would go a little further. There is the question of people's confidence in investing in land that can be bought at any time.

George Lyon: That is the position at the moment, is it not?

Andrew Hamilton: Yes, but it affects only certain areas of land, such as the croft ground and the common grazings, if apportioned. It does not necessarily affect mineral rights and so on.

George Lyon: You said that investors who were interested in buying a piece of land might be put off by the existence of the pre-emptive right to buy or the crofting right to buy. You compared the situations in Scotland, England and Wales. What other comparisons could be made between the legislation that we are discussing and the restrictions that exist in other European countries? Would investors be more inclined to invest in other European countries or are their land laws even more restrictive than they are here?

Andrew Hamilton: I have not made a study of the land laws of other European countries. I understand that there is a whole host of land laws, many of which restrict who can purchase land. I believe that European Union rules will bring those laws into line within the next four or five years. Having considered the situation in Finland, I am aware of areas where land can be owned only by those who are born and brought up in the area. That restriction, although fiercely guarded, will have to go. Such restrictive land laws are being addressed under EU law.

Roddy Jackson (Royal Institution of Chartered Surveyors in Scotland): There is a fear that any restrictions that are placed on the land market will have an impact on investment. For example, if a hotel owner was considering expanding their business, a registration affecting the land might affect their perception of whether expansion was advantageous. In reality, that may not affect their investment in the future, but it could create an adverse perception, which, in turn, could discourage investment. That is the concern about the community right to buy.

The Convener: What are the main interests of your members in relation to crofting and related land?

Andrew Hamilton: Our members are involved in land management throughout Scotland, including the crofting counties. They also act for people who have an interest in land.

The Convener: So your main interest is in representing landowners?

Andrew Hamilton: Not necessarily. Our membership acts for anyone with an interest in land, which ranges from those who own land—including companies, charities and trusts—to tenants and other interested bodies, such as Scottish Natural Heritage. Much of our work is with owner-occupier farmers, for example, rather than landlords or tenants.

The Convener: The Executive's objective in the bill, which is supported by most, if not all members of the committee, is to transfer ownership of land in Scotland, because at the moment so few people own so much of the land. If it was felt that there should be legal mechanisms to spread the ownership of land more evenly, how else could the Government achieve that objective?

Andrew Hamilton: The question whether the ownership of land should be spread wider has not been addressed by the institution because it is not necessarily relevant. Our members work with land; who owns it and how many people own it is no particular concern of ours. The spread of ownership of land is a political point and one on which we would not comment.

The Convener: In that case, what are your objections to the proposed crofting right to buy?

Andrew Hamilton: Our principal objection is that investment and confidence in land is likely to be affected. In our experience, owners of land invest considerably in their land. However, if there is a possibility that that land might be bought from them at any time, that will affect confidence and the amount of money that might be invested in the local economy. Similarly, it will affect the value of the land, which will affect the owner's borrowing power and ability to invest in the land.

The Convener: So your concern is based on the possibility that investment might be affected.

Andrew Hamilton: Until such time as the bill is implemented, one cannot be certain. We are offering you the views of our members who are involved in most land transactions in Scotland. Their view is that it is likely that the value of land will be affected.

The Convener: What is your evidence for saying that?

Andrew Hamilton: As I said in answer to Mr Lyon's question, on the crofting estates, the land value excluding the sporting interests is capped at 15 times the rent, which is already many times

less than it might be if that land were not covered by crofting legislation.

Our members are involved in valuation of land at all points: purchase, sale and loans. When they value land that comes under crofting legislation, they find that it tends to be worth less—that is excluding sporting interests—than land that is unaffected by such legislation.

The Convener: So the entire basis of your members' opinion is that the bill is likely to affect investment in land.

Andrew Hamilton: The bill is likely to have a blighting effect on land management. We have said before that our interests are in the best sustainable use of land. The bill might affect investment; it might cut off a source of investment for land.

Roseanna Cunningham (Perth) (SNP): Can we encapsulate the RICS Scotland's view as being that—objectively speaking on behalf of its members—anything that would not allow its client group to make the absolute maximum profit on an international open market would be objectionable, regardless of the political motivation behind it? Is not that the position that you are stating?

Andrew Hamilton: That is going a little further than we were suggesting. We are considering the current ability to attract investment in land and how the proposed legislation will affect it. We are commenting thereon. In our opinion, the bill will affect the value of land and the ability of people who have an interest in land to invest in it.

Roddy Jackson: It is important to create circumstances that will encourage investment, whether by a community, private landowner or other business. We feel that encouraging, not discouraging, investment is critical.

The Convener: Before I take Duncan Hamilton's question, I will take further points on investment, if there are any.

George Lyon: I have a point of clarification on investment. You stated that we would see a decline in investment. Did you mean that fewer people would be willing to buy and sell land, or did you mean that there would be less investment in the estates by current or new landowners? It seems, from the evidence that I have heard driving around Scotland, that one of our great problems is that the current pattern of land ownership is failing. The evidence is clear for everyone to see. In many areas of Scotland the problem is lack of investment, under the current open-market system.

Are you saying that the bill will put people off bidding to purchase land as opposed to investing in the land that they own at the moment? Those are two separate issues.

Andrew Hamilton: The first question is what the existing landowners will do when they make a decision whether to invest further in that land. As you know, when someone invests in something on a piece of land—be it a building or improvements to salmon rivers, which are included in the bill—the value of that investment does not come back immediately in the capital value. If someone spends £100,000 on a riverbank improvement, that does not mean that the value instantly increases by £100,000. If someone is considering making such an investment decision and there is a risk that the land could be bought from them next week or next month, that will affect the decision.

It seems to us that where owners are making decisions about investing in housing, facilities or tourism-related businesses on a piece of land, if there is a possibility that that land could be bought from them against their wishes, that will affect their ability to invest. I feel, and the institution feels, that that is not necessarily in the interests of the area concerned as it takes away opportunities.

George Lyon: Is that point directed at the right to buy on salmon rivers?

Andrew Hamilton: No, it is directed at the crofting community right to buy in part 3 of the bill. Salmon rivers are a recent example, because they have been included, but I was referring to the rest of the land as well.

The Convener: We will come to the issue of fishing rights later, George.

Mr Duncan Hamilton (Highlands and Islands) (SNP): Some of my questions have been covered, but I want to pick up on the last point about the potential inhibition of investment in land that is owned, on the basis of fear of future risk, as you would see it.

I do not begin to understand this. I take your point that there is no immediate return of investment. If I invest £20,000 in a piece of land, that does not immediately add to its value. It might, however, increase the value of the land by more or less in the longer term. That is the nature of land economics and the risk that people take.

Is it not also true that in the intervening period, the party who has chosen to make the investment derives a degree of utility from it? Why is that not taken into account in your submission?

Andrew Hamilton: It is taken into account. I am saying that it is not taken into account in terms of the valuation.

Mr Duncan Hamilton: Indeed, but presumably the initial cost is partly defrayed by the fact that utility is derived from the land for the duration that the owner has it.

Andrew Hamilton: Yes, although it obviously

depends on the nature of the investment. It is likely that the aim of the investment is to produce utility, as you put it, and that that will derive during the period after the investment has taken place. My point is that the value of the investment will not be directly related to the value of the land if the land is sold the next day. Many investments are more long term than that, and any decision to invest is made on the basis that the utility will derive after a certain time. If the land is bought before the utility is derived, it will affect the investor's confidence.

10:15

Mr Duncan Hamilton: My point arises from the Scottish Landowners Federation's submission, which by way of an example asked why someone would install double-glazing in their house if that would not add value to the house in the shorter term. Although that might be true, it is not necessarily a reason why someone would not invest. They would want the benefit of the investment in the short, medium and longer term. It is not absolutely fair to say that the potential risk of right to buy would inhibit investment.

Andrew Hamilton: I am not sure how you draw such an inference. If not all investment is for short-term gain, short-term benefit or short-term utility—however we choose to describe it—and if some is for longer-term gain, that will not be immediately reflected in the value of the land if it is sold immediately. Am I not making that point clear?

Mr Duncan Hamilton: The point has been made, but I want to return to it later.

An area of confusion that was raised in a briefing yesterday is the difference between the valuation of the land and the price that the land gets. Am I right in saying that, in most cases, the value that you put on land would be exceeded when it was sold?

Andrew Hamilton: Are you talking about an open-market sale?

Mr Duncan Hamilton: Yes.

Andrew Hamilton: No, that is not the case. The RICS has strict rules on carrying out valuations. It depends on why the valuation has been requested. However, in an open-market sale, the valuer is attempting to estimate to the best of his ability the price that a piece of land will fetch when it comes on the open market. That figure is not always exceeded. Sometimes the final price is more and sometimes it is less. The idea behind the valuation is to produce the best estimate of what the land will receive in the open market, if that is the definition of the valuation that has been requested.

Mr Duncan Hamilton: So you refute the evidence that in the vast majority of cases the price received would exceed the valuation.

Andrew Hamilton: I would not have said that it happens in the vast majority of cases. Some of our previous submissions have suggested that a right of pre-emption for communities would be preferable to the right to buy. That would secure the exact market price for the seller, as the land would have to be exposed to the market before the right of pre-emption kicked in. Such a right also takes into account the fact that purchasers often make a bid that is considerably higher than the price that one might have expected to sell the land for. I am sure that members are well aware that that happens in the market. Even in the house market in Edinburgh, people seem to make bids that any valuer would tell you are way higher than one might otherwise expect. By putting in a Government-appointed valuer, one removes from the seller the opportunity of exposing the land on the open market and the chance that such a purchaser might turn up.

The Convener: Have you had much involvement with salmon fishings and titles to fishings and minerals?

Andrew Hamilton: Yes. The institution's members will have been involved in all those aspects.

The Convener: What is the usual procedure for transferring titles to minerals? Do they transfer with the land or not?

Andrew Hamilton: In some cases, they would not transfer. They usually would, but it all depends on the titles. The minerals are often reserved to the feudal superior and not all sales include the sale of the superiority. There are many cases in which the minerals are reserved to the seller. It usually depends on whether a mineral interest is known before the land is sold. Land is often sold and—to use the phrase that I think is usually used—minerals are included so far as they are owned by the seller. That usually indicates that there may have been a reservation of minerals in a previous sale.

The Convener: Yes, but if minerals are not reserved or owned by the feudal superior—a position that will not exist in a year's time anyway—a normal transaction would involve minerals going with the land.

Andrew Hamilton: If you are talking about rural land sales of estates or farms, that is usually the case. However, in many cases minerals are specifically reserved. For example, when sand and gravel reserves are known of, it is quite common for them to be reserved.

Roddy Jackson: Salmon fishing rights can be transferred separately from the land.

The Convener: Is the situation with fishing rights different? Is it normal to transfer fishing rights with land?

Andrew Hamilton: It is much more common for salmon fishing rights to be separate from the land than it is for mineral rights. Salmon fishing rights are a separate hereditament—I believe that that is the term. They can be held separately from the land. Someone can own the right to salmon fishings without owning any land. In some cases, salmon fishings are sold with the land on either side of the river; in some cases, only the bed of the river is sold with the fishings; in some cases, only a strip of the bank is sold with the fishings; and in some cases, no land but only an access right may go with the fishings. The fishings are transferred in a whole host of ways, but it is very common for them to be held separately from the land.

Roddy Jackson: A transfer may include the right to trout fishings but not to salmon fishings, unless they have been specifically included.

Andrew Hamilton: The riparian right of owners refers to the fact that those who own the banks have the right to trout fishing and the like but not to salmon fishing, which is separately identified in law. Salmon—and sea trout—are migratory fish.

The Convener: Do any issues arise about the safety of titles to fishing rights? We have heard evidence that an objection to transferring fishing rights with land is that the title may not always be safe.

Andrew Hamilton: What is a safe title is a legal question. I do not think that I could comment on behalf of the institution.

The Convener: So you have not come across that.

Andrew Hamilton: I am not exactly sure what you mean by "safety". Do you mean that the title may not be valid?

The Convener: Yes. It may belong to someone else.

Andrew Hamilton: Lawyers are always involved in those transactions, so that kind of thing would normally be looked into. However, I have no experience of a bad title being transferred.

Roddy Jackson: In any dispute, the question is of proving who has the best title.

George Lyon: Can you provide the committee with any information on investment in the salmon fishing industry? Do trends in investment and value apply equally across all fisheries? The Highlands and Islands River Association gave evidence to the Rural Development Committee of substantial investment in Highland rivers. Do you support the evidence that was given? The figure quoted was, I think, about £2.5 million.

Andrew Hamilton: I have not read all the association's evidence and I do not know the exact figures. I am aware of a number of areas where there has been significant investment in salmon rivers to improve banks, create pools and provide facilities for those who exercise fishing rights. That has happened in salmon rivers across Scotland. However, there are some rivers where it has not happened.

George Lyon: You also suggest that a salmon fishing will not provide a return that reflects its market value. If that is the case, the crofting right to buy will never be used. A community will not buy an asset that is not economically sustainable.

Andrew Hamilton: We have raised that issue. It is a quirk—or whatever you like to call it—of the market. A value is placed on the open market when salmon fishings are bought and sold. As I think you know, salmon fishings are usually valued on a per-fish basis. The average catch over the previous five or 10 years is calculated and that number is then multiplied by a figure that reflects what has been happening in the market. The cost per fish is set against the income that would be derived from letting the rights to fish. The result represents either a negative return or a low return. That is principally because there are many costs associated with providing fishing facilities, such as costs for ghillies, huts or river improvement. We believe that a community that purchased fishing rights would be taking on something that could cause it future losses.

George Lyon: If that premise is correct, no community is likely to activate the community right to buy and purchase a fishing. If the fishing is ultimately not a sustainable proposition, the community will not make the purchase.

Andrew Hamilton: That might be the case, but we will have to wait and see.

George Lyon: If you are correct, then there are few rivers where the community right to buy will be used. That is what you are saying.

Andrew Hamilton: I question whether there are many communities that will want to exercise that right, because to do so could result in their making a considerable investment for little return. However, I dare say that that will depend on how such purchases are funded. We are talking about the return set against the capital cost of purchase.

If the community's purchase is funded by a community land unit or a fund such as was available to the Gigha islanders, the community might look at the return on the fishings not against the capital value, but simply against the fact of the community's ownership of them. That situation might encourage a community to buy, as an

income could surely be derived from those rivers, albeit that that income might look like a poor return when set against the capital value.

The Convener: I thank the three witnesses for their evidence this morning and their helpful written submission.

Our next witness is from the Lands Tribunal for Scotland. As we have received no written submission, we will hear a five-minute statement from Alistair MacLeary, which will be followed by questions.

Good morning, Alistair. I thank you for coming along. I believe that, as we do not have a submission from you, you will give a short statement. [*Interruption.*] The clerk has just informed me that a written submission is on its way. However, it would be great if you addressed the committee—if you speak for no more than five minutes, that will leave 25 minutes for questioning.

Alistair MacLeary (Lands Tribunal for Scotland): That is fine. I apologise for the late delivery of our written submission. However, I do not think that that—says he apologetically—need particularly concern the committee, as most of the submission is on technical matters, which will be mainly for the solicitors to consider later. We have only a couple of main points to make.

I am a surveyor member of the tribunal. Surveyor members are expected to have experience in and knowledge of surveying and valuation. I have been with the tribunal for 12 years. I was previously the MacRobert professor of land economy at the University of Aberdeen. Prior to that I was in practice. The tribunal consists of people such as me; it is an expert body that also has a judicial function.

I know that the committee wishes me to be brief, but I will be a little pedantic and go through the opening statement of our submission, which outlines the point that we believe is most essential.

The tribunal is a judicial body and, as such, is anxious to ensure that it expresses no views that relate, or appear to relate, to issues of policy. Accordingly, we did not seek to give evidence to the committee. We appear by invitation to give such assistance as possible on parts 2 and 3 of the bill. We are willing to advise on the practical application of the bill. We participated in several discussions with the solicitors who were involved in preparing the bill. We welcomed that discussion. As yet, we have not commented on the bill as introduced, but, as I said, our submission contains small suggestions on technical aspects of the bill.

10:30

Our main concern is about the time limit for the tribunal to make a decision in the event of a reference to the tribunal of a dispute over the value of land. The same holds true for the Scottish Land Court. Forgive me for further explanations, but I should add that the Lands Tribunal for Scotland shares a building with the Scottish Land Court, although administratively they are different bodies. Lord McGhie, who is the president of the Lands Tribunal for Scotland, is also the chairman of the Scottish Land Court. We share experience through that.

Unusually, the bill suggests that the Scottish Land Court should deal with disputes over land. Such issues normally come to the tribunal, but the suggestion in the bill has come about because crofting land is involved—the Scottish Land Court has crofting expertise. I will perhaps deal with that later.

It might help if I give members a brief idea of the on-going work with which the tribunal is involved. One broad category of our work consists of dealing with disputes over the valuation of land, which can involve valuations of land taken by compulsory purchase or of land that is to be assessed for rating or capital taxation. At present, we are dealing with a case on mining subsidence. We deal with disputes on a wide range of issues.

The other broad category of our work involves dealing with rights in land. For example, we receive references under the Housing (Scotland) Act 1987 for tenants who have the right to purchase. There can be difficulties about what people are entitled to purchase, whether there should be conditions on the sale, whether a person is a secure tenant and whether they have the right to buy under the act. Land obligations are another of our on-going responsibilities. Typically, applicants seek to have a land obligation waived or discharged. Those cases range from small to large ones.

I mentioned the membership of the tribunal and I referred to Lord McGhie. We are a small outfit. The one other legal member is John Wright, who is a Queen's counsel. He is a part-time member. Our part-time surveyor member is Roger Durman, who is a recently retired partner of Montague Evans. Our resources are pretty tight. At present our staffing is sufficient for our work load, but I must put up a flag. If the work load increases as a direct consequence of the bill, there will have to be an increase in staffing—in the first instance we will seek to make part-time members full time. That is not a complaint, but, if a lot of work comes in, there will be a staffing problem.

The tribunal is an expert body. It has a judicial function and is treated, particularly by those who appear before it, as a specialised court. We use court procedures, but we try hard to be as informal as possible. The process is one of assessing evidence. However, because the tribunal is expert

and can accept certain propositions, the evidence is often truncated. We are not an investigative body, so we do not demand information from people. We decide on cases in which the evidence is led by both sides.

Like other bodies, we have at the front of our minds the aim to be as impartial and as fair as possible. Our staff go out of their way to help with applications to the tribunal. I assure the committee that, if cases are referred to us, they are dealt with sympathetically. By that I mean that we are flexible about how we pitch cases. It is often in everyone's interest for a case of modest scale—although not necessarily one of lesser importance—to be dealt with locally with minimum cost to the parties involved. Although more complex cases are usually held in Edinburgh, we can sit in a village hall in Lewis or wherever.

The Convener: Could you please wind up?

Alistair MacLeary: Briefly, I will also attempt to answer questions on behalf of the Scottish Land Court. We believe that section 58(7), in the case of the Lands Tribunal for Scotland, and section 89(5), in the case of the Scottish Land Court, do not admit sufficient time for a proper hearing. If I may take 30 seconds on that, we mean that the process of hearing cases takes six weeks to three months. We were flabbergasted to hear that that might have to be done in two weeks. Theoretically, if everybody in the organisation was dedicated to a case for two weeks for all of their working hours, that might be feasible. However, that is not the world that we all expect to inhabit.

If I may, I will describe a case—I am aware that I am taking more than 30 seconds—that involved only seven hectares of agricultural land and took a week to hear. The land had development value and the case involved expert witnesses. The case took place over the Christmas period and it took four months for a lengthy decision to be made. We do not sit around in such cases.

I am not exaggerating when I say that we are very concerned about the two-week period. If we were to address decisions specifically to the parties and to the points at dispute, we could accept a shorter period than normal. With apologies for going on for too long, I will leave it there. Thank you.

The Convener: Thank you. For members' clarification, the time period is two weeks.

Mr Alasdair Morrison (Western Isles) (Lab): I will pick up on the last point that you made, Mr MacLeary. You made a helpful suggestion of a rewording of section 58(7). The bill states that the tribunal should come to a decision within two weeks. Given the constraints under which you work, you consider that time scale to be unreasonable. Is the issue one of time or is it about having a deadline?

Alistair MacLeary: A deadline per se is not the problem; the problem is the time scale. We have to consider the worst-case scenario. Some small cases can be dealt with quickly. However, our experience is that cases involving disputes about valuations—including agricultural land in which a number of elements are involved—can raise many more issues than do cases involving more straightforward urban properties or rights on land. Expert evidence may have to be heard and the site may have to be inspected—the process takes a long time.

As I said, the written decision that we make on a case—let us say on land compensation or a rating case—is a complete, reasoned judgment. That means that those who, in the future, may have an interest in presenting such a case will know the process, what issues and criteria are important and the views of the tribunal. If people know the process, that can reduce litigation in the future. People will be deterred from doing something because they know that it will not succeed. They may therefore come to an agreement, which would be the best of all worlds.

The bill seems to suggest straight arbitration—a proposed value is disputed by another party and we hear the case and deal afresh with questions of value and evidence. In essence, that is arbitration. If there are limited or no issues in law, a case can be quick and dirty, but it will take much longer if a reasoned decision is expected and people are looking for pathways to follow in the future.

Mr Morrison: You have made that clear. The committee will note what you said.

Roseanna Cunningham: From my experience before entering Parliament, I agree that two weeks is probably too short. What is a reasonable time scale? Would two months be reasonable?

Alistair MacLeary: Two months would be entirely acceptable, if it were seen to be necessary. Part of our difficulty is that, as a judicial body, we require people to meet deadlines. If we constantly failed to meet deadlines on decisions, our credibility would be eroded. Two months would be acceptable—painfully acceptable, but acceptable nonetheless.

The Convener: From two weeks to two months is quite a difference.

Alistair MacLeary: It is, but I do not know where the time scale of two weeks came from. Everybody wants a process that is fair, efficient and as short as possible—no one would dissent from that. We would be involved at the end of the process and where the longest delays could lie—in disputes. The easiest way of chopping time may

be at the end of the process. I am not saying that such a decision has been made, but we would fail to meet two weeks in every case—the truth is as blunt as that.

The Convener: The committee notes your point that two weeks is too short and that two months would be better. We will have to consider that.

Mr Duncan Hamilton: If I appealed to the Lands Tribunal and it gave a decision within a time period, what could I do if I disagreed with that decision?

Alistair MacLeary: At present, you would have to accept the decision. Unless the tribunal had misdirected itself in some way or had behaved unreasonably, you would have no redress.

Bill Aitken: On the time factor, how many sitting days a year do you have?

Alistair MacLeary: I would have to ask the clerk about that. We process cases all the time. I will sit tomorrow and on Friday, as well as on Tuesday, Wednesday and Thursday next week. Cases must be written up while other cases are being heard, so things do not neatly compartmentalise. One does not sit for a week and write for two weeks. Was that what you meant?

Bill Aitken: No. There is sympathy in respect of problems that might result from a two-week limit. However, we must know how many sitting days you have had in the past couple of years so that we can give proper consideration to the issue. It might be useful if you wrote to the committee clerk with that information.

Alistair MacLeary: Sure.

The Convener: Are the valuation provisions on community right to buy workable and fair?

Alistair MacLeary: I cannot comment on fairness, because we must be detached from the principles and issues that underlie the bill. I can comment on whether the provisions might be practically workable, but I cannot comment on fairness.

The Convener: It would be helpful if you would say whether the provisions are workable.

Alistair MacLeary: I see no reason why referring disputes to the tribunal as suggested should not work. I say that with the caveat that we consider any appeal to be open and not a judgment on the valuation performed by a valuer who is instructed by the Government. The appeal should not be a test of that, just an adjustment. It should be an appeal de novo on the value. We see no practical difficulties in other matters in which the Lands Tribunal may be involved, such as anti-avoidance procedures. We have no practical concerns, except for that concerning time limits.

10:45

The Convener: I thank Alistair MacLeary for his evidence, which was clear and helpful. The committee will take note of what you said. We could only skirt over your written submission this morning, but we will have a chance to read it later. If we have any outstanding questions, the clerks will contact you. We may contact you about Mr Aitken's question on the number of sittings. An answer to that would be helpful.

The third set of witnesses is from the Scottish land fund, which is managed by the new opportunities fund. We will hear from Stephen Dunmore, who is the chief executive of the new opportunities fund, David Campbell, who is the board member for Scotland and Neil Ritch, who is the programme manager.

Good morning and welcome to the Justice 2 Committee. Thank you for coming. It would be helpful if David Campbell introduced his colleagues.

David Campbell (New Opportunities Fund): I am the Scotland board member at the new opportunities fund, where I have the honour of representing Scotland's interests. I also chair the Scottish land fund. Stephen Dunmore is the chief executive of the new opportunities fund and is based in London. Neil Ritch is the programme manager for the Scottish land fund and is based at our Scotland office in Glasgow. John Watt is the head of the community land unit at Highlands and Islands Enterprise, which we contract to deliver the Scottish land fund, and is the service manager for the Scottish land fund.

The Convener: You have been asked to give a five-minute statement, with which I ask you to proceed. It will help if you stick to five minutes, because we have only 30 minutes for questions.

David Campbell: We will try to do that. I will give a brief background to the new opportunities fund, which will lead into a description of the Scottish land fund.

The new opportunities fund was established as a new lottery distributor by the National Lottery Act 1998. It is a non-departmental public body that is sponsored by the Department for Culture, Media and Sport. The fund distributes lottery money to health, education and environment projects throughout the United Kingdom. It works in partnership with national, regional and local organisations from the public, private and voluntary sectors to fund fairly and efficiently health, education and environment initiatives.

We support projects that improve the quality of life of people throughout the UK, address the needs of those who are most disadvantaged in society, encourage community participation and

complement relevant local and national strategies and programmes.

In our first couple of rounds, the total funding that was available to programmes in Scotland was £170 million. From spring this year, an additional £167 million will be available to Scotland for new initiatives in the areas that I mentioned.

The funding that is available for each initiative is generally divided among the countries of the UK and weighted to reflect the population and level of deprivation in each. Scotland receives 11.5 per cent of the total funding. Those who are aware of the Barnett formula will appreciate that we have done rather well with that figure. Since our first grant announcements in July 1999, we have allocated more than £74 million to Scotland through 500 grant awards.

The fund is working closely with a wide range of partners in Scotland and tailoring its programmes to reflect Scotland's special needs and circumstances. As I have said, we have a Scotland office based in Glasgow.

The Scottish land fund was established by the new opportunities fund in response to policy directions from central Government after consultation with the Scottish Office in April 1999. The Scottish land fund opened for business in February last year. It was established to contribute to sustainable development in rural Scotland by assisting communities to acquire, develop and manage land and land assets. The land fund will make £10 million available to help communities to establish the feasibility of land purchase, complete the purchase and undertake the development and management of local land and land assets. I understand that the committee has a copy of our guidance notes—if members do not have a copy, we will ensure that they get one. I refer members to pages 4 and 5 of the guidance notes, which give an idea of the types of projects that we fund.

The Scottish land fund is designed to complement the forthcoming land reform legislation, but it is independent of the Scottish Executive and it is not intended to pay for the Land Reform (Scotland) Bill. It is important to emphasise that the land fund is not part of the machinery of the bill, because that has not been clear so far. The delivery of the grant programme, the assessment of applications, development work with communities and so on are contracted to Highlands and Islands Enterprise in partnership with Scottish Enterprise. As the committee will know, HIE has considerable experience of community land initiatives. The partnership with Scottish Enterprise ensures that there is Scotland-wide coverage.

Decisions on applications are taken by the Scottish land fund committee, which I chair. I have a group of nine independent people from across Scotland who have an interest in and experience of community land issues. The board of the new opportunities fund has delegated to the committee grant-making authority to the value of £2 million. For grants in excess of £2 million, the committee can make recommendations to the board. The committee meets monthly. We have made 35 grants with a total value of £4,446,411. The policy directions state that the land fund and its funding will run until 2007.

Three types of assistance are available: technical assistance to help communities to investigate the feasibility of projects, legal issues, valuations and so on; acquisition assistance to help communities to acquire land that they propose to manage or develop in a sustainable way; and development assistance to help communities that already own land, have acquired land or have land management agreements to carry out development projects. Communities must have control of projects and they must act to benefit the whole community. Applicant organisations must have open membership. We employ land advisers throughout the Scottish land fund area who work with communities to develop their project ideas.

Flexibility is the key to our work and to our success. Our programmes are flexible. We have assisted large-scale projects, such as the buy-out of Gigha, and small but equally vital projects that involve only a small plot of land or money for development. We have flexibility in terms of speed. The turnaround time for processing applications can be short. We respond quickly when time is of the essence.

Since the launch of the land fund, we have been successful in assisting communities in all parts of rural Scotland. We have made grants to excellent projects in the Western Isles, Aberdeenshire, the Borders and Ayrshire, which reflects the need for such assistance for rural communities throughout Scotland. The land fund has been a success, in particular in the way in which it is structured, and we have advisers covering all regions of Scotland.

George Lyon: First, I pay tribute to Stephen Dunmore and David Campbell for all the help and backing that they gave us with the Gigha buy-out. Without their complete backing and flexibility it would never have happened.

I want to ask a fundamental question. Although Gigha has been the biggest community buy-out of recent times, it swallowed up approximately £4 million of your £10 million fund—although the community will have to repay approximately £1 million. Three Gighas and the fund will be gone. What mechanisms do we have in Scotland to ensure that the land fund is topped up?

David Campbell: I am not sure that there are another two Gighas out there waiting to come on the market. We receive policy directions from central Government and we can now receive policy directions from the Scottish Executive—provided that it has the agreement of the Department for Culture, Media and Sport. It is open to the Executive to say that the Scottish land fund is doing a great job and to make more money available to the fund for new policy directions.

Stephen Dunmore (New Opportunities Fund): If current predictions for the number of lottery tickets that people will buy hold good over the next two or three years, the Government in London and Scottish ministers should be in a position to specify new or amended initiatives for us around 2004. If Scottish ministers wish to specify additional funding for the Scottish land fund, that will be their opportunity.

Bill Aitken: Gigha was clearly one of the largest projects that you are ever likely to fund. Can you give us some examples of smaller projects?

Neil Ritch (New Opportunities Fund): So far, we have funded 35 projects. The scale ranges from a grant of approximately £3.5 million for Gigha to a grant of £480 for technical assistance. That is quite a broad spectrum.

Early in the life of the land fund, we funded a development project up in Fernaig in the Kyle of Lochalsh. The project was to develop smallholdings on, and create access to, a piece of land that the community had recently bought. A development officer was employed to manage the development of the land and to agree on forest management for neighbouring woodland.

We have given technical assistance to a range of projects. In Aberdeenshire, we assisted the Windyhills Wood group to investigate the feasibility of buying a piece of woodland that is a site of special scientific interest. The group needed expert advice on legal aspects, on the risks in allowing public access to the area, and on how it could best manage the site. The group had wondered whether it had the skills required, but it subsequently proceeded with a purchase, which we assisted. The whole process allowed the group to come to an informed decision.

We have assisted in the acquisition of a wide range of types of land—from whole estates such as Gigha to small strategic plots. Such plots may be beside existing community facilities or may be for a multi-use project—as was the case with a recent grant to Iomairt Chille-Chomain in Islay for approximately 20 hectares of land. That project secured access to local sporting facilities and looked into developing croft-type holdings.

Bill Aitken: What kind of conditions do you usually apply for land purchase deals?

Neil Ritch: We apply a range of conditions that vary depending on the project. Are you asking about securities, for example?

Bill Aitken: Yes.

Neil Ritch: We tend to consider things case by case. We consider the size of the purchase and we assess the risks. However, as a rule of thumb, we take out standard security when a grant is for more than £100,000. Otherwise, we look to our standard lottery grant conditions to protect our investment.

Bill Aitken: For how long do those conditions apply?

Neil Ritch: They apply for 80 years.

Bill Aitken: What monitoring do you carry out of projects to which you have given such support?

Neil Ritch: We set a monitoring level that is appropriate to each project. For example, if we have provided a small technical assistance grant, we receive a report and that is that. We require applicants to provide us with annual monitoring returns that contain varying levels of detail, depending on the project. For a fairly straightforward acquisition, in which the deal has been done and things are moving along smoothly, the monitoring may be less active. However, if a project has a higher monitoring rating, we will actively monitor it, by visiting the site and having more regular contact with the project.

Bill Aitken: Let us suppose that you have awarded a project £100,000 to £150,000. Would you ask for audited accounts now and again?

Neil Ritch: Yes. We would ask for audited accounts annually.

11:00

Mr Duncan Hamilton: You said that the next opportunity for another slice of money to be added to the pot will be in 2004. How much money are you talking about?

Stephen Dunmore: That depends on the rate at which people buy lottery tickets. The Department for Culture, Media and Sport has three levels of forecast: high, medium and low. As I said, if the medium forecast holds up, in about 2004, another £160 million to £170 million should be available for the NOF to spend in Scotland. We will require a new set of policy directions to spend that money.

Mr Duncan Hamilton: What proportion did the £10 million represent of the money that was initially available? In other words, what was the equivalent figure to the £160 million that you just mentioned?

Stephen Dunmore: As David Campbell said in his introduction, our first two rounds of initiatives—

which we are rolling out and which include the Scottish land fund—were worth around £170 million in Scotland. We are talking about £10 million out of £170 million.

Mr Duncan Hamilton: Therefore, under the medium forecast for 2004, we should get roughly £10 million again.

Stephen Dunmore: There should be roughly £170 million for a range of health, education and environmental projects across Scotland.

Mr Duncan Hamilton: Would I be right to say that if the money is disbursed according to the same policy objectives, the land fund will get £10 million?

Stephen Dunmore: I cannot predict what priorities ministers may wish to set for spending that money.

Mr Duncan Hamilton: I understand that, but if ministers go down the same route, about £10 million should be expected, realistically.

Stephen Dunmore: If ministers work on that basis.

Mr Duncan Hamilton: I share the concern of other members that the overall amount of money that will be available may not be enough. The bill may not be effective, but if it is effective, are you confident that the overall amount will be enough? If I understand your remit correctly, it covers acquisition, development and management. That is an enormous remit, but there does not seem to me to be a huge amount of money available if the bill is to be effective.

David Campbell: Perhaps I may be of assistance. As I said, members should bear it in mind that the NOF does not exist to fund the Land Reform (Scotland) Bill. The Executive's explanatory notes to the bill contain estimates of the number of buy-outs that are expected—I believe that the estimates are in the financial memorandum. The anticipated number of buy-outs is quite modest. I do not envisage problems in funding those estimates, if they represent the number that will be actually involved, and if the applications meet our criteria. That might be a big if; projects might be eligible for funding but not meet our criteria or priorities. I stress that the estimates were produced not by us but by the Scottish Executive.

Mr Duncan Hamilton: The estimates amount to something less than a rip-roaring success. That is always a danger.

Once the relationship with a community begins with an acquisition, you then move on to development and management. Could you give an example of a project that has been badly managed and from which you have withdrawn funding? Has such a situation arisen?

Neil Ritch: Thankfully, such a situation has not arisen to date. Within the conditions of grant, there is an understanding that the applicant will use the money in line with the project plan that they submitted. We would be unlikely to fund a project plan that said, "We plan to manage this badly." Bad management would ultimately be a breach of the conditions of grant.

We would deal with such situations case by case, as there are different reasons why bad management might happen. For example, there may be capacity issues or issues to do with the skills of the group that is involved in a project. I do not think that we would deal with such situations in a draconian way, as our interest is in achieving project outcomes that impact on sustainable rural development. We would hope to have a close relationship with an applicant who was struggling with a project. I am glad to say that, so far, the opposite has been the case—applicants who have received grant aid have tended to blossom.

The Convener: We will not mention your free commercial for the lottery to the Standards Committee. I thank the witnesses for their helpful evidence and for the pack that they provided, which gives us an insight into what the NOF does.

We have finished the evidence-taking session a little ahead of time. I propose to take a coffee break until 11.20 am. Do members agree?

Members *indicated agreement.*

11:05

Meeting adjourned.

11:24

On resuming—

The Convener: I welcome Dr Jim Hunter to the meeting. Dr Hunter, I know that on 15 January you gave evidence to the Rural Development Committee, but members of the Justice 2 Committee thought that it would be relevant for you also to speak to us. I know that, although you are the chair of Highlands and Islands Enterprise, you will speak to us in a personal capacity. Would you like to say a few words about your background?

Dr Jim Hunter: I thank members for giving me the chance to be here. As the convener said, I chair the board of Highlands and Islands Enterprise, but I also have a long-standing interest in the matters that the committee is considering. For more than 25 years, I have been making the case for land reform in writings and in public. During that time, I have been involved in various land-related issues. In the 1980s, I helped to set

up, and served as the first director of, the Scottish Crofters Union.

For rather sentimental reasons, I have brought with me a copy of the second John McEwen memorial lecture, entitled "Towards a land reform agenda for a Scots parliament". That lecture was delivered in 1995, when it was by no means certain that there would ever be a Scottish Parliament, let alone a land reform agenda. It is encouraging that I am here today to discuss with members of the Scottish Parliament a land reform bill.

I support the general thrust of the Land Reform (Scotland) Bill for a variety of reasons, but primarily because I think that land reform in the Scottish countryside is required for developmental reasons. We hear a great deal about a so-called crisis of the countryside. I do not think that there is such a crisis. I accept that there are severe and serious difficulties in the agricultural sector, but that is not the same as a crisis of the countryside. Even in the Highlands and Islands, which is the most rural part of Scotland, only a vanishingly tiny proportion of the total rural economy is related directly to agriculture.

I welcome very much the sort of rural economy that has emerged in parts of the Highlands and Islands in recent years, most spectacularly in Skye, to which a large number of people have moved to set up homes and businesses in a rural setting. In Skye, the population has grown substantially, the economy has diversified in all sorts of ways and the number of people in employment has risen remarkably. The situation is the result of a range of factors, not least the possibilities that new technologies offer for rural development. Fundamentally, such development is related to the landholding pattern in areas such as Skye. It is much more possible for people to set up homes and businesses in a rural setting in such areas than in areas that are given over to large estates and farms. I would like to think that one of the objectives of the land reform process in which members are now engaged is to make the countryside that I have described a little easier to achieve in other parts of rural Scotland.

On community ownership, I would like to stress something that, although intangible, is fundamental: the boost that is given to communities and the people who live in them when they assume responsibility for their own affairs and destiny. Critics of land reform sometimes say that it is driven by a quasi-Marxist agenda. In my case, that is by no means so. I see land reform and, in particular, community ownership as helping to liberate communities and to end the dependency culture in which they have often been caught up in the past. Community ownership enhances people's self-esteem and self-confidence, making it more likely that rural businesses of all sorts will develop and flourish.

In that connection, I would like to mention two of the headline examples of community ownership in the Highlands: Knoydart and Eigg. In each area, Highlands and Islands Enterprise, as a development agency, has assisted six businesses in the past two or three years. The businesses are not associated directly with the community ownership body, but are owned and operated by individuals who live in those localities. That demonstrates the positive development that can result from community buy-outs and from the bill.

That is all I have to say by way of introduction. I am open to questions.

George Lyon: As you mentioned, one of the key goals of land reform—and my understanding of land reform—is to achieve a wider and more diverse ownership pattern. You have given us some reasons why the bill should deliver that key objective. What impact will that have?

11:30

Dr Hunter: It will have an impact. It will encourage communities to think about taking over ownership of their land and will facilitate their doing so. We must acknowledge that the procedures in the non-crofting sections of the bill—part 2—are complicated. In most instances, there will no opportunity to exercise a right of community purchase until land is put on the market, so it would be wrong to hold out the expectation that the bill will achieve rapid or instantaneous diversification of ownership—it will not.

I regard the bill positively for the reasons that I have mentioned. It is a move in the right direction, but it will not of itself produce radical changes in the ownership structure of Scotland.

George Lyon: What further measures need to be introduced to achieve that goal? We have had evidence from HIE and Highland Council that they would like further measures to be taken. How could we bring about even more radical change?

Dr Hunter: The most obvious such measure is to give tenant farmers the right to purchase their land. That measure has achieved some attention and consideration in recent months and I have supported it for as long as I can remember. It is what land reform has generally meant internationally and it is the sort of land reform that has been made by British Governments—such measures antedated Irish independence.

That point is worth emphasising. In Ireland, the measures taken in the early part of the 20th century, by—as it happens—Conservative Governments, eliminated estates and landlordism

of the type that still survive in Scotland. Incidentally, Conservative Governments have a much better record as land reformers than any other Governments that we have had, although the Conservatives seem rather to have forgotten that of late. Giving tenant farmers the right to buy created hundreds of thousands of owner-occupier farmers in Ireland. Although such things take a long time to come to fruition, I believe that that was fundamental to engendering the developmental ethos that has evolved in much of Ireland in recent times.

Something like that was done—also, as it happens, by Conservative Governments—in the Highlands and Islands in the 1920s. Thereafter, the momentum slowed. I would like such measures to be taken more widely in Scotland.

George Lyon: The thrust of the bill is predicated on the public sector putting up the money. The suggestion that you have just made would, I take it, bring the private sector into funding radical land reform, which would take away some of the criticism that the bill constitutes land nationalisation by the back door.

Dr Hunter: I would expect no public expenditure implications from giving tenant farmers the right to buy. That is possible. I mentioned the Irish precedent. In Ireland, the British Government of the time set up a body called the Irish Land Commission, which acquired, often by compulsion, almost all the land in Ireland and then sold it back, so to speak, to its occupiers on 50-year purchase schemes. The same thing was done, to a limited extent, in Scotland.

In current circumstances, it would be sufficient for the Parliament to create the right of tenant farmers to acquire the land, but leave it to the individuals to raise the necessary cash. It might be necessary to create arbitration mechanisms and so on to ensure that the price is relatively fair. I appreciate that the Parliament will deliberate on that—in a different context—over the next few months. As things stand, I do not think that there is any need for public money to be part of the process.

George Lyon: How many projects exist that have involved community ownership of land? What role has HIE played?

Dr Hunter: The answer is a lot. Since it was established in 1997, our community land unit has handled approaching 60 cases. Many of those cases do not involve great expanses of land—often they involve tiny portions of land. To enable communities to have access to small parcels of land for particular projects can be important in rural settings.

We have been involved in assisting some of the more major, newsworthy cases, which involve much larger areas of land. I mentioned Knoydart and Eigg. The Valtos estate on Lewis is another example. As you well know, the most recent example is Gigha. We have been involved in a fair number of projects involving community ownership of land.

George Lyon: Does the current pattern of land ownership in Scotland frustrate economic development for many communities? Is it, in many cases, leading to the neglect and decay of much of the infrastructure and fabric of large estates?

Dr Hunter: Yes, but it is right that I put on record the fact that I fully recognise the endeavours on a substantial number of privately owned estates in rural Scotland—including the Highlands and Islands—to develop the local economy, to create opportunities and to take new initiatives. Those estates deserve to be encouraged. Equally, in other cases, the situation is closer to what you describe—the system is frustrating local initiative.

Although I appreciate that my point is rather intangible, I stress again that the key factor is not the fact that, in cases X, Y and Z, a big, bad landowner has stopped something specific from happening—although it is possible to find such cases. Much more fundamental is the dependency culture that is engendered by the fact that so much power and responsibility resides in individuals who often live far away and to whom it is difficult for rural communities to get access. That deprives individuals in communities of any real scope for exercising initiative on their own behalf. That is why community ownership demonstrably unleashes entrepreneurial effort that did not exist before. That is the fundamental gain from such transfers.

The Convener: I want to explore your statement about the bill not resulting in huge changes in land ownership. I agree with that. I want to explore how the provisions of the Land Reform (Scotland) Bill might be expanded to create more opportunities.

Members of the committee visited the Stornoway Trust on Monday and Tuesday. We went to the Valtos estate. It would not be speaking out of turn if I said that what impressed us was the extent to which the community benefits and gets out what it puts in. That came across loud and clear.

Are there ways of expanding the range of bodies that can register an interest in land or should registration of interest be restricted to companies limited by guarantee?

Dr Hunter: That is an important technical change that could improve the bill. To be blunt, I think that it is a bit daft to insist that a new entity be created before a rural community can register an interest in land. Many fragile rural communities find it difficult enough to create such entities

anyway.

I accept and strongly endorse the principle that we need a mechanism to ensure that such bodies are representative of community interests and are not simply a vehicle for one or two self-interested individuals. However, it would be much more sensible if community councils and the like could register an interest, instead of obliging communities to set up something that will exist solely for that purpose. It is in the nature of things that, as the land may not come on to the market for a long time, the interest may not be exercised, so the process would have to be repeated every so often. For the most part, bodies such as community councils that exist in statute tend to have a longer life. For that reason, my proposal would make more sense.

The question might be summarised as, "How do we get more Stornoway Trusts?" Part 3 of the bill, which provides for the crofters' right to buy, creates the possibility of establishing a whole set of Stornoway Trusts more or less instantaneously, the moment the bill is passed. Crofters should be encouraged to exercise that right.

To be frank, I have been rather disappointed by the attitude that some of the bodies that represent crofters have adopted. Having discussed such matters with crofters over many years, I fully understand why crofters and crofting communities are often reluctant to assume the responsibilities, but I believe strongly that bodies that exist to promote the long-term interests of crofting should encourage crofting communities to think seriously about the possibilities that could be opened up.

As it happens, when the late Lord Leverhulme left Lewis and Harris in the 1920s, he offered the entire island to the people. His offer was accepted only by the folk in Stornoway parish. That was a tragic mistake for Lewis and Harris. The bill opens up the possibility of putting that right.

The Convener: We will explore that a bit more fully next week, when we report back on our evidence-gathering visit. Will you clarify whether you are saying that you would encourage crofters in a body such as the Stornoway Trust to exercise their right to buy?

Dr Hunter: I am sorry if I did not make myself clear. I certainly would not encourage crofting communities in the Stornoway Trust area to buy out, as it were, the Stornoway Trust. I would encourage other communities in the Western Isles and elsewhere to set up an equivalent of the Stornoway Trust. They will be able to do that by exercising the right that the bill will provide to acquire large areas of croft land. Stornoway Trusts could be set up across almost the whole of the Western Isles, if crofters so wished. I believe that crofters should be encouraged to do that.

Scott Barrie (Dunfermline West) (Lab): I want to follow up the answer that you gave to George Lyon's final question and to inquire further into what you said in your introduction, when you indicated that the fact that Eigg and Knoydart are now community owned led to the establishment of six businesses in each of those areas. How has community ownership helped business development, which was previously prevented, even though there is no direct connection between the two elements?

Dr Hunter: Perhaps this is beginning to sound like a religious revivalist meeting but, as I said, the fundamental point is that the individuals in question just feel different. People have more confidence and a greater sense of security. They can see that they are in charge of the community and its assets.

There are also practical implications. In Eigg, which was a somewhat extreme case, it was difficult for people to acquire the tenancy rights that would enable them to proceed with business ventures by accessing cash or funding. That situation has ceased now that there is community ownership. I fully accept that it is rather difficult to get this point over but, in my view, the difference is more psychological than anything else: the new atmosphere that community ownership ventures create means that people begin to think about doing things that they would not have contemplated doing in the past.

There is also a practical dimension. In certain cases, including that of Eigg, even if one had wanted to go ahead with a venture in the past, the ownership structure would have frustrated it. My colleague John Watt and I gave evidence about that to the Rural Development Committee on behalf of HIE. I would be happy for HIE to supply more concrete details of what has gone on in that regard.

11:45

Mr Morrison: I whole-heartedly agree with Dr Hunter's view that those who represent crofters should actively encourage crofters to take advantage of the provisions of the bill and should prepare communities to make a move the moment the proposals become law.

From your knowledge of the Stornoway area and from your experience of setting up the Scottish Crofters Union, do you consider it reasonable to suggest that the boundaries of the Stornoway Trust should be extended and that communities that make the move should become part of the Stornoway Trust area?

Dr Hunter: Yes, although, ultimately, that is a matter for the communities themselves. In Lewis, it would be a matter for communities that lie outside

the present Stornoway Trust area whether they wished to become part of a greater, geographically expanded Stornoway Trust, or whether to have their own, more localised, set-up, as already exists at Valtos, which is in another part of Lewis. It is a matter for crofters and their communities to sort out themselves and I would not want to be too forceful on one or other side of the argument.

There are certain financing advantages—in terms of getting the best possible deal—in having sizeable units. In other words, if every crofting township becomes a trust in its own right, that is not the ideal outcome, because it creates fragmentation and makes it difficult to raise the necessary finance to make the resulting operation viable and to deliver the best possible outcomes.

I would certainly encourage communities to consider larger-scale, rather than smaller-scale, entities. Whether that would involve, say, a single entity for the whole of Lewis or even for the whole of the Western Isles, I do not know—that is for people there to think about over the next few months.

The fundamental point, which you picked up from a comment that I made earlier, is that crofters ought to be thinking about the matter and taking the opportunity seriously. It may be easy for crofters to think, correctly, that they have unrivalled security of tenure and so on under the existing dispensation, but all sorts of things are happening or are about to happen in places such as the Western Isles with regard to renewable energy, for example, which make it hugely to the advantage of communities not just to have secure tenancy over crofting land, but to own the land concerned outright. That is fundamental in relation to accessing revenue streams from renewable energy.

Mr Morrison: I think that my membership of the Scottish Crofting Foundation, whose written submission I wish to cite, has already been recorded as an interest.

On the vote required for a community to proceed with making a purchase, the foundation states

"that this simple majority be increased to 75%".

What is your view on that proposal?

Dr Hunter: I honestly think that it is nuts. I cannot understand where the foundation is coming from.

I will explain why I say that. On the face of it, it seems perfectly sensible to argue that a community ownership initiative must command a substantial degree of support; otherwise, it will not work. I accept that, but it is important that cognisance is taken of the nature of social change. We saw that most recently in Gigha. For the most part, when the possibility of change begins to open up, the people who are most eager to embrace it tend to be a small minority of active younger people. If they are going to prevail, they must convince at least a reasonable number of their neighbours and colleagues that it is a good thing to do. That happened in Gigha.

In many crofting communities, because of past depopulation, the community is dominated—if I can put it like that—by inactive elderly people. I do not want to cause offence but, on the whole, such groups have little interest in embarking on a process of radical change that clearly involves risk. If we are serious about encouraging community ownership, of course we must be certain that it will have a fighting chance of being viable, but we do not want to erect unnecessary barriers in its way. If a 75 per cent ruling were put in the way of such transfers, a lot that would otherwise happen would not happen. I would be surprised if many transfers happened with such a restriction. For that reason, I see it as crazy. I do not know where the suggestion has come from.

Mr Duncan Hamilton: I will ask about the criteria for registration. One of them, as you will know, is that ministers have to be convinced that the

"acquisition by the community body will substantially support the sustainable development of that community".

What is your understanding of the process by which ministers will come to a view on whether that is the case?

Dr Hunter: The honest answer is that I have no detailed understanding of that, so I do not want to comment on it.

Mr Duncan Hamilton: Given that level of uncertainty, how would you see HIE's role in the process, given that it is the principal agency charged with development?

Dr Hunter: We would not, as it were, have jurisdiction. We would not say whether a transfer would go ahead. Ministers would do that. If, as is likely, communities in our area that are contemplating purchase came to us to get assistance from our community land unit, we would want to be convinced—this touches on issues that I spoke about in response to Mr Morrison's question—that the community was serious and reasonably well organised. Even more fundamentally—because we would be expected to do so and we would want to do it anyway—we would want to be convinced that, as far as we could judge, the result of such a transition would be beneficial for development. By that I mean that new employment and development opportunities might be created. I have made that point to representatives of some of the salmon fishing interests who have lobbied me of late. If there were the prospect of a crofting community seeking

to take over an existing salmon river enterprise, we would not be interested in assisting such a takeover if its instant effect would be to turn 10 people out of their jobs.

Mr Duncan Hamilton: I understand what HIE, as an economic development agency, would need to be convinced of. My question is what impact, if any, that would have on ministers. Are you saying that, if a project was in your area, your expectation is that your advice would be part of the process?

Dr Hunter: It is wrong for me to say what my expectation is of ministers, who often move in mysterious ways on which I would not dare comment. However, I hope that if ministers were approached and had to take a decision on some hypothetical purchase in the Highlands and Islands, they would consult Highlands and Islands Enterprise, among other bodies. Any advice that we gave to ministers would be on the basis that I have just sketched out.

Mr Duncan Hamilton: People do not necessarily understand the process by which ministers come to such decisions. It might be that Highlands and Islands Enterprise would have a role to play; I hope that it would. It might be the case that Government civil servants would decide to take such advice.

If it were decided that it would be wrong to proceed with a purchase, should the economic analysis of whether that purchase would support the economic sustainability of the community be publicly available?

Dr Hunter: I hope that I am not simply running for cover, but you are—on the whole—asking questions that you must ultimately address to ministers rather than to me. Speaking personally, I agree in principle that economic analyses should be publicly available. I would be more than happy for at least the bones of our advice to ministers in such instances to be publicly available. My only reservation is that if, on the back of that, private business were being carried out that would not otherwise be carried out, we would not want to be party to unveiling in public the financial details of a private individual's financial position, for example. With that proviso, I would have no personal objection to the generality of our advice—certainly as to whether it was for or against a purchase—becoming public.

Mr Duncan Hamilton: You are obviously personally committed to land reform, and probably to more radical land reform than is provided for in the bill. You have stated today that you think that, in and of themselves, the changes in the community ownership provisions would unleash an entrepreneurial spirit. I cannot think of an example of an application that would not. Unleashing entrepreneurial spirit will, inevitably, support substantially the sustainable development of communities. Although you have a personal commitment to community ownership, are you confident that if—heaven forfend—you were run over by a bus tomorrow, systems would be in place that would maintain the fair wind that you provide?

Dr Hunter: One cannot legislate—perhaps that is the wrong word to use—for all possible contingencies. I am not personally all that crucial to the process. Those of us who have advocated land reform have sometimes felt that we were very much lone voices crying in the wilderness, but matters have gone way beyond that. You are, in effect, inviting me to say that the bill is not radical enough. You need only examine what I have written and said over many years to be aware that I would like the land reform process to go much further than the bill proposes. I would be crazy to deny that, but I want to make it clear that I welcome the bill strongly. It is the first measure that has been seriously contemplated since the 1920s that will allow progress on land reform.

The Parliament and the Executive are to be congratulated on finally having grappled with an issue that has been ignored by their predecessors elsewhere for a long time. Parliament and the Executive have grappled with the matter constructively. The bill is to be welcomed—it will move the process forward and will have beneficial consequences of the sort that I outlined. Although I would like the process to continue—I am sure that it will—I do not want to be portrayed as being in any way negative about the bill, because I am not.

Bill Aitken: There have been well-documented instances in which landowners and land managers have manifestly failed to invest in land. There have been less well-publicised instances in which they have invested in their land. How do you respond to the argument that uncertainty about retention of ownership of land might inhibit a land manager from investing in it?

12:00

Dr Hunter: It is clearly the case—I do not beat about the bush here—that, if the owners of existing assets think that they might lose jurisdiction over those assets as a result of the bill or any other legislation, that will inhibit their investment. I fully appreciate that and I acknowledge the points that are made in that regard by, for example, the owners of salmon rivers.

However, having acknowledged that, I ask members to look at the wider picture. It is in the nature of land reform that it enhances the rights and opportunities of one set of people and

interests at the expense of another. Anyone who thinks that they can achieve worthwhile land reform by universal consensus is not living in the real world. If ownership of and responsibility for land is to be transferred from the people who currently own it to another set of people, the people who currently own it will be disadvantaged. Experience throughout the world illustrates that. It is for you, as politicians, to judge whether the balance of advantage is with the reform process. I believe strongly that it is. Over the piece, the rural communities of Scotland will be much advantaged by engaging in that process, rather than by sticking with the status quo. If the cost of that is a diminution of investment by certain interests that invest currently, that is a cost that those of us who favour the transition must bear.

On the other side, I argue—as I have argued throughout—that this sort of process will enhance greatly the overall outcome in rural development. Conservative Governments have a superb record of transferring the ownership of land in these islands—much better than that of any other political party. I ask members seriously to go to Ireland, either north or south of the present border. I would be astonished if you found any owner-occupying farmer, from one end of Ireland to the other, who thinks that the rural community in Ireland today would be better placed if the land were still owned as it was before the reforms took place.

The Convener: There was a positive response to that suggestion.

We have heard about the ways in which communities could be defined. On the one hand, we have heard that they should be defined by postcode; on the other hand, we have heard that that would be too difficult and that communities should define themselves. What is your view?

Dr Hunter: I tend to favour the self-definition end of the spectrum. The issue of definition is a serious flaw in the bill, which I hope you will be able to iron out

The Convener: Who would adjudicate if there were a dispute over definition?

Dr Hunter: I acknowledge that that is a practical difficulty. For reasons that ultimately concern law and administration, a line must be drawn on the map somewhere by somebody. If the choice is between polling districts and postcode districts, postcode districts win handsomely in my view. I would certainly go for that definition before the other one. I know that the committee has received detailed evidence on the subject—I shall not repeat it. However, the polling district definition would, in effect, give a large number of people who have no real interest in the land the right to veto a purchase, which is simply wrong.

The Convener: That is easy to see. Nonetheless, if a community was allowed to define itself but there was a dispute over that definition, that is the kind of mechanism that we would have to consider. It is helpful to have your view.

Let us move on to property rights. You are right to point out the fact that what we are dealing with, in dealing with land reform, is the transfer of property rights. We are changing the nature of property rights in Scotland. We are not talking just about land, but about mineral rights and other rights, such as the right to salmon fishings, which has been a controversial subject. The view of the Crofters Commission is that the land that is transferred should include

"mineral rights, unleased sporting rights and inland salmon fishings".

Do you think that there are any controversial issues about salmon fishings?

Dr Hunter: It is clear that there are controversial issues about salmon fishings. I know that the distinctions are artificial, but I stress that I am giving my personal view here. My view is that the more rights that are transferred the better—

The Convener: I am sorry to interrupt you, Jim. I thought that you would say that. We heard from the Royal Institution of Chartered Surveyors in Scotland that the normal situation would be that unless mineral rights were reserved, they would transfer in the conveyance of land. Fishing rights, however, are slightly different. There could be a mixed bag of factors determining who owns the title to fishing rights. How can we get round that? Highland Council has suggested that, in cases in which it might put evidence to oppose the transfer of fishing rights with land, there might be practical difficulties, because the title to the fishing right might be unsafe.

Dr Hunter: There are many practical problems. I hesitate to comment on the technical detail, because I am not a master of it.

I have met representatives of the Crofting Counties Fishing Rights Group. As a result of that, and of the issue having assumed the profile that it has assumed in recent weeks, we at Highlands and Islands Enterprise have undertaken and are progressing with research that is as substantial as time allows. We are trying to get to the bottom of some of the facts about salmon rivers and fishing rights. We have offered the fishing rights group the opportunity to be involved in the process and we will consult it as we progress.

I acknowledge that the CCFRG has genuine concerns, which I understand. I am willing to share the results of the research; we should have a draft report by the end of March. We would like then to be in a position in which we understand more fully

both the current position and—more to the point—how assets could conceivably be kept going and expanded under the new ownership arrangements that the bill might make possible.

I hesitate to get into the legal detail of the current salmon fishings situation, because I am not an authority on it.

The Convener: I will allow one last question, if any matter is outstanding.

George Lyon: I have a couple of points to make. I reassure Jim Hunter that he is no longer a lone voice in the wilderness; he is in the main stream. Those who seek to defend the status quo are now the lone voices in the wilderness.

You have encapsulated for us today the stark choices about the future we want for rural Scotland. The bill is absolutely central to enabling and empowering many of our rural communities. On that point, it seems to me—Andy Wightman seemed to agree in his evidence—that very few triggers will allow the community to exercise the right to buy.

We are basically offering the prospect of being able to register an interest in the land. However, it is still at landowners' discretion when land is put on the market. There are many exemptions, such as inheritance, or estates constructing trusts to avoid inheritance tax. That is true throughout much of Scotland.

The Convener: I allowed the question on the basis that you would be brief, George.

George Lyon: Does Jim Hunter agree that we need more triggers in the community right to buy to ensure that communities exercise that right within the next 100 years.

Dr Hunter: Briefly, yes. If more triggers could be inserted into the process, that would enhance the possibility of the bill leading to greater diversity of ownership. It is worth emphasising that that is fundamental. As I am sure Andy Wightman made clear—I stress that I am speaking as an individual—the bill is ultimately about social justice.

Rural Scotland has one of the most inequitable and concentrated systems of land ownership on earth and we have not benefited from that. Rural enterprise and activity would be fostered by a much more diverse structure of ownership, such as is common in most other parts of the European Union. I encourage the committee to investigate whether it is possible, during the passage of the bill, to make a greater impact on land ownership in the promotion of social justice.

The Convener: Thank you for coming to the committee and for giving such useful evidence.

Our fifth set of witnesses today come from the Crofters Commission. I welcome Iain MacAskill and Shane Rankin, who are, respectively, chairman and chief executive of the Crofters Commission. Thank you for coming to give evidence. I am sorry that you have had to wait for so long.

We will go straight to questions, but if there is something that we have not covered I will allow you to make summary points at the end.

Your submission says:

> "The eligible land should include mineral rights, unleased sporting rights and inland salmon fishings".

We have established that mineral rights are somewhat more straightforward than other land rights. Do you agree?

Iain MacAskill (Crofters Commission): Yes.

The Convener: What difficulties do you see in including automatically unleased sporting rights?

Iain MacAskill: The only difficulty would be cost. Any significant legal difficulties would already apply to current owners—the bill would not introduce something new simply because the rights were being transferred to communities. It would not create a new difficulty if such rights were included in transfers because that difficulty exists already. Unleased sporting rights are transferred from time to time, so we assume that the legal system has been overcoming such difficulties. I am not a lawyer, so I do not know how those difficulties are overcome, but it is obvious that they are being tackled.

The Convener: Are you suggesting that on the transfer of any land there would be an automatic assumption that mineral rights and any unleased sporting rights would also transfer?

Iain MacAskill: That would have to be stated specifically in the sale. I am talking specifically about crofting lands and I do not see any problem in defining what is being transferred. If land is being transferred, one is transferring the proper title—there is a legal system to ensure that that happens.

The Convener: The point is that landowners can reserve such rights—they are called "alienable rights", which can be separated from land interests. That is probably more notable in relation to fishing rights, which are more frequently alienated from the land. I want to establish whether you are saying that whatever form transfer takes, it should include the assumption that those rights are also transferred. I understand why you would want to include that assumption, because the point of community interest in land is partly so that the community can use the assets of the land. It makes sense to transfer with the land any other interests that would help to achieve

sustainable development.

Would there be more difficulties in transferring inland salmon fishings?

Iain MacAskill: Yes. The technicalities of transfer can be overcome, but the difficulties might relate to cost. However, the same principle should apply. Many people have complained that communities might cherry-pick the land that they want to buy. However, the reverse of that is that landowners will also try to cherry-pick. We must have an open situation in which the right to buy is possible, realistic and sustainable. Otherwise, it is not worth doing, because there will be no proper basis from which to start.

The Convener: Will many crofters take up the right to buy the land on which their crofts are?

Iain MacAskill: Through time, crofters will take up that right, but it will depend on the nature of the community and the nature of the land. Communities change over time.

There will be three stages in the purchasing process. First, we must ask why the community wants to buy, what it will do with the land as a resource, what benefit purchase will be to the community and whether that benefit meets the requirements of the bill.

Secondly, having decided on those initial aspects, the community will go through the process of buying. The final stage, which is probably the most important, will be when the community goes through the process of deciding how to manage the land.

Each community will go through those processes in different time scales; some communities will go through the processes more quickly than others will. Communities will learn from one another as time goes on. The system will bed down so that, in most cases, the bill's provisions will probably not be exercised, because the purchase of land will happen between willing partners.

12:15

Mr Morrison: I had the benefit of hearing Mr MacAskill's excellent oral submission to the Rural Development Committee some time ago. I want to touch on the point that I raised with Dr Hunter, on when a community votes on whether to purchase land. Should the community accept a simple majority? If not, do you subscribe to the view of the Scottish Crofting Foundation that 75 per cent of the community should vote in favour of purchase?

Iain MacAskill: I am more inclined towards the view that a simple majority should decide. Each case would have to be judged, but 75 per cent is a big majority. Most MSPs, or their parties, did not achieve anything like that. A simple majority is fine, provided that it is large enough to allow for sustainable development. For example, if the majority is too small, the purchase will not work, because it requires a certain number of people in the community to be in favour of it. However, a majority of 75 per cent is too high.

Mr Morrison: It was ironic when we met previously at the Rural Development Committee that the Crofters Commission was the radical voice that was articulating crofters' views.

As the bill progresses sensibly and communities move through time—as you said—toward crofters purchasing their crofts, how do you envisage the Crofters Commission developing in the light of that more diverse land ownership?

Iain MacAskill: The Crofters Commission must change, as must all the bodies that are involved in rural development within crofting communities—which is what I know best. If communities are encouraged to take more responsibility for using their assets, you cannot say also that they must run to Inverness or Edinburgh for consent for this, that or the next thing. We must change our organisations to enable them to be successful.

At the moment, for example, the Crofters Commission is running a pilot project with three communities. We are trying to get to the stage at which the communities take decisions that we currently take. I hope that a new act will be introduced that will allow communities to take many decisions.

Mr Morrison: What sort of decisions do you mean?

Iain MacAskill: I mean, for example, who gets a croft and how crofts are apportioned. It is much more sensible to decide that with the people who will be most affected and who know the area best. That approach could also be taken in other matters. As we structure our aid schemes, all of which are centralised, we should start gearing the money that goes in—I am not referring to extra money—in a way that is appropriate to each community. We should not standardise schemes so that they become complex to implement.

Even people who have only a couple of cows must fill in something that is the size of the "Encyclopaedia Britannica" before they get through the system. The system should be simplified and made appropriate to communities. It should be geared to match the different needs of communities, which are not all the same. There must be change throughout Government agencies and the Executive. I agree with Jim Hunter that encouraging people to take more control of their lives makes communities more effective and allows them to achieve things that would not

otherwise be achieved. If we are to give people responsibility, we must accept that we will have to stand aside and not be too paternalistic.

The Convener: On Monday and Tuesday, members of the committee visited the Stornoway Trust, which we found interesting and encouraging as a model for involving the community in moving towards sustainable development. The Stornoway Trust told us that it advises its members not to exercise the right to buy because the trust can look after their wider interests. Should that model be adopted more widely?

Iain MacAskill: Personally, I prefer the Stornoway Trust's model in which the community is the owner and not many individuals exercise the right to buy. If that model were followed elsewhere, there would be less incentive in the most rural places for individuals to buy out their tenancies. Most people who have done so have not benefited and only about 1 per cent of crofters have done so in Lewis. Individuals are more likely to buy land in the Stornoway Trust area when they are looking for housing land near Stornoway.

Bill Aitken: I am intrigued by the figures in your submission, which show that only 1 per cent of crofters in Lewis have availed themselves of the right to buy under the Crofting Reform (Scotland) Act 1976, whereas the figure is about 42 per cent in the Inverness and Caithness areas. I understand the development potential of a croft on the outskirts of Inverness, but I am rather puzzled as to why the figure is so high for Caithness. What is the reason for that?

Iain MacAskill: I am not entirely sure. The figure probably reflects the fact that people feel that they are a community. In some cases in which we are involved, the Scottish Land Court tries to define a crofting community. It takes into account whether people work together and an area's history and culture. On Lewis, where 1 per cent of crofters have bought their land, there is seen to be a crofting community. Crofts on Lewis are, by and large, pretty small. In Caithness, larger chunks of land are involved and there is a different sort of development culture. I assume that that is the reason why more land is bought in Caithness.

Shane Rankin (Crofters Commission): Housing and employment growth in Caithness, which includes Thurso, Wick and Scrabster, is relatively dynamic in Highland terms. Dounreay power station is partly responsible for that. Along with the quality of the land, the size of the crofts and the agricultural potential of some of the units, that dynamic growth is the reason why there is more interest in buying land.

Bill Aitken: I want to explore that point a little further. Do the interests of crofting communities always coincide with the interests of the wider community?

Shane Rankin: That depends on how the wider community is defined. The two interests often coincide. That is certainly largely the case in the Western Isles and Shetland, although I cannot argue that for people who live near Inverness.

Bill Aitken: Can you conceive of situations in which there might be localised conflict?

Iain MacAskill: Yes. We do not need the Land Reform (Scotland) Bill to generate conflict in many communities, human nature being what it is. Conflicts are there to be resolved.

Shane Rankin: Not all crofters necessarily agree about what is most desirable for their community. The matter is not only about crofters and non-crofters in a community. The overriding factor in most crofting communities is the interest in the community. There might not be agreement about the best way forward, but there is an interest in establishing confidence and bringing energy to the community.

Bill Aitken: Mr MacAskill, in answer to Mr Morrison, you mentioned the percentage required to trigger a purchase scheme. In some situations, crofters might not totally agree with one another, so if a straightforward figure of 51 per cent were necessary for the scheme to go ahead, the other 49 per cent could feel a degree of alienation, which might jeopardise the project. Do you agree with that?

Iain MacAskill: I accept that. Obviously, fairly stiff hurdles must be negotiated before the end product is arrived at and that factor would be taken into account when the situation was appraised. The deciding factor would be the strength of the minority's objection. Is the objection a result of apathy or lack of knowledge? If a large group is firmly opposed to the proposal, I would accept that there might be a problem, but a block of 51 per cent in favour does not mean that there is a group of 49 per cent that is opposed.

Bill Aitken: I can see where you are coming from, but you must appreciate that, when we are framing legislation, it is difficult to provide for what we want to happen and to consider each case on its merits. Given that that is the case, we have to consider whether the 51 per cent figure is adequate.

Iain MacAskill: However, the process demands that each case be dealt with on its own merits. There is no totally standard community or case. That means that, for the minister, the communities and all concerned, there must be a degree of discretion. You cannot assume that a simple formula will be adequate in all situations. That is one of the great problems with many of the schemes that exist and the legislation that is

produced. If there is no room for discretion, we will end up with a flawed act that is difficult to administer and does not fulfil the purpose for which it was developed.

Mr Duncan Hamilton: Your paper helpfully says that 90 per cent of townships have 10 or fewer crofts. Could you provide the committee with details of the breakdown of that 90 per cent? How many townships have seven crofts? How many have six?

Shane Rankin: We will try to find out that information for you.

Mr Duncan Hamilton: When do you think that a community would be too small to be in a position to use the provisions in the bill?

Iain MacAskill: I do not know. It would depend on what the community was trying to do. There must be a certain scale before the operation of the process is guaranteed to be effective. On the other hand, if the community is small, the process should, in theory, be simpler. The only question would be whether the community is sustainable. In other words, will it continue to have enough people, or is the population fading? I see no reason why the operation should not be small as long as it is sustainable. If it involved only a small group of people over 80, however, it would be difficult to sustain.

Again, I would not try to impose a definition. I would prefer the operation to involve more than 10 people, but small operations with simple community ownership proposals should be given the option of proceeding.

Shane Rankin: Over the past three or four years, a European-funded scheme—the crofting township development scheme—has energised crofting communities and encouraged development proposals. Around 120 or 130 communities have developed projects, some of which are substantial. Some of the communities involved are townships and some are groups of townships. That illustrates the willingness of communities of all sizes to experiment and to present ideas that could provide part of the basis for the development of proposals for land reform.

Iain MacAskill: One of the interesting things about our pilots is that we started by encouraging a specific community. As the people in the community sat down together, they did two things. First, they expanded into other communities, which was something that they had talked about for years—the pilot was a trigger. Secondly, they encouraged people who were not crofters, but who lived in the community, to come into the exercise with them. The crofting community right to buy will encourage people to work together. Very small communities will come together—the proposals will embrace everyone in those crofting communities.

The Convener: In your submission, you state that the difficulty with the bill lies in the underlying policy assumptions and aims. Will you say briefly what those policy assumptions should be?

12:30

Iain MacAskill: We are trying to communicate the point that, although the bill is a crucial first step and it will not be possible to get anywhere unless that first step is taken, we have to recognise that that is all that it is. We have to recognise that the ways in which communities are given assistance need to change. A simplified set of procedures is required that is geared to communities' individual requirements. We have to be flexible and we need to change organisational thinking, not only at the Crofters Commission.

The Convener: You made specific mention of policy assumptions. Would you like to put on the record what you meant by that?

Iain MacAskill: We tend to go down tramlines when we give out assistance. Policies start in Europe and work their way down. I would like the range of assistance, be it financial or otherwise, to be joined up—to use one of the Parliament's favourite expressions. Assistance might touch on the environment, on agriculture or on development. It should come by a simple route—through one door—to the communities. If people live remotely and they have to see six people for assistance with a project, that is difficult for them.

The Convener: Does that mean that you are looking for simplification?

Iain MacAskill: Yes.

The Convener: You are also looking for recognition that communities, however small, are diverse and different, depending on geographic location.

Iain MacAskill: Indeed.

The Convener: You do not want the Executive to make broadbrush policy assumptions. Do you want it to take a more refined approach?

Iain MacAskill: I would prefer the Executive to write into its policies the flexibility to recognise that people in Scotland are culturally different and that they have different requirements, depending on their different situations.

The Convener: To be fair, that is the point of the bill. That is one of the reasons why the Executive is addressing the question of rural communities. I thank the witnesses for their evidence.

Last, but not least, we come to our witness from the Scottish Crofting Foundation. I welcome Ian

Rideout, the chief executive, who has given evidence to the Rural Development Committee. I suggest that we go straight to questions.

Ian Rideout (Scottish Crofting Foundation): Certainly.

Mr Morrison: I had the benefit of hearing your evidence at the Rural Development Committee and, as I intimated earlier, I am a member of your foundation—I joined the Scottish Crofters Union some 13 years ago. I want to ask about the percentage required to trigger a community purchase. I took part in the postal ballot on the change from the Scottish Crofters Union to the Scottish Crofting Foundation. Will you remind me whether the majority used was a simple majority or whether a majority of 75 per cent was required?

Ian Rideout: In fact, 98 per cent of those who voted voted in favour.

Mr Morrison: Yes, but which principle did you adopt?

Ian Rideout: We were looking at a sizeable majority.

Mr Morrison: Was it a 51 per cent majority?

Ian Rideout: The norm would have been 75 per cent, but the feeling was that the majority would be greater than that, as it was.

Mr Morrison: Had the majority been 51 per cent, would you have proceeded with the change?

Ian Rideout: We would have had to question that. I can explain why we chose 75 per cent. The reasons are clear and they have come from the membership. I am here to represent the interests of crofters and crofting throughout the Highlands and Islands. We are talking about the interests of more than 3,000 members.

Mr Morrison: To return to the question of the ballot, which percentage did you use?

Ian Rideout: We used the 98 per cent, because that was the mandate that was given.

Mr Morrison: Fair enough. I do not know whether you heard the earlier evidence, but Dr Jim Hunter described the 75 per cent criterion as nuts and an unnecessary barrier, and Mr MacAskill of the Crofters Commission said that the level was far too high. Given the views that have been articulated by people of the calibre and experience of Dr Hunter and Mr MacAskill, would the Scottish Crofting Foundation happily revisit the issue?

Ian Rideout: I say again that our position comes from the membership; I am here to represent the interests of more than 3,000 members. If I may be given leave to explain why the majority should be increased to 75 per cent, I would be pleased to do so.

Mr Morrison: Please do.

Ian Rideout: The membership views the issue as a crofting community right to buy, and as such believes that any action should be led by crofters. The 75 per cent threshold gives a better mandate, with more crofters voting in favour. Moreover, communities consider it to be less divisive, because potentially only 25 per cent would have voted against, rather than 49 per cent. Crofting townships and communities are fragile enough without causing unnecessary division. It is felt that the requirement for a greater mandate would create less division. Another reason for the 75 per cent threshold is that the commitment to the process would be greater if the majority were larger. If 75 per cent vote in favour, the commitment to making the process work will be greater.

We need reassurance that the voice of crofters will be heard and will be paramount. Part 3 of the bill concerns the crofting community right to buy. In other words, the right to buy must be led and directed by crofters. It is also a question of crofters determining who their landlord should be. A crofting community that comes together for the purpose of exercising the right to buy could be the new landlord. In the opinion of the people on the ground, that requires a substantial vote.

Another issue—it is perhaps less tangible, but it is relevant—is that crofters perceive a threat from the wider geographical community. In some cases, particularly in relation to larger townships, that threat may be real. In other words, crofters fear that activists in the wider community may take control of the community right to buy. In the smaller townships, that is probably not the case, but there is a perceived threat from people who are not active crofters.

Those are the main reasons why our members have decided that requiring a 75 per cent majority, rather than a simple majority, would be better for them and would give them a better mandate. I reiterate that I am here to represent the interests of the people on the ground.

The Convener: I wish to examine the issue of the 51 per cent threshold in ballots. I have heard evidence that, in the past, crofters have not exercised their rights and have not been able to pull together as a result. If the majority required is 51 per cent, people who have thought through the issue will be more likely to have an effect. Should they have a greater impact than those who are not sure about the issue?

Ian Rideout: I do not think so. Someone has suggested that there is a lack of encouragement from the SCF. However, that assertion was made on the basis of a press article. Since the bill was published, mechanisms have been introduced to

encourage people and to help them understand what it will do and the opportunities that it will offer to crofting communities. We are actively addressing the need to provide advisory and support mechanisms. However, the issue is ultimately about education. We have to show people the opportunities that might exist if the bill is passed.

The Convener: So you think that the bill has benefits.

Ian Rideout: Yes. However, something has to be more than a principle if it is going to be a benefit. It is only correct for crofting communities to have the right to buy; they are the rightful and appropriate owners and custodians of the land. The concept that people belong to the land is valuable and should not be overlooked.

The Convener: Will you briefly explain why you want to increase the 51 per cent threshold to 75 per cent?

Ian Rideout: I have already highlighted the reasons why the membership has asked us to push that figure. Although the mandate is an important issue, the real or perceived threat from the wider community is more important still.

The Convener: Why does 75 per cent represent a mandate, whereas 51 per cent does not? Is it not a question of degree?

Ian Rideout: The issue is not that 51 per cent is not a mandate, but that 75 per cent is a greater mandate. It allows for more crofters to vote in favour of starting a particular process.

As we say in our submission, we feel that there is a flaw in the bill. Whatever the majority in the ballot—whether it is 51 per cent or 75 per cent—the requirement does not apply to the management of the company that is set up. There is no requirement for the board of the company to have a majority of crofters. The bill does not contain any prescriptions in that respect. If the bill prescribed such a measure, people would feel easier about it. The incorporated entities known as crofting community bodies will have to be set up before the process begins.

The Convener: The sixth section of your submission, which concerns salmon fishings, says:

> "There needs to be a distinction betw een the ow nership of fishing rights on a particular section of river and the ow nership and management of river systems that make up a fishery".

What do you mean by that?

Ian Rideout: The bill's definition of salmon fishings is unclear. Since we sent our written submission to the committee on 21 December, there has been much debate about salmon fishings and rights and, like Jim Hunter, we have been lobbied considerably by those who hold an opposing view from ours. I want to be very clear: salmon fishings should be included in the bill.

However, we feel that there is a lack of definition. When we talk about riparian rights, do we mean bank rights or entire river systems? Some of the fishing lobby's confusion centres on that question. In principle, crofters should be able to have the right to own and manage salmon fishings. Those fishings are part of a natural resource that constitutes the land and, as crofters are the rightful custodians of the land, they should have the opportunity to manage them. The suggestion that some lobby groups have made that crofters are incapable of doing that is utterly absurd.

The Convener: Should some sort of management system be introduced to assist the transfer of rights?

Ian Rideout: To some extent, such a system exists already in the salmon fishery boards, which co-ordinate the ownership and management of river systems. As our submission says, we feel that the bill should allow crofting communities that are unable for whatever reason to access those river systems—I suspect that it might have something to do with meeting the concept of sustainable development in relation to investment—to have a stake in them. If there were a right of pre-emption for crofting communities beyond the one-year period for compulsory purchase—which there is not—those communities might take up the opportunity to buy river systems when they come on the market, which happens every 10 or 12 years on average. However, I repeat that the bill contains no right of pre-emption for crofting communities beyond the one-year compulsory purchase period. We think that it should include such a right.

12:45

Bill Aitken: I want to concentrate on section 6.1 of your submission, which relates to salmon fishings. The difficulty is that the crofting community might not be able to provide sufficient investment. For example, any development along a stretch of river might happen in a piecemeal fashion instead of in a way that would have a real and positive impact on a local economy.

Ian Rideout: You seem to be asking whether we are talking about an entire river system or just the rights to fish on a river. If we are talking about an entire river system, I agree that it would be logical for one entity to manage it.

Bill Aitken: If part of a river receives some initial investment and other parts are neglected, might the level of investment not be maintained?

Ian Rideout: The current benchmarks of managed river systems appear to show that that is not the case. However, crofting communities should be taking an interest in shorter runs and river systems that are most definitely undermanaged, badly managed or underutilised. In such cases, far less investment would be required, as we would not need to match the investment that had already been made—indeed, no investment has been made.

The Convener: As members have no other questions, do you wish to make any further comments about any issues that we might not have covered?

Ian Rideout: I acknowledge that our membership's approach has been cautious but, as many members know, crofters are cautious people. Although others have accused the organisation of being cautious, our position is really only a reflection of the members' view. However, we should remember where crofting comes from and what it is. It is a unique social system that has existed for a number of years and has sustained populations in remote rural areas. As such, it needs to be developed and valued. Some of the people in remoter areas feel disfranchised from the process; we want them to feel part of it, which is why I am here today.

The Convener: Thank you for waiting for so long to give your evidence. We are very grateful both for that and for your submission.

Item in Private

The Convener: That ends today's marathon evidence-taking session. I now seek the committee's agreement to take the first part of our next meeting, which is on Wednesday 30 January, in private. Are members agreed?

Members *indicated agreement.*

The Convener: I thank everyone for their patience.

Meeting closed at 12:48.

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Printed in Scotland by The Stationery Office Limited

ISBN 0 338 000003 ISSN 1467-0178