JUSTICE AND HOME AFFAIRS COMMITTEE

Tuesday 26 October 1999
(*Morning*)

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JUSTICE AND HOME AFFAIRS COMMITTEE
7th Meeting

CONVENER:

*Roseanna Cunningham (Perth) (SNP)

COMMITTEE MEMBERS:

*Scott Barrie (Dunfermline West) (Lab)
*Phil Gallie (South of Scotland) (Con)
*Christine Grahame (South of Scotland) (SNP)
*Gordon Jackson (Glasgow Govan) (Lab)
*Mrs Lyndsay McIntosh (Central Scotland) (Con)
*Kate MacLean (Dundee West) (Lab)
*Maureen Macmillan (Highlands and Islands) (Lab)
*Pauline McNeill (Glasgow Kelvin) (Lab)
Tricia Marwick (Mid Scotland and Fife) (SNP)
*Euan Robson (Roxburgh and Berwickshire) (LD)

*attended

THE FOLLOWING MEMBERS ALSO ATTENDED:

Dr Sylvia Jackson (Stirling) (Lab)
Angus MacKay (Deputy Minister for Justice)
Mr Brian Monteith (Mid Scotland and Fife) (Con)

WITNESSES:

Mr Chris Ballance (Carbeth Hutters Association)
Mr Richard Grant (Scottish Executive)
Ms Heather Martin (Carbeth Hutters Association)
Mr Tony Meehan (Adviser to the Proprietors of Carbeth Estate)
Mr Bill McQueen (Carbeth Hutters Association)
Mr Thomas Hanratty (Carbeth Hutter)
Ms Isobel Low (Scottish Executive)
Mr Murray Sinclair (Scottish Executive)
Mr Andrew Smith (Carbeth Estate)

COMMITTEE CLERK:

Andrew Mylne

SENIOR ASSISTANT CLERK:

Richard Walsh

ASSISTANT CLERK:

Fiona Groves

Scottish Parliament

Justice and Home Affairs Committee

Tuesday 26 October 1999

(*Morning*)

[THE CONVENER *opened the meeting at 09:47*]

The Convener (Roseanna Cunningham): I have received apologies from Trish Marwick, who is unable to be here this morning. I welcome Brian Monteith and Sylvia Jackson, who are attending today's meeting. They are not members of the Justice and Home Affairs Committee, but as MSPs they are entitled to be here. I understand that they both have a particular constituency interest in one of the items on the agenda. Lyndsay McIntosh has informed us that she may be late.

I want to say a few words about today's meeting. We have a detailed agenda. The first part of the meeting will be an ordinary meeting of the committee, taking forward items that we are investigating. There will be a report from the reporter on domestic violence, the European document will be discussed and there will be further discussion of the petition from the Carbeth hutters. We will also take evidence on that petition.

The fourth item on the agenda—Scottish prisons—will be taken only if the item on the Carbeth hutters does not run until 11.30. Item four is a provisional item to ensure that the committee does not have to adjourn for 15 or 20 minutes after the evidence on the Carbeth hutters has finished. The committee has been discussing prisons since the beginning of September and it seems reasonable to hold a brief discussion about the most recent announcements.

Item five on the agenda is a debate on a motion in my name to annul the amendment regulations considered at our previous meeting. As committee members will recall, we decided on that course of action because of concerns about some of the contents of the statutory instrument. The debate may last for up to 90 minutes, although I hope that it will take far less time than that.

The Deputy Minister for Justice, Angus MacKay, is expected to attend. Under rule 10.4.2 of standing orders, he has a right to participate, although if there is a division he cannot vote. That is also the case for the two visiting members, should they still be in attendance at that stage in the proceedings. The minister is not appearing as a witness to be questioned and I ask committee members to remember that.

After debating the legal aid regulations, we will consider our report to Parliament on our conclusions. We must do that by the end of the 40-day period that applies to the regulations as a whole. That means that the report would need to be published before the next meeting of the committee, which is why the final item on the agenda is a consideration of the draft report circulated in advance of today's meeting.

I propose that item six, the consideration of the draft report, be taken in private. It has long been recognised—as far back as the consultative steering group—that considering draft committee reports is something that it is appropriate for committees to do in private. The Presiding Officer recently endorsed that. If committee members have any concerns, I point out that it would be extremely difficult to discuss in public the terms of a document that is not available to the public and cannot be made public until after the committee has made a decision on it. In those circumstances, it would not be appropriate to make public an expression of the committee's views until the whole committee had endorsed the document.

Before we continue, I ask members for formal agreement to take item six in private. Are we agreed?

Members: Yes

Domestic Violence

The Convener: Item one on the agenda is a progress report on the committee's investigation of domestic violence and the issue of interdicts. Committee members will recall that, at the last meeting, we designated Maureen Macmillan to be the reporter on the issue. We now have a brief opportunity to hear from Maureen about who she has spoken to since then and what further action she intends to take.

Maureen Macmillan (Highlands and Islands) (Lab): On 14 October, I visited the Scottish Legal Aid Board, with Richard Walsh, the senior assistant clerk. We met Lindsay Montgomery, the chief executive, and Catriona Whyte, the solicitor to the Scottish Legal Aid Board. They were aware of the committee's discussions on the possibility of extending interdicts and powers of arrest. They were disappointed that they had not been asked to come and speak to us and they raised some issues, mostly of a technical nature. I do not think that it is appropriate to go into that at the moment.

I wanted to ask them about the possibility of the extension of the interdict being treated in the same way as criminal legal aid, so that women could access it freely, without paying contributions. If that were not possible, I wondered whether the contributions could be mitigated in some way and we discussed that. We discussed the difference

between civil legal aid and criminal legal aid. The Scottish Legal Aid Board was of the opinion that there would be human rights implications for people seeking remedies through civil legal aid if that distinction were to be changed in one context. That is a matter that we could investigate further.

The Scottish Legal Aid Board thought that part of the problem is that family credit is included when calculations are made to determine eligibility for civil legal aid. That can be examined.

We also discussed the length of the repayment period. At the moment, the repayment period is 10 months. A pilot scheme that allows a longer repayment period is due to be assessed at the beginning of next month. If the repayment period is extended, that will have financial implications for the Scottish Legal Aid Board's funds.

Those are the areas that we can pursue in connection with women affording protection, if protection can be extended to a greater number of women. That was everything of substance that we discussed. Perhaps Richard has something to add?

Richard Walsh (Senior Assistant Committee Clerk): No.

The Convener: Do members have any questions on the issues that Maureen has raised?

Christine Grahame (South of Scotland) (SNP): It might be helpful if staff who are not asked to make representations to us are thanked for all they have done and are asked to provide us with a note on the issue. I know that Maureen has given those thanks, but she mentioned further technicalities. Perhaps they could provide those of us who are curious with a note.

Maureen Macmillan: Yes.

The Convener: It might be possible for Maureen, in collaboration with the clerk, to write up the notes of the meeting.

Maureen Macmillan: We have notes of the meeting, but I did not think that it was appropriate to present them today.

Christine Grahame: They would be very useful.

The Convener: Are there any other questions?

Maureen Macmillan: I would like to talk to the Crown Agent about the implications for the fiscal service. I would also like to revisit the Family Law Association with our new proposals; we have moved on since our previous meeting.

The Convener: So your next step is to go and see the Crown Agent and the Family Law Association.

Euan Robson (Roxburgh and Berwickshire) (LD): Has Maureen had the opportunity to consider the final work plan prepared by the Scottish Partnership on Domestic Abuse?

Maureen Macmillan: I have not yet had a copy of the final work plan. If I have received a copy it will be under the pile of papers here, but I do not think that I have.

Euan Robson: We may be asked to debate the matter later this week and it would be helpful to see the plan before that.

The Convener: There is a debate on Wednesday afternoon on an Executive motion that refers to the final work plan. I do not think that the final work plan has been published yet. A draft work plan was published in March 1999. That will give people an indication of the way in which the partnership is progressing. Everybody should have a copy of that. I hope that as many members of the Justice and Home Affairs Committee as possible will request to speak on Wednesday afternoon. Because of the work that we have been doing, we have much to add to the debate.

I do not think that the final work plan has been published yet; I suspect that it will be published tomorrow morning.

Are there any other questions for Maureen?

Members: No.

European Document

The Convener: Item two on the agenda is European document 334, a green paper on liability for defective products (10609/99). We have a very helpful covering note that was prepared by the clerk, which I hope committee members have read.

The document is the first step in a review of an existing European directive on the subject. It imposes a strict liability on the producer so that any consumer who suffers injury from a defective product can obtain redress without having to prove negligence. A consumer would have to show that a defect in the product caused the accident, but it would not be necessary to show negligence, provided that the product was defective.

10:00

The document has been remitted to us by the European Committee. We can debate it, although I should point out that product liability is reserved to Westminster. In those circumstances, and given that it is only a green paper, containing no legislative proposals, I would propose, unless the committee has any particularly strong views on the matter, that we simply take note of the document and file it for future reference should any specific proposals come back to us that may affect what we are doing.

Euan Robson: I have two brief comments. The directive is important. It is on a reserved matter and is therefore not for us to discuss in detail, but the problems in the directive are the development risks, which are noted in the paper. Another problem is what to do with second-hand appliances, particularly white goods. There is also the matter of the installation and servicing of appliances.

A safety of services directive is passing through the Commission at the moment. If we were to make any comment, it would be in the areas that I have just outlined, but if we are just noting the document, fair enough. There are, however, some important issues in the document, which I hope the European Committee will take into account.

Christine Grahame: There are some things in the document which are not reserved matters. The Scottish Executive covering note, on the page headed "334", says:

"Under the terms of the Scotland Act 1998 product liability is a reserved matter apart from in respect of food, agricultural and horticultural produce, fish and fish products, seeds, animal feeding stuffs, fertilisers and pesticides."

The Convener: But none of those are areas that this committee discusses.

Christine Grahame: I just wanted to note that it is not entirely a reserved matter.

The Convener: We could perhaps ask if the European Committee has referred it to other relevant committees as well as this one. There may be matters—[*Interruption.*] The clerk has just pointed out that it has been referred to the Enterprise and Lifelong Learning Committee. By the sound of it, it should perhaps also have been referred to the Rural Affairs Committee. Other committees may have particular concerns about it.

Euan is right to point out the consumer aspects, which would fall to this committee as they touch on consumer law. There may be issues relating to the document to which we might return in a longer discussion on a future date. Today, we are choosing simply to note the document. It is, I remind members, the equivalent of a green paper, and is just for discussion at this stage.

Is everybody happy with that situation?

Members *indicated agreement.*

Petition

The Convener: We now move to consideration of petition PE14 from the Carbeth Hutters Association, on land reform legislation. We have asked certain individuals to present evidence to the committee: the first is Mr Chris Ballance, who represents the Carbeth Hutters Association. Could Mr Ballance and those he has brought with him please come to the table and the microphones?

Mr Ballance, could you introduce the people you have brought with you?

Mr Chris Ballance (Carbeth Hutters Association): I would like to introduce Heather Martin, who will be giving the presentation.

The Convener: Can we establish who the other person is?

Mr Ballance: The other person is Mr Bill McQueen. We are all members of the hutters association.

The Convener: You are all members of Carbeth Hutters Association?

Mr Ballance: Yes, and of the Carbeth Hutters Association committee.

The Convener: Members have received your booklet. It was sent to us some time ago. Another document has been passed around today, just before the meeting. You will appreciate that people have therefore not really had a chance to look at what you have submitted this morning. Committee members will have seen the booklet, but it is perhaps a bit much to expect them to have got through all the rest of the documentation including, I note, pages from the Sheriff Courts (Scotland) Act 1907 and various other exciting tomes. Thank you.

Ms Martin, if you could take perhaps two minutes to outline briefly the position that you are in at the moment; then committee members may take the opportunity to ask some questions.

Ms Heather Martin (Carbeth Hutters Association): Certainly—

The Convener: Please try to speak up, so that everybody can hear you clearly.

Ms Martin: I will give a brief background to the dispute at Carbeth. The huts began over 70 years ago, under the proprietorship of the present landlord's grandfather. When the current landlord took over in 1990, he embarked on rent rises that went out of control. In 1997, most hutters decided that it had gone too far, and intimated to the estate their intention to withhold part of the site charges.

The letter that was handed in from a number of the hutters—it makes up the petition—refers to the land reform policy group's recommendations for action from January of this year. Mentioned in those was the possible introduction of legislation to provide security of tenure and rights of access plus a mechanism for settling rents and other disputes. The final recommendation was that there should be further study on the matter. We strongly believe that that recommendation should be implemented.

In cases where people own property on rented land, and that property cannot be removed without being destroyed, their lease should be a secure tenancy. They should have access to rent control, to ensure that rents cannot be increased above the rate of inflation without justification. Mr Peter Scott, a law lecturer at Glasgow Caledonian University, has prepared a briefing paper for the Justice and Home Affairs Committee. He is unable to attend today due to work commitments, but he has expressed his willingness to answer any questions and elaborate on any of the points that he has raised, if the committee wishes to contact him.

The Convener: Thank you. I should say that, before we proceed with any question session, we are aware that there is an active court case involving an eviction dispute between one of the hutters, a Mr Rigby, and the landlord, Mr Barns-Graham. Because of the sub judice rule, members should avoid making direct reference to that particular case.

Does the committee have questions for the representatives of the Carbeth Hutters Association?

Phil Gallie (South of Scotland) (Con): You comment on excessive rent levels and increases from 1990. The landlord has suggested that that is linked to improving facilities at the site, following no investment over many years. What are the current levels of rent? By how much has rent risen, and what would you consider to be a fair rent?

Mr Bill McQueen (Carbeth Hutters Association): I can tell you exactly. The rent was 10 shillings before the war. After the war, in 1948, it was £1. It was £5 in 1958, after the grandfather of the present landlord died. The rents have risen by over 13 per cent yearly until 1996, when we received a newsletter about the rents. The huts used to be of the same standards. Some were put up on premium sites. In the spring 1997 newsletter, it was stated that the rents would be based at £888 from 17 May 1997. The rent was £529 in 1996; they were to go up to £888 in 1997. Does that answer your question?

Mr Ballance: They went up even further. I have a couple of brochures, headed "Chalets at Carbeth Estate – How to Buy" from 24 November 1997 and 27 February 1998. They show that the monthly rent was to be £90 a month—just over £1,000 per annum. I have a spare copy of those brochures that I can deposit with the clerk if members wish to refer to them.

Phil Gallie: That is helpful as a base.

Mr McQueen: The increase represents a doubling in two years.

Phil Gallie: Is that purely rent? I take it that no local taxation or council tax is included?

Mr McQueen: We pay taxation. We pay a non-domestic taxation rate of approximately £140 or £150.

Phil Gallie: On top of the rent?

Mr McQueen: Yes, on top of the rent. I need to point out that there are hundreds of huts all over Scotland—and England. We have visited eight hut sites. The rents there ranged from £55 a year to £200. The hutters are complaining about the rise to £200, having heard of the rents being asked at Carbeth.

Phil Gallie: What about investment in the site? What facilities do you have? In recent times, has there been any increase in investment on the site?

Mr McQueen: We have had nothing back from the site. On my site, the landlords have not spent a penny for 60 years. I am a retired clerk of works and maintenance officer. As far as repairs go, the site has to be seen to appreciate how much disrepair it is in at present. The site is a disgrace. I do not know why the council hasnae stepped in and done something about it.

Ms Martin: We actually have some boards with—

The Convener: We cannot hear you.

Ms Martin: We have brought some photographs displayed on boards, if members would like to see photographs of the huts and the estate, to get a clearer idea of the site.

Mr McQueen: Shall I pass them round?

The Convener: Yes, please hand them to the nearest members. Do the two boards display the same photographs?

Ms Martin: No.

Mr Ballance: One has pictures of the huts that are well maintained. They show how we would prefer to see the site. The other board shows how things have become run down over the past few years.

The Convener: Both show pictures of huts on the site?

Mr Ballance: Exactly.

The Convener: Some are well maintained and some are not?

Mr Ballance: That is right.

The Convener: How has that difference come about?

Mr Ballance: Just by virtue of the fact that so little has been spent on upgrading the site and looking after it.

Maureen Macmillan: Are the huts on the photos that I have in front of me ones that have been abandoned?

Ms Martin: They are huts that have reverted to the ownership of the estate.

Mr Ballance: Members should understand that—

The Convener: Can we hold it there. You are going to have to be more clear about the questions and answers. The official reporters must try to get this down in a clear manner for the *Official Report*. When there are questions and answers, please try not to cross-talk. There is somebody here desperately trying to take down your every word, and that is difficult if two people are trying to speak at the same time.

Christine Grahame: It would be helpful to refer to the little booklet, "The Carbeth Clearances"—the reporters could look at it—from which you have quoted rent figures and some of the history of what has happened to some of the huts.

I had heard about the Carbeth hutters, but your booklet mentions 700 huts in 62 locations in Scotland. Were they all established at about the same time—in the 1930s—in the same manner as is described in the booklet? I am trying to discuss the culture of such huts.

Mr Ballance: As far as I am aware, but I have not researched that in any detail.

Christine Grahame: Are you seeking the kind of protection—I am perhaps treading in difficult waters here—of agricultural tenancies? It is on that sort of principle. Must the huts be used for a certain purpose and be already established? Is it the case that new ones cannot be established? Is it correct that new hutters' space cannot be set up without the landlord's consent? Would protection be for the existing ones? Would it also give the landlord rights with regard to what the hutters would be doing on the site?

Mr Ballance: Yes.

Christine Grahame: So it is a bit like an agricultural holding?

Mr Ballance: At the moment there are folk on the site who have been there for 50 years and who have put in 50 years' worth of repairs on the huts. They are still governed by a lease that allows the landlord, first, to put up the rents in any way that he pleases and, secondly, to throw anyone off at 40 days' notice without having to give any reason whatsoever. If the hutter is not able to sell their hut to someone, who has to be approved by the landlord in those 40 days, the landlord takes possession of the hut without paying compensation.

Christine Grahame: I am familiar with that—I have read your material. I am trying to get to the principle of how it would operate. Should we consider the matter with the Executive or this committee—more likely the Executive—moving towards a separate piece of legislation, or do we incorporate measures in a land reform bill? That is ahead of us anyway, and we could set up a special type of tenancy.

10:15

Mr McQueen: We are campaigning for a bill on rent control for residential huts and chalets that are fixtures to the ground, which was defined in a House of Lords ruling on the Welsh hutters' case two years ago. We think that that could be done in Scotland and that it is the only way in which this situation can be resolved. The Rent Registration Service, a body that is already in existence, could adjudicate on rent disputes.

Pauline McNeill (Glasgow Kelvin) (Lab): I have read all the material that we have been sent so far, except that which we received today, as I have not had a chance to read it. I want to establish for the record the chronology of the situation, as it is important that we clarify the steps that led to it.

Am I right that the original trust was that the working people of Clydebank were entrusted with part of the Carbeth estate for reasonable rents that they could afford?

Mr Ballance: That was the general idea.

Pauline McNeill: Was that the trust's original intention?

Mr Ballance: That is right.

Pauline McNeill: I would like the witnesses' view on whether the trust's intentions—in terms of the new landowner—have changed.

Mr Ballance: They have changed entirely.

Pauline McNeill: How have they changed?

Mr Ballance: The original trust appears to have been wound up at some point around 1990—I am not sure of the date—and a new trust was set up. The terms of the new trust are geared to allow the landlord to do whatever he likes. We have it on record from the landlord's evidence in court that it was set up for tax reasons. A clause in the landlord's grandfather's will stipulated that the estate of Carbeth should not be feued or leased in such a way as to interfere with the rights of possession of the traditional hutters. Linked to that, there may have been other reasons why the original trust was wound up—it may have been too restrictive. Now, the estate appears to be considering the land solely in terms of a product from which to maximise income.

Pauline McNeill: Therefore, is it your evidence to the committee that the current trust has changed in nature from the original trust?

Mr Ballance: I have not seen the deeds of the original trust. However, I would infer that from the wording of the will of the grandfather who set up the place.

Pauline McNeill: What is the position on the increase in rent for services? Can you give us more detail on the services that are being provided by the landlord?

Mr Ballance: There is a tap for every 16 or so huts and there has been some construction of new tracks. A cliff was pulled to pieces by a JCB and the pebbles and rocks from that were partly distributed around the estate. I have a third document that I can lodge with the clerk, which is a report by Robert Balfour, who is, I believe, soon to become the new convener of the Scottish Landowners Federation. He is also a land surveyor. He toured Carbeth estate and, after examining the surfaces, he estimated that their value was around £50 per annum.

Ms Martin: I wish to make it clear that no services are provided to the individual huts. They have no running water, electricity, gas or sewerage—all services that would be associated with caravan sites, for example. Such services are not provided at all. Stirling Council provides water and rubbish collection, which are paid for by rates.

Pauline McNeill: So, is it your position that there is no correlation between the rent increases that are being sought and the services provided by the landlord?

Ms Martin: Absolutely.

Pauline McNeill: It is important that members understand the terms of the lease. Is it your position that the terms of the lease are unreasonable and unfair? What are the terms of the lease?

Mr Ballance: We think that the terms are entirely unreasonable. There is a copy of a lease in the folders that Heather gave out. I should advise that the folders contain background information, should members need to look up anything after the meeting.

The clauses that are at the root of the problem are those that refer to 40 days' notice and to the conflicting property rights, if you like. We own the huts, but the landlord owns the ground and has the power to take huts away from us without compensation. We feel that it is grossly unfair that someone can have had a hut for so long, have put so much work into it and have expended so much energy on it, only to lose it. The estate has claimed that that is a nice, clean and easy clause that allows it to get rid of unsociable hutters.

While we all agree that there should be some term that enables the estate to go through the procedures to get rid of unsociable hutters, that clause has caused countless problems. Five or six years ago, the estate tried to evict one of its representatives—Mr Hanratty, who is here today—but the clause simply failed.

Pauline McNeill: Therefore, your position is that the power balance in the lease massively favours the landlord.

Mr Ballance: It favours the landlord entirely. There are around 56 stipulations in the lease on what hutters must or must not do. The sole obligation on the landlord is to let land—of, I think, 20 ft by 30 ft—for a year.

Pauline McNeill: You said that you wish the Justice and Home Affairs Committee to consider some form of protection legislation. You also mentioned rent controls. Have you taken guidance on the Unfair Contract Terms Act 1997, which may cover the lease?

Mr Ballance: We have considered that. Sixteen or a dozen cases are on-going—

The Convener: Please do not mention any of them.

Mr Ballance: I think that one of them is in court today.

We have considered various approaches but a succession of sheriffs has upheld the lease. They have said that, be it fair or unfair, the lease holds in law and that we have no protection in law. We are considering as many approaches as possible.

One of the papers in members' folders is a report by Peter Scott, which Heather may wish to refer to.

Ms Martin: One of the most important documents that members should consider is Peter Scott's briefing note. He is an expert in property law and has closely examined the situation. He is more able than we are—as lay people—to examine the legal arguments.

The Convener: It would have been helpful if that had been circulated in advance of the meeting. When papers are handed around at the start of the meeting, it is very difficult for committee members to take them on board during an evidence-taking session.

Maureen Macmillan: I want to be absolutely clear about the lease. When did the new lease commence?

Mr McQueen: We signed the new lease in 1993. We received two letters, one in the morning post and the other in the afternoon post, before we signed the new lease. I have the letters here if members wish to see them. The first letter said

that great changes would be made to the Carbeth estate but that we had to sign the new lease for those changes to be made. The letter received in the afternoon post said that our tenancies were terminated, so if we did not sign the new lease we would be evicted. We had no option—we either walked away from our huts or signed the lease.

Maureen Macmillan: Can you give a brief summary of what the previous leases had been like?

Mr McQueen: They were very similar. There were a few points, but they were almost the same.

Mr Ballance: They had the 40 days clause.

Maureen Macmillan: Was that always present from the very beginning?

Mr Ballance: Yes—from memory.

Dr Sylvia Jackson (Stirling) (Lab): I have seen it written somewhere that the huts are considered to be holiday homes as opposed to permanent dwellings. How do you see them and how do you justify that view?

Mr McQueen: They were brought in as holiday homes, although people stayed in them during the Clydebank blitz during the war and stayed on for a couple of years. Other people also lived in them, as they were able to get on to the local housing list. People bought huts for that sole purpose. The council wanted to stop that practice and classified them as holiday huts. However, they are not holiday huts at all. Many people stay in them permanently, including many of the estate workers. Some people have stayed in them, full time, for 40 years—I could give members the names of a dozen people who still live in them, including me.

Dr Jackson: Thank you. Can you tell us a little more about the situation in England and Wales? You spoke about visiting huts down south and said that there were similarities. What are those similarities? Can you draw out the differences with leases of comparable huts down south?

Mr McQueen: I have not visited those huts, although some of our members have visited huts in Wales.

Mr Ballance: I have visited them.

Mr McQueen: The huts that I referred to were those on the eight sites in Scotland. They were built in exactly the same way as our huts were built. They were built a wee bit at a time—a foundation was laid and they were built bit by bit, stick by stick. Nearly all huts were built like that. Some new chalets are being built differently, but huts are built in the same way across the country. They are not prefabricated—people bring wee bits at a time. They have been built that way in England.

Mr Ballance: The crucial point under debate in the case of the Welsh huts, which lasted more than eight years and which ended with the hutters winning in the House of Lords, was whether the huts were part of the ground—whether they could be moved without being destroyed. That may be the definition of a hut—it cannot be moved without being destroyed because of the way in which it is built. It is a legal fiction, as the estate would have it, that one can just pick up one's hut and transport it to the back garden or whatever. Quite apart from planning laws, that is not physically possible. Perhaps the committee could consider how to frame legislation so that it covers only huts such as those in Carbeth.

The other issue is the clause in the lease that states that hutters must have another principal place of residence. According to the courts, we have no protection under any housing legislation. A hut is a piece of property that is owned by one person, and placed, with permission, on the land of another person. It cannot be moved from that land without being destroyed. That differentiates hutters from those who use, for example, caravan sites.

10:30

Dr Jackson: How do the leases operate in the Welsh example that you described?

Mr Ballance: As far as I know, it is a bit confused because the Welsh hutters did not have leases. They had licence agreements that were weaker than a lease. Different hutters have had different licences at different times. At the moment, the owner of the site—who acquired it for development purposes—is caught between the bank to which he owes a lot of money and the hutters whose huts he must now maintain and look after. He is, as far as I know, still not accepting rents and so there are no leases.

Christine Grahame: This is a point that the witnesses may not be able to answer. The grandfather of the current owner set up a trust, the terms of which regulated the estate. When his son—the father of the current owner—died, did that trust lapse, and is some other trust functioning?

Mr Ballance: That seems to be case. I cannot speak about the history of the case with any certainty.

Christine Grahame: I would like to recap some of the points that have been made. The hutters want regulated tenancies of some kind with regulated rents, and would, in due course, like to be able to buy their leases, although that is not on the agenda just now. The regulated tenancies would apply only to existing sites on which huts are established.

We would have to examine the definition of a hut, but it may be based on an historic situation from the 1920s and 1930s. Would the hutters expect the rents for the site to be subject to independent review?

Mr Ballance: Yes.

Christine Grahame: The hutters would like rights regarding management of the site. Would it follow that you would have obligations regarding the management of the site? Should those rights of management be subject to independent scrutiny? You have talked about this in terms of the environment, so how would that be achieved?

Mr Ballance: I am not sure what the mechanism to achieve that would be.

Christine Grahame: Surely the landlord also has rights. Are you saying that such places as the site of the Carbeth huts are special places? Do they require special treatment because they are not like holiday homes or caravan sites, but have been there for a long time and have a function that is, perhaps, more important now than in the past?

I notice from the booklet that things have happened to tracks, for example, that were bad news for the sites, but any legislation would seek to give the landlord rights as well as obligations. There would be a need for someone to regulate this whether there is or is not a dispute. Do the witnesses agree with that?

Mr McQueen: We would like the Rent Registration Service to take that arbitration role. The service deals with housing rents and we do not see any problems in its dealing with ground rents or site rents for huts and chalets.

Christine Grahame: Rent is not the only issue in this. The nature of the huts, the area itself and the regulation of that must all be considered.

Mr McQueen: The nature of the huts is well-enough defined in the case of those huts or chalets that are classified as fixtures to the ground.

Christine Grahame: I am not talking about a definition—legislation would have to include a definition. I am talking about regulation. If there is legislation regarding this issue and if there will be designated hutters' sites such as Carbeth, there must be regulation of how the sites are managed as well. There must be a mechanism for resolving or even avoiding disputes.

Ms Martin: We think that that is very important.

Mr Brian Monteith (Mid Scotland and Fife) (Con): First, I would like to clarify what appears to be a discrepancy. In the oral evidence that was given at the start of this part of the meeting, it was said that the rent in 1996 was £529 per year. Is that correct?

Mr McQueen: That is correct.

Mr Monteith: You then said that you had heard, or had been sent communication—I am not quite sure which—indicating that the rent would be going up to £888. Is that right?

Mr McQueen: The rents were meant to be £808 from 17 May 1997, but that was not to be implemented until 1999. Premium rents were increased by 42 per cent in that year.

Mr Monteith: Does that mean that had you been paying your rent—obviously you are on a rent strike—you would be paying £808?

Mr McQueen: In 1997 it would have been £888. The landlord could have added any increases he wanted up to the present moment.

Mr Ballance: The rent figures that have been given by the estate have gone up and down considerably in the past couple of years. At the moment the estate is advertising huts at £68 a month, which, at a quick guess is just over £800 a year. The figure in our book comes from documents that were issued by the estate at the end of 1997 and the beginning of 1998. Those documents quote a rent of £90 a month, or £906 per annum. The cost of paying £90 a month would be £1,080 per annum.

Mr Monteith: I ask because the evidence that has been submitted by the estate owner suggests that the rent currently stands at £785, not £808. I am trying to see why there is a difference.

Mr McQueen: If you read the estate owner's newsletters you get a wee bit bamboozled because they are, among other things, contradictory. The rent has gone up from £529 in 1996. Standard rent went up, I think, to £672. Rent on premium sites went up to £750.

Mr Ballance: Perhaps the detail is not as important as the fact that the lease allows the landlord to do whatever he likes. He can add any charges he wants whenever he wants to add them.

My first involvement in this issue was when we received notice of rent increases. We decided that we were going to have to sell the hut as we could not afford it. We applied to the estate to sell the hut and the estate told us that the hut was in a particularly nice spot so a transfer charge of £1,500 or £1,750 would be applied to it. That meant that someone who bought the hut for perhaps £1,250 would then have to pay a further £1,500 or £1,750 to the estate.

It is the fact that the lease enables the landlord to add whatever charges he wants whenever he wants that is dangerous. Our understanding is that anyone coming on to the site is being offered huts at a cost of £68 a month. The landlord usually

charges more if tenants are paying rent monthly, so that may account for the discrepancy.

Mr Monteith: There is a lot of paperwork and a lot of figures.

I would like to ask Heather Martin a question. I understand that you started renting in October 1996.

Ms Martin: That is correct.

Mr Monteith: Is it correct that you purchased a hut for £10?

Ms Martin: I purchased the remains of a hut—some pieces of wood and a few bits of broken glass.

Mr Monteith: Did you then demolish that and invest in creating a new hut?

Ms Martin: Yes, I did.

Mr Monteith: I understand that some access was provided by the estate owner. Is that correct?

Ms Martin: The track was covered with rubble from quarrying that the estate owner had been doing.

Mr Monteith: Was that cleared so that there was access for you?

Ms Martin: No—the rubble was piled on top of the original track.

Mr Monteith: Was that to provide hard core? It was not, presumably, put there to provide an obstruction.

Ms Martin: I think that the estate would say that it was meant as an improvement, but whether it was meant to be for the benefit of the hutters is open to question. Most people would say that it is an eyesore that adds nothing to the estate.

Mr Monteith: Have you been on strike more or less since you gained entry?

Ms Martin: I joined the campaign with the other hutters at Carbeth at the same time as everyone else.

Mr Monteith: The proprietor claims that the cost to him of improving the access was around £3,000. He would argue that your contribution to date has been around £97.50.

Ms Martin: The amount of money that I have paid to the estate is relevant to the court case that is going on between me and Mr Barns-Graham, so I should not comment on that.

Mr Monteith: You are in litigation at the moment.

Mr McQueen: I would like to point out that the roads are just rubble. It is not hard core. The landlord has talked about the cost of putting that stuff on the road. He wanted planning permission to build a house and had to remove 2.5 m of cliff and cut it back at an angle. That resulted in thousands of tonnes of rubble being scattered all over the place. You could not walk on a lot of the roads, nor could you take a car on them. We are not really talking about roads here—we are talking about rubble that has been put on top of the original paths.

Mr Ballance: I would like to quote from a report by Mr Robert Balfour. He said:

"Provision of access is not a service as the rent should cover the renting of the property to include the access road. As an access road is a communal area it is possible to charge a service charge to cover the maintenance. Service charge by its very name cannot be used to recover capital cost".

The Convener: What are you reading from?

Mr Ballance: I am quoting from a report by Robert Balfour of the Scottish Landowners' Federation. He came to the estate as a surveyor.

The Convener: Could you make it clear when you are quoting from a document and could you leave that document with the clerks at the end of the meeting so that it can be circulated? I think members would find it interesting.

Mr Ballance: Yes.

Mr Monteith: It appears from your submission and from your petition that you are particularly concerned about management and the relationship you have as tenants with the landlord. The landlord is currently seeking to raise the rent, but has he evicted people who have not paid rents?

Mr Ballance: He has served eviction notices on 90 people. Of those 90, four or five of us have gone to the courts and lost our cases.

Mr Monteith: Are those who have not gone through that legal process or who have paid their rent still on the site?

Mr Ballance: Two have settled up and come to an agreement with the landlord and the other three have mysteriously lost their huts in arson attacks which have been put down to vandals.

Mr Monteith: Does it not seem then, that rather than aiming to remove the hutters, he is seeking to increase revenue?

Mr McQueen: That is exactly what he is doing. I have a letter here that was issued after I had received an eviction notice in the court. It says that the landlord's reason for going to court was to ensure that everyone knew his rights as a landowner. He stated in court that his right as a landowner was to charge any rent he wanted to charge. He said that, if he wished, he could legally charge £20,000 million.

Before people went to court, the landlord said that if they paid all the money that he wanted, they were welcome back. I have a letter here that was delivered to every hutter. It states that I am a first-class hutter, "a highly respected hutter", and that I will be very welcome back. This is not about eviction at all; it is about forcing all the hutters to accept ridiculous rent.

10:45

Mr Monteith: So it is not so much a clearance as a rent strike and a dispute about the rental payment. The proprietor is not seeking to clear you from the land.

Mr Ballance: There are various documents in Stirling planning department. I have a couple here, which I will leave with the clerk. There is a letter from David Egerton, development control manager in planning services. It states:

"I would invite you to consider a further meeting with officers to discuss the potential comprehensive redevelopment . . . of the chalet complex".

There is a handwritten note of a meeting of 24 November 1995. It mentions

"relocation of areas within estate, timescale for relocation of areas . . . New numbers would be dependent on size of area.15 per acre? (ie caravan standards)".

Mr Smith, one of the trustees, has assured us that at the moment there are no plans for development. We believe him and take his word on that, but the evidence from the planning department is that plans have been discussed with it, although nothing concrete has been put in.

Mr Monteith: Do you accept that if this committee—or the Parliament—introduced legislation of the type that you might want, the current proprietor could immediately issue eviction notices for everyone, including those who are paying, and do something else with his land? For all that you might feel that you have a just campaign, everybody might lose in the end because he might feel that any new regulations would be onerous.

Mr Ballance: We hope that any legislation would stop this whole affair, which has been messy and unnecessary.

Mr Monteith: So it would have to be retrospective legislation?

Mr Ballance: We hope that it would prevent this from happening anywhere else. We believe that there are 600 hutters across Scotland and hope that legislation would prevent a repeat of this fiasco anywhere else.

We believe that the land is unusable for any other purposes. It is too poor for any agricultural use other than grazing, and much of it has ancient woodland on it. The land is in the green belt outside Glasgow. We believe that the landlord has concluded that, short of gaining planning permission to redevelop—which he is unlikely to get—the huts are the best income. We hope that legislation will force him to negotiate. We have had a couple of meetings, one with the local MPs—Anne McGuire and Tony Worthington—and representatives of the estate.

We hope to continue to negotiate. At one of the most recent meetings—last week, in the presence of Anne McGuire and Tony Worthington—the estate was speaking in a friendly tone. We welcome that, but yesterday every hutter was sent out a newsletter from Mr Barns-Graham. I will quote parts of it:

"our attempts . . . has been sabotaged by those who continue to lie and misinform . . . This is the type of insult, typical of those who claim to represent the hutters . . . libellous . . . How do we know whether the same fires were not started by those connected with the strike for the purpose of gaining sympathy support . . . Lies, misinformation and ridiculous claims . . . Deliberate lies, . . . proven to be lies . . . silly . . . It is untrue, it is also an insult, . . . It is also an insult. . . . It is about time that the lies and the bullying stopped . . . why can they only lie about Carbeth?"

All of that is in a three-page document, which I will also leave with the clerk, sent to all hutters yesterday in the wake of the negotiation meeting that we had with Anne McGuire and Tony Worthington last week. That is the estate trying to be conciliatory.

The Convener: I do not want to cut people short, but we are pressed for time. People representing the estate and individuals from the Scottish Executive are here and we must begin the debate on the statutory instrument at half-past 11. Gordon Jackson and Euan Robson wish to ask questions. Could your questions equally be asked of other witnesses?

Euan Robson: Yes.

Gordon Jackson (Glasgow Govan) (Lab): I would like to ask a question. The difficulty is that part of me thinks that the rent issue does not take us anywhere. You signed a lease in 1993, which gives the landlord the right to charge whatever he wants. Why you signed it is neither here nor there, but you did. We could do something about rents by introducing rent control. We could fix a method of ensuring that there must be independent rent reviews, even though it is just land that is being leased. Once that has been done—Brian has hinted at this—you have no security of tenure. You have never had any security of tenure, in that a lease has always been in existence that either party can terminate in 40 days. The rent could be controlled but the landlord may not like it and say, "I no longer wish to have those people here at a rent, that is not enough for me. I will evict

everybody straight away." I believe that he can terminate those leases on a 40-day notice.

What do you propose that we do about that? I have some sympathy with Brian's view, that if we block the rent increase, the proprietor will simply say that the leases are terminated. How would we stop a landlord terminating a lease in terms of a notice, which is agreed by both parties?

Mr Ballance: We are not lawyers, and there is vastly more experience on the committee than we have. Part of our problem is that we have always been refused legal aid, which is why a lot of us are fighting our own cases. We have been examining the possibility of a change to the Sheriff Courts (Scotland) Act 1907, under clause 37 of which we are being evicted. An addition to that clause might be a simple way to enable us to have some form of security of tenure.

Gordon Jackson: Leaving aside the Sheriff Courts (Scotland) Act 1907, I take it that there has never been security of tenure. This is a lease signed willingly by two parties to a tenancy agreement, which says that either party can terminate it within 40 days. How would we prevent that from happening?

Mr Ballance: It has always been signed on trust. The fact that there are people on the site who have been there for 50 years shows that trust had been maintained until two or three years ago.

Gordon Jackson: So, the lease has been signed on the basis that neither party would use it?

Mr Ballance: That is right. I should speak carefully here, but people have agreed to say under oath that that has been said to them.

Phil Gallie: You have emphasised that you want legislative change and that you want it to be separate from residential caravan and static holiday caravan legislation. Holiday homes have developed over a long period of time. There is not too much in the way of planning development control over the site. Do you fear that legislation would lead to a proliferation of such sites across the country?

Mr McQueen: We are all for legislation that will improve the huts. We have had discussions with Stirling Council about making the estate a conservation area. We would like the council to ensure that the huts are properly kept and that the place is nice and tidy. We would welcome that.

The Convener: Thank you for attending the meeting today. It may be that we will be in communication with you again. Please leave the documents that you brought with you with the clerks so that members can see them. I now ask the representatives of the estate and Mr Thomas Hanratty, on behalf of hutters not in dispute with the estate, to come forward.

We are more pressed for time than I had hoped. After we have spoken to those who represent the estate, we will hear from individuals from the Scottish Executive. I do not expect that they will give evidence for long as the points on which they can respond are narrow and they have given us a detailed briefing. I propose to allow questions and answers for the three witnesses before us to run until 20 minutes past 11. That is shorter than we thought. I ask committee members to ask their questions as briefly as possible and those giving evidence to be as focused as possible.

The witnesses are Mr Andrew Smith, from Carbeth Estate; Mr Tony Meehan, who is the adviser of the proprietors of Carbeth Estate; and Mr Thomas Hanratty, who is here to speak on behalf of hutters who are not in dispute with the estate. It is appropriate to point out that not all of the hutters are involved in the action that has been on for the past few years.

I have just noticed that Lyndsay McIntosh has joined us. Have you been here for a while?

Mrs Lyndsay McIntosh (Central Scotland) (Con): Yes, I have. I did not want to interrupt.

The Convener: Rather than have the estate representative give a presentation, we will go straight to the question and answer session.

Kate MacLean (Dundee West) (Lab): I will ask about money that has been spent on the site—upgrading of tracks and pathways was mentioned. Is that the major expense on improvements in recent years?

Mr Andrew Smith (Carbeth Estate): In terms of the amount of money, the upgrading of tracks is the principal expenditure. To put that into perspective, the estate had some rock that could be used to put the base of a road down. I am not an engineer, but I know that you must put a base down for a road. To get at the rock, a crusher had to be hired and the best deal available was to bring one up from England. That had to be brought up on a loader and was on the estate for quite a long time. Some of the roads have natural small streams running by them or underneath them. In one place, quite a big concrete culvert had to be built before the road could be put on top. With roads, it is also necessary to do ditching work at the side.

The road that goes down to Heather Martin's hut was mentioned. I drove down it two weeks ago. It is on an estate, so it is not a motorway but it is a road that you can drive a car down. The roads represent the biggest item of expenditure; there is a lot more to putting down a road than just throwing a few rocks down.

11:00

Kate MacLean: The other submission says that the cliff had to be removed. Was that the case?

Mr Smith: That is not my understanding, although I do not know for sure. I could not say definitely. I know that the estate management always tries to get two jobs for one, so it may well be the case that the removal of the cliff assisted with other work. Refuse is removed by the council but the vehicles have to get up there to take it away. If we had not used the material from the cliff for road bases and hard standings for rubbish bins, we would have had to bring other material to the site, which would obviously have cost even more money.

Kate MacLean: But if you had not used that material for the roads, you would probably have used it as landfill.

Mr Smith: In order to maximise the income to the estate, we would probably have sold the material as base for other people who are building roads.

Euan Robson: I refer to the submission that we have received from the proprietors, in particular to paragraph 7 on page 2, about the rent strike, and to the key points in paragraph 8 on page 8. They refer to the number of huts. How many huts are there? It is not at all clear to me.

Mr Smith: We refer to 169 hut owners. Tony Meehan will have the actual figures. There is a difference between the number of hut owners and the number of sites. There are many sites for huts on the estate, some of which are not occupied by huts. It is a bit of a movable feast, but in terms of the rent strike, there are 169 hut owners.

Mr Tony Meehan (Adviser to the Proprietors of Carbeth Estate): There are 169 huts. Of those, 93 are paying rent. There are 20 unoccupied huts—huts that are either unoccupied or have no leases attached to them. There are 18 derelict huts, which are just wood sitting on a piece of land. We believe that, therefore, the number of striking hutters—

Euan Robson: I am sorry, I was going to come to some of those matters in a minute. I need to establish exactly how many owners there are. You say 169.

Mr Meehan: Yes, there are 169 hut sites with property on them, 20 of which are unoccupied.

Euan Robson: So, of the 169, 20 are—

Mr Meehan: Yes, 20 are unoccupied, and 18 are derelict. So if you take 38 from 169, you will have the number of leases that are currently in force or the number of people in residence.

The Convener: So 131 of the huts have leases in operation.

Mr Meehan: Correct.

The Convener: Of those, how many are on strike?

Mr Meehan: A total of 93 are paying rent.

The Convener: So 38 are on strike.

Euan Robson: You are saying to the committee, as you say in your submission, that 93 hutters are up to date with their payments.

Mr Meehan: Which is Mr Barns-Graham's terminology for paying rent.

Euan Robson: And that there are 38 with whom you might be said to have a dispute.

Mr Meehan: Correct.

Mr Smith: A dispute about rent, yes.

Euan Robson: About rent? So you might have a dispute of another nature with some of the other 93?

Mr Smith: Not as far as I am aware, but a lot of issues other than rent seem to be being discussed this morning.

Euan Robson: In one of its submissions, the hutters association says that it represents 120 huts, yet in your documents you suggest that the association represents a smaller number—presumably the 38?

Mr Smith: Yes. That is right.

Euan Robson: If 93 hutters are up to date with their payments, is it the case—as we have heard in evidence this morning—that you have served eviction notices on 90 people?

Mr Smith: No. Eviction notices were served on 80 people at the start of the dispute. Since that time, some of the people who received eviction notices have decided to pay their rent. Hence the change in the figures.

Euan Robson: Of those who have paid, how many decided to pay after the eviction notices were served?

Mr Smith: I cannot do the arithmetic, but there are 38 non-payers left, so roughly half of them came back and said that they would pay the rent.

Euan Robson: Is the estate saying that the problems that have been drawn to our attention this morning are the problems of a minority, not a majority?

Mr Smith: We think that the Carbeth Hutters Association represents the minority. We also think that the increase in rent was the original cause of the difficulty. Since that time other issues have come to light that have proved problematical. We

are happy to try to address those but, essentially, we think that this is a rent dispute with a few vociferous people who do not represent the majority of the hutters.

Pauline McNeill: I have three questions. The first is about the original trust. I understand that the grandfather set up the trust to help working people so that they could have a hut in the beautiful scenery of the Carbeth estate. Do you disagree with that?

Mr Smith: Yes. There has been a lot of talk about trusts which, at the end of the day, are just legal entities. The grandfather's will contained a general statement that he hoped that the hutters would continue to be part of the estate and would continue to be looked after. However, as far as I know, he did not set up a trust to look after the land. His estate would have been wound up—as would anybody's—when he passed on.

Pauline McNeill: I understand that his will states that a trust should be set up for working people from Clydebank.

Mr Smith: No.

Pauline McNeill: Are you saying that that is not the case?

Mr Smith: That is correct. I do not have the will in front of me, but if he said in his will that a trust had to be set up, one would have been set up.

Pauline McNeill: Was that the nature of the trust originally—for working people to have a hut? I want to be clear about that.

Mr Smith: I understand that. There was not a trust set up to look after the Carbeth hutters under the will of the late Mr Barns-Graham—the grandfather.

Pauline McNeill: But that was his wish.

Mr Smith: No. He did not ask that a trust be set up. He said in his will words to the effect that he hoped that the hutters would continue to be looked after by the estate and that the estate would not be sold off or dealt with in such a way as to affect adversely the hutters who were on the estate at that time. We are talking about 1950 or something like that.

Pauline McNeill: I realise that it was a long time ago. As far as the present landowner is concerned, have the purposes of the estate changed? Do you now see it as a commercial issue?

Mr Smith: In today's terms, the estate is really just a small farm of around 280 to 300 acres. It has always been a working farm, or working estate. Different generations of the family, who have all lived on the estate, have run it in their own ways, as people do with businesses, but it is fair to say that when Allan Barns-Graham—the current proprietor of most of the estate—inherited, he inherited a situation that he thought was dangerous in terms of the estate's ability to continue to support the huts. Reference is made to that in our submission, and there was evidence to back that opinion up. The number of huts had declined over the years and they had fallen into some degree of dilapidation. In Allan's view, one of the reasons for that was the impossibility of getting material to them to repair them. Therefore, in 1990, some six years before the raising of the rents that kick-started this problem, he embarked on a programme to try to improve the way the estate was run—the whole estate, not just the part the huts occupy, which is substantial. So there was a change in attitude that came with a new proprietor.

Pauline McNeill: I would like to ask you about the lease. Do you think the lease is fair?

Mr Smith: Yes, I do.

Pauline McNeill: It seems to give an inordinate amount of power to evict people. Do you not think that it would be fairer to lengthen the duration of the lease, to give people a wee bit of security of tenure?

Mr Smith: Again, you need to consider this with some regard to the history of the estate. It is important to say that the principal terms and conditions of the lease—and certainly the ones that are causing concern, such as the 40-day notice condition—have been in place since around 1962, to my knowledge. That particular provision was not introduced in 1993.

Pauline McNeill: That is why I am asking you about the nature of the trust. If people believed that there was a general wish to help or protect people, they were not so worried about a 40-day notice. If you are now changing the nature of the original trust to put it on a much more commercial basis, the lease has more meaning—but you believe that the lease is entirely fair.

Mr Meehan: There was no original trust—that is the confusion. You have been told that there was an original trust that was set up by the grandfather. It does not exist.

Pauline McNeill: You used the phrase—

Mr Meehan: No, there was a clause in the will that indicated that the grandfather's wish was that the estate would look after the hutters.

The Convener: There is a confusion here that needs to be cleared up, Pauline. You will find the direct quotation from the will—ironically—in the Carbeth Hutters Association pamphlet. It does not mention a trust; it simply mentions a wish.

Pauline McNeill: I accept that, but the phrase

"look after" is the key one that I picked up from what Mr Smith and Mr Meehan said.

Mr Meehan: The 40-day lease is binding on both parties. The tenants therefore have the opportunity to give notice and move. They can sell their huts, or do what they choose with them, because they are their property, as they are on the estate. One of the important things that I ask the committee to take on board is that nobody has actually been evicted. Nobody has been thrown off the estate, and—to the best of our knowledge—nobody has had their property usurped. The claims that you are being confronted with are nothing more than hypothetical claims.

Pauline McNeill: I will ask my final question. The hutters association suggested that you have lodged some plans with Stirling Council. Do you have any intention of submitting plans, or have plans been submitted?

Mr Meehan: Thank you for asking that. First, plans were not lodged at Stirling—they were proposal documents that were presented for discussion with Stirling Council. They were confidential. One of the things that we would like to know—although this may not be the forum for it—is how confidential papers that were not in the public domain were made available to the public.

As for the caravan sites, that was not a detailed plan; it was nothing more than a discussion. There are no plans other than what we have already agreed with Stirling to proceed with.

Mr Smith: I do not wish to take up too much time, but I would add that I have been involved personally, on behalf of the estate, in nearly all the discussions that have taken place between the estate and the council. Lots of things have been explored, but at no time did any of them involve the clearance of the huts from Carbeth. I feel strongly about this: phrases have been used well and successfully by the hutters about clearances, but that never formed any part of any ideas that we have for the future.

Phil Gallie: I would like to go back to item 8 on page 8 of your submission. You make a statement that surprises me and gives me cause for some anxiety.

"Around 20 people . . . want to come off the rent strike and pay their arrears but are scared of doing so."

Mr Hanratty is sitting beside you. He, and 92 other people, must be extremely brave—or perhaps you have some other justification for the statement about people being scared of paying their rent.

11:15

Mr Smith: I am sure that Tom will be able to answer that in more detail than I can, but one of the other services that the estate provides is a system of wardens. They are on the estate almost all the time, can be contacted all the time and talk to the hutters all the time. The wardens form a link between the estate management and the hutters; inevitably, they chat about things. Our information comes to us via that route.

Phil Gallie: Perhaps Mr Hanratty would like to comment.

Mr Thomas Hanratty (Carbeth Hutter): At the beginning of this rent dispute, I was part of it. At that time, I thought that the landlord needed to be taught a lesson and that the rent hikes had to stop. I went along with the dispute for 18 months, but after reading some newsletters—which are now being passed around to members of the committee—I started to see flaws in it and to feel that we were moving away from the original issue. Mr Barns-Graham has since reduced the rent and issued circulars offering olive branches. He has asked people to come back in and said that there will be no reprisals.

After receiving one of the circulars, which, I thought, was offering not a bad deal, I approached two or three of the hutters. Since then, I have been pilloried. I have had two cars vandalised and, about a month ago, my hut was burned down. I have since been shot at. Newsletters are still being circulated, claiming that the wardens—me included—are all hooligans, drug dealers and wife beaters. We hear that every day of the week. That is why people are reluctant to come forward. You talk about people being scared—I cannae be any mair scared. I have slung the towel in, and they can dae what they like. They will no get away with it—in a democratic state, a minority cannae rule the majority. That is what is happening at Carbeth.

Phil Gallie: Thank you, Mr Hanratty. I have one final question for Mr Smith, regarding controls on the site. The site seems to have been built up over time. What controls the conditions and the number of huts that you have on the site now and might have in the future?

Mr Smith: That would be a planning issue for the local council, which has placed a restriction on the occupancy of the huts. I do not have the exact wording of the regulation in front of me, but the gist of it is that the huts are not to be used as a principal or main residence. That is what is laid down by Stirling Council's planning department. If we sought to increase the number of huts beyond the number for which there are sites—as I have already said, at present there are more sites than huts—we would need permission from Stirling Council, because it has to provide certain services. Rubbish clearance is the obvious example.

The Convener: We are getting very close to the

time that I designated as the cut-off point for this part of the meeting, but I have one or two questions that I want to ask.

We all agree that the origins of this dispute lie in the rent rises that were imposed some years ago. The lease—of which we do not have a copy—seems to allow arbitrary rent rises, of any amount. Is that the position?

Mr Smith: That is correct.

The Convener: Does the lease allow the landlord to raise the rents whenever and by however much he chooses?

Mr Smith: That is correct.

The Convener: Notwithstanding the fact that the lease allows for that, do you consider it to be fair? Effectively, you could impose rent rises five times a year, if you wanted to.

Mr Smith: Effectively, as opposed to legally, we cannot do that. If we do, we will end up here, in front of the Justice and Home Affairs Committee.

The Convener: This is a new—

Mr Smith: Excuse me, I think that this is quite important. Legally speaking, there is nothing in the lease to stop us increasing the rents. When I say that we can raise the rents, I mean that the lease permits it, not that it says so explicitly. The lease allows us to do that because it is annual in nature—every year, we can renegotiate the terms with the tenant. When we introduced the rent increases, we thought that what we were doing was quite reasonable—if we had not, we would not have done it. We still ended up before this committee and with some very expensive court actions.

In our view, the marketplace and the existing law provide reasonable protection as regards rent controls. I would also draw the committee's attention to the settlement proposals that were issued and appear at the back of our submission. They make it clear that in future we are prepared to work with a group that represents all the hutters and to discuss various issues relating to the estate, including any proposed increases. Looked at starkly, the lease permits rent increases to any level, but practically that would not work.

The Convener: Is it your argument that if there were an independent rent review procedure, you would not be able to manage the estate viably?

Mr Smith: That would be one of the issues that we would need to consider if there were an independent procedure, but there are others. What would such a procedure take as its terms of reference? If a person rents out a flat in Glasgow, there are 50 or 100 other flats with which to compare it. There are other hut sites in Scotland—and indeed in other parts of the United Kingdom—but Carbeth is unique. We do not think that there is anywhere that an independent group could compare to it. We also worry about the costs. To whom will the costs for running the body fall? Will it be a Government body and will people be happy to pay for it? Finally, we feel that it is our job to manage the estate and if the ability to fix one of the principal sources of income is taken out of our control, the ability to manage the estate is taken out of our control.

The Convener: In my experience, the Scottish Landowners Federation is not generally seen as a radical body, full of reforming individuals—

Mr Smith: That depends on the angle from which you are looking.

The Convener:—but it has been quite scathing about the situation at Carbeth, using language that appears to have become endemic to the dispute. How do you explain its response to the situation, which seems very unusual?

Mr Smith: I can explain it very simply. The Scottish Landowners Federation has a very difficult job on its hands, trying to convince a sceptical public that it has a role to play. The public perception is that the SLF represents fat-cat absentee landlords who rent out their land for lots of money, for hunting, shooting and fishing and who own huge tracts of Scotland and do not attend to it. What could be more perfect when trying to redress that opinion than to take on a landlord and pillory him in the press? That is exactly what the Scottish Landowners Federation has done.

Allan Barns-Graham's estate has perhaps the greatest public access of any estate—certainly any lowland estate—in Scotland. There are rights of way through it and there is access to crags for climbers and the public. I think that the Scottish Landowners Federation chose to come out publicly, very strongly against Carbeth estate because it was politically expedient: it suited its purpose nicely.

The Convener: Perhaps the committee should hear from the Scottish Landowners Federation. Gordon has one brief question and then we will allow the witnesses to leave.

Gordon Jackson: You say that the lease is fair and you have talked about negotiation, but there is no negotiation in the lease, which makes it clear that you can fix the rent at any time. That is perhaps rather unusual. It is more common for a commercial lease—that is what this is—to say that there will be rent reviews, a figure will be fixed by the landlord and if agreement is not reached the rent will be fixed independently. If you really want to be fair, why do you not change to that sort of lease?

Mr Smith: I have tried to explain that while other commercial operations and lets have comparative evidence available for the consideration of the arbiter—I am familiar with commercial leases and that is what happens if landlord and tenant cannot agree—there is nothing else that can be compared to Carbeth.

In the past few weeks, we have let new huts to people at the rents that we are asking the hutters to pay—without any difficulty. There is a market for them. If we go beyond those rents we will simply not be able to let the huts. We do not think that an independent mechanism has anything to work with in order to fix the rents.

The Convener: Thank you for coming. As I said to the previous witnesses, we may contact you further about this. I suspect that this meeting will not be our only consideration of this problem.

Mr Smith: If anyone wants to visit Carbeth estate, they are more than welcome to get in touch with us.

The Convener: Thank you.

I now call the representatives of the Scottish Executive, Mr Richard Grant, Ms Isobel Low and Mr Murray Sinclair.

The Deputy Minister for Justice, Angus MacKay, is now in the building for our debate on the statutory instrument. We do not want to keep him waiting for too long. We are pressed for time, and I apologise to the three members of the Executive who have waited patiently and now find themselves squeezed in at the end of the morning's evidence. They have helpfully provided a paper giving the background to the Carbeth hutters and the dispute. Is it correct to say that research into huts and hut sites across Scotland is still going on?

Mr Richard Grant (Scottish Executive): Yes.

The Convener: I notice that that research is due to be concluded shortly. Can you give a more fixed time scale?

Mr Grant: Yes.

First, I will introduce myself and my colleagues. I am Richard Grant, the head of housing division 2. Murray Sinclair is from the office of the solicitor to the Scottish Executive. Isobel Low is from the land division in the rural affairs department.

We hope that the research will be completed and we will have a final report by the end of the year, although it may be available before then—it will be soon, in any case.

The Convener: Is it fair to say that no final decision has been taken on whether legislation will be introduced, or what the nature of such legislation would be?

Mr Grant: That is correct. The land reform policy group considered the issue and put out a report for consultation that included a proposal for legislation to give greater security for those who "own" property on leased land. We received about 120 responses to that consultation. Opinions were sharply divided between those for and against legislation—I can elaborate on that, if you want. Others did not answer directly, or raised other points. Following the consultation, ministers decided that further information and consideration was needed before they could decide about legislation. That is why we commissioned the research, which is in two stages.

The first stage was concluded in the spring and was an attempt to identify other sites of huts and hutters—people in a similar situation to those at Carbeth. We then agreed to move on to the second stage, obtaining information from both the landowners and the hutters. That stage is almost completed and is being written up at the moment.

The Convener: Do members have any quick questions?

Dr Sylvia Jackson: I realise that this is a difficult question. Is it possible to take into account similar huts that we have heard about in other parts of the UK?

Mr Grant: I will pass on the question about the legal differences—it would be a different legal framework. Much has been said about the Welsh case, about which we have information, in Holt's field in the Gower peninsula. I understand that while those huts may have started off like the Carbeth huts, they are used as the main or principal residence of the majority of people and therefore are in a different position. Legal cases went through the courts and eventually reached the House of Lords, which considered whether the chalets were a fixture on the land—a point that relates to who owns the chalets.

We have heard quite a lot today about the fact that the hutters believe that they own the huts. Under Scots law, if the huts were a fixture on the land, they would be owned by the landowner. Paradoxically, that would help to create a condition in which the rent acts might apply, although many other conditions would have to apply as well.

Murray, would you like to comment on that?

11:30

Mr Murray Sinclair (Scottish Executive): My comments will be general, as it is difficult to comment on these particular cases, partly because we have not yet seen the leases and do not know the facts and circumstances of all the cases.

The House of Lords case is relevant, because it is about the law of fixtures—that is, when property attached to land is affixed to the land and has become a fixture. As I understand it, the law in England is thought to be the same as the law in Scotland in that regard. I do not think that that is directly relevant to these cases because, based on what we have been told today, whether the huts are a fixture is not a matter on which the rights of the hutters turn. Rather, I understand that the hutters do not have rights because the huts are said not to be their principal home. If the huts are not their principal home, there is no question of the rights of the hutters amounting to an assured tenancy.

The Convener: Gordon, do you have a quick question?

Gordon Jackson: I shall leave aside the question of who owns the huts and whether they are fixtures or not, which is quite complicated. This is to do with a lease of land. Forget the hut on the land—these people are leasing land and there is a rental provision that allows the landlord to charge whatever he likes. Is there a particular problem in simply having a provision that there is rent control when land is leased, leaving aside whether there is a building on it? For example, if one were to rent out land, there could be a barrier to an arbitrary charge of £1 million a week—which, theoretically, could be charged—and some form of rent tribunal control on the lease of land. Is that technically bad or good, possible or impossible?

Mr Grant: Any proposal for regulation or control of rents would need to take account of the purpose of that control and its likely impact. My responsibilities are in the area of housing and I am responsible for the Rent Registration Service, which was mentioned earlier. There is a history of rent control and regulation in housing and there are principles around the concept of a fair rent and a market rent on which that control is based. If we were to extend rent regulation into land that is used for building huts, we would need to establish some kind of principle and a regulatory body. Certainly the Rent Registration Service has no expertise in the setting of rents for hut sites, which is a specific subject, or for caravan sites and so on. Its expertise is quite specific.

The Convener: I do not want you to settle into a long exchange, Gordon, because we have already gone beyond our time limit and the minister is waiting.

I have one or two more questions. You heard the Carbeth hutters' evidence this morning. Would legislation along the lines of what they want be viable? I am not asking you for an opinion as to whether it should happen, but would their proposal be viable? If so, could it be included in the forthcoming land reform legislation? Again, I want to know whether that is possible rather that whether you think it should happen. The committee needs to know whether, technically, such legislation would be viable or possible.

Mr Grant: I shall pass the second question over to Isobel in a moment. On the first question, I foresee some difficulties. The proposal for legislation would have to be worked up in more detail. Any legislation in this area would have to be fair to both landowner and tenant and we would have to ensure that it was compliant with the European convention on human rights. We want to avoid hybridity and retrospection.

There are also difficult questions about the categories of properties to which the legislation would apply. That would need to be given careful thought and drawn up in a way that did not have adverse consequences for people who were dragged along by the definition that we had to employ. For example, there is complex legislation to cover time-share owners or agricultural tenants who have built houses.

There will also have to be consideration of the basic principles. What is the principle on which rents will be set? Is it fair to limit them to the retail prices index, as the hutters have suggested? That would mean that people would start from a variety of different positions. What would happen if the landowner improved the land? A phalanx of questions would need to be answered. We have only recently seen the Carbeth hutters' proposals. At official level, we would be happy to discuss them in more detail.

The Convener: Basically, your position is that you are not sure at this stage whether the proposals are viable.

Mr Grant: That is right. There are quite a lot of difficulties that would need to be worked through.

The Convener: That must make it difficult for you to answer the second part of my question.

Ms Isobel Low (Scottish Executive): The only thing that I can say at this stage is that the proposals are not absolutely impossible. Much depends on the viability issue, but it is also a matter of timing.

The Convener: That is what we need to know. If something can be worked out, will it be possible to include it in the land reform bill? The committee must determine how to proceed with this issue. If certain things are technically impossible, we would cause ourselves difficulties by going down a certain road.

We may want to send you further questions in written form, but now there is just time for one final quick question before we move on.

Christine Grahame: I accept all that has been

said about the difficulties that are involved in this case. If one were to start from the historical position that I went into, would that assist in the viability of the proposal?

Mr Grant: I am not sure that I understand the question.

Christine Grahame: I am referring to the historical position of the hutters from the '20s and '30s and to the definition of legislation that would deal just with those particular issues.

Mr Grant: The way in which the huts have developed and the nature of the huts would help in shaping a definition, but there would have to be a generic definition and one that clearly identifies the people for whom we are trying to target protection.

The Convener: Thank you for coming along. Although what you had to say has been somewhat abbreviated it has nevertheless helped us to clarify some of the issues that we will have to deal with if we are to take this further.

Subordinate Legislation

The Convener: The Deputy Minister for Justice, Angus MacKay, is here for this debate. Minister, thank you very much for coming and please accept my apologies for keeping you waiting. You will be aware that we have been dealing with the issue of the Carbeth hutters, which may increase your work load even further, depending on what the committee decides to do about their petition.

I remind members that there is a court case in progress on the general issue of fixed fees and whether they are compatible with the European convention on human rights. To conform to the sub judice rule, members should, I am advised, avoid making comments on the issue, and should concentrate on the merits or otherwise of the amending regulations. However, I wish to make a couple of comments on the record.

Given that the statutory instrument is, in the main, specifically about fixed payments, it seems quite extraordinary to me that the sub judice rule should be construed as barring us from a discussion about fixed payments. I think that it is an extraordinary interpretation of the ruling that could have some serious effects for the Justice and Home Affairs Committee and indeed for the Parliament, given the increasing number of cases that are likely to be taken under the convention on principles, rather than on specific issues.

Gordon Jackson: Whose ruling was it?

The Convener: The legal advisers to the Parliament. I will take up the issue, because it seems an utterly extraordinary position for us to be in: a statutory instrument on fixed payments is before us, yet we are told that we are not permitted to discuss fixed payments.

As it happens, the point about the statutory instrument with which we are concerned is not to do with fixed payments, but I wanted to remind members not to stray into generalities until we have a further discussion or debate with the legal advisers to the Parliament about that ruling.

I should also remind members of the committee that if they have any interests that are relevant to criminal legal aid they should declare them at the beginning of any comments that they wish to make. Gordon, I see that you are smiling, but I think that these particular legal aid provisions do not relate to the kind of legal aid that you frequently put in claims for. So, despite your smiles, I am not sure that—

Gordon Jackson: I have an interest in legal aid. [*Laughter.*]

The Convener: I note that there is no elaboration.

Gordon Jackson: A small interest in legal aid.

The Convener: With a lot of zeros on the end of it. [*Laughter.*]

There is a motion in my name on the agenda that I think everybody will have read. I move,

That the Justice and Home Affairs Committee recommend that nothing further is to be done under the Criminal Legal Aid (Fixed Payments) (Scotland) Amendment Regulations 1999 (SSI 1999/48).

The point that the Subordinate Legislation Committee and the Justice and Home Affairs Committee are concerned about is relatively narrow and has to do with the definition of when a trial begins.

In common law, a trial begins when it is called. For the purposes of legal aid, that definition appears to have been departed from. Specifically in these regulations, a definition is given that the beginning of a trial is deemed to be when the first witness is sworn. That is a matter of concern for the Subordinate Legislation Committee and for this committee, because it is in the knowledge of a number of individuals that a trial can go on for a considerable time before a witness is sworn.

As I understand it, the reasoning is that legal aid—at least in so far as it is described in the statutory instrument—is meant to be a recompense for the skill and abilities of solicitors in their conduct of trials, so it is not appropriate to reward them for not really doing anything, albeit a trial has been called. Nevertheless, even that caveat does not cover a number of situations that not only can arise but are well known to have arisen. Although they do not arise every day or in every court, they have occurred frequently.

11:45

I am aware, as are committee members due to correspondence that was circulated before this meeting, that discussions have taken place between the Executive and the Law Society in particular, with regard to perhaps reconsidering the way in which this instrument is drafted. The correspondence, which resulted in an almost daily exchange of letters, culminated in a final letter that was sent to you yesterday, minister—a copy of which I believe we all have—which outlines some of the ways in which a trial could have started substantively without the first witness having been sworn.

Some of the issues concern the accused's competence to give instructions. For example, there could be a question as to whether the complaint itself is fundamentally null. There could be a plea in bar of trial. There could be long and detailed arguments about whether an adjournment was appropriate. The sheriff may decline jurisdiction, and there may be discussion about that.

That is not an exhaustive list of occasions on which a considerable amount of debate may take place over a considerable amount of time without a witness having been sworn. It seemed to the committee that it would be anomalous and unfair if in those circumstances—even if it were in a minority of cases—solicitors who were having to work hard for their client were being denied reasonable recompense for their work.

That outlines the committee's concerns. We were also concerned, in a more general sense, that having recognised that there was a defect in the drafting, we should not be seen to be allowing the instrument to go through on the nod. We felt that it was incumbent upon us to respond to what had been drawn to our attention and to ask the Executive to reconsider the position.

As I have referred to an exchange of correspondence, including letters to the minister, the minister may wish to detail some of the conversations that have been going on when he makes his response, which I invite him to do now.

The Deputy Minister for Justice (Angus MacKay): Thank you for the invitation to attend the committee to discuss this issue.

I should say—I am happy to receive your guidance on this—that I had intended, by way of providing some brief background, to address the broader issue of the Criminal Legal Aid (Fixed Payments) (Scotland) Amendment Regulations 1999 (SSI 1999/48). Is it your view that it would be improper to do so?

The Convener: That is not my view, minister, but unfortunately it appears to be the view of the Parliament's legal advisers. I consider that interpretation to be utterly ludicrous and I intend to take the issue further. The clerk advises me that you would have to make up your own mind about whether you wish to proceed. [*Laughter.*]

I cannot advise you—all I can say is that the advice that I have been given is that we should avoid a discussion of fixed payments.

Angus MacKay: That is the very subject about which we need to talk today. That makes for a challenging opportunity. In that case I will—as I am sure members will be relieved to hear—simply cut to the chase. That will make my contribution considerably shorter.

The regulations—as the name of the statutory instrument suggests—amend the original fixed payments regulations that were made earlier this year. They did three things: first, clarify how fixed payments apply to deferred sentences; secondly, extend the special allowance payments for remote sheriff courts to three further courts; thirdly, define the start of a trial for legal aid purposes.

The first two changes—applying fixed payments regulations to deferred sentences and extending the remote payments to Wick, Fort William and Dunoon sheriff courts—have been fairly widely welcomed, including by the Law Society of Scotland, and I do not propose to speak about them in any detail.

The clarification on deferred sentences extended the scope of the fixed payments and that arose from discussions in the tripartite group that was set up in March when the regulations were made in the House of Commons.

A special payment of £50 for every case in a specified list of remote sheriff courts was part of the original fixed payments scheme. It was based on a formula that was designed to take into account the remoteness of the court and the volume of its business. While remoteness does not vary year by year, volume of business does, and has done in the past. As a result, we have updated the list to take account of the latest figures on case loads. That has brought in three more sheriff courts to the remote payments scheme, which has been welcomed.

The third change has been the subject of comment by this committee, although it will be difficult to discuss the matter without discussing fixed payments. The original fixed payments regulations did not specify when a trial was understood to have commenced. The intention was to rely on the common understanding that a trial begins when evidence is led. The problem that has emerged is that the recent decision in the High Court in the case of John Mitchell v Vannet has cast doubt on that approach. That case—which was concerned with a different issue—

provided a definition of the start of a trial as being when the accused's plea is confirmed.

Since the intention behind the extra payments was to reward a solicitor for work in conducting a trial, it was felt necessary to define the start of a trial—for legal aid purposes only—as being when the first witness is sworn. That definition was chosen because in the great majority of cases that is the start of the trial proper. The Law Society of Scotland did, however, draw to the attention of the Executive that there might be cases in which no witnesses are sworn. Our advice has been that that happens in a very small number of cases and we have not as yet identified any, but we did not want to disadvantage solicitors conducting trials of that kind.

Officials of the justice department have, as you mentioned, convener, had discussions about a solution to that problem with the Law Society. I understand that it has written to members of the committee to tell them that those discussions have taken place. The most recent letter relating to the subject was—as you rightly said—to me. I received that letter very late yesterday and I will come to it later.

As a result of those discussions, the Executive now proposes to bring in further amending regulations, as the committee is aware. Our proposals are set out in full in the letter that I sent to the convener on 21 October and that has, I understand, been made fully available to all members of the committee.

In short, there was agreement on the general proposition that the starting point for a trial could be based either on when the first witness is called by the procurator fiscal or when an agreed joint minute of evidence is placed before the court on the day of trial. Our solicitors are at present considering how those proposals can be translated into regulations, which we plan to lay as soon as possible.

The Law Society has written to welcome the Executive's approach to discuss changes to the regulations. It asked specifically for consideration of two issues. The first is the time scale for the regulations. Our position is that we would like to introduce them as soon as possible. We already have a draft, which requires some more work. That should not take too long. We will then consult the Law Society directly. Once it has considered the draft, we will lay the amending regulations. The regulations need to lie for 21 days before they come into operation. However, in this situation, I suggest that Parliament may wish to consider waiving that requirement.

Secondly, the Law Society asked what would be done to ameliorate the prejudice to anyone who is adversely affected by the current amending regulations. As I have already said, we understand that no cases of a kind that might not have been covered by them have emerged so far. It seems to me that the solution is to make the new amending regulations come into force as soon as possible.

I suggest that, since action is now in hand, following consultation with the Law Society, to repair what this committee considered to be a defect in the regulations, there is no case for annulling them. If the regulations are annulled, it will mean that solicitors in the courts in Wick, Fort William and Dunoon will lose the extra payments that have been widely welcomed. I ask, therefore, that the committee note the action that is now in hand and will, very soon, remove the problem that was the source of its main comment on the regulations.

Before I finish, I want to say something about the letter from the Law Society, which the convener mentioned and which I received very late yesterday. It drew attention to a range of examples where, it was felt, the start of a trial would not remunerate the solicitor. As you would expect, I will respond to that letter in due course. However, it seems to me that the examples given are, broadly, pre-trial issues that are already covered by the core fee of £500 in the sheriff court and would, in the normal run of events, be taken care of in the intermediate diet. I will be interested to hear the views of individual committee members on that. That is the purpose of today's discussion.

In the light of what I have said, I invite you, convener, and the committee, to consider withdrawing the motion.

The Convener: Thank you, minister. I remind members that when they address questions to the minister they are doing so on a member-to-member basis—as a member of the Scottish Parliament, the minister is entitled to be here. We are not questioning a witness, as we were earlier this morning. Do any members wish to make a comment, ask a question or look for elaboration?

Gordon Jackson: Minister, when you discuss with the Law Society amending the date of trial, will you at least consider the issues that are raised in the society's letter of 25 October? I am not entirely persuaded that it is fair to say that the services described there come under the core fee. The purpose of the core fee is to cover preparation for the trial. For the hearing itself, there is remuneration in addition to the core fee.

There are likely to be situations when the preparation has been done and it is time to start the trial—which might last a number of days and would, of course, be paid for on an enhanced basis. At that point, however, serious issues may arise that involve the solicitor's being in court for as long as they would for a trial, without a trial

taking place. I am not saying that that is particularly common, but there might be situations in which there is a discussion of fitness to plead—the sort of issues that are described in the letter. That is as common as the situation for which you are already prepared to legislate.

There may be situations where there is a joint minute and no actual evidence is led, but that is probably less common than the issues that are raised in this letter.

I would be content if there was a possibility of addressing some of the issues in the letter when an amendment is made. I am a little unhappy about saying simply that it is in the core fee, because that might not be fair in some situations.

12:00

Christine Grahame: I endorse what Gordon says and appreciate that the matter is urgent, but I would be unhappy if we did not deal with the matter that the Law Society has raised just for the sake of making things move more quickly. A witness might be called and a solicitor might have to deal with all sorts of situations that were not foreseen in pre-trial preparations. That would be unusual, but it should be covered.

Gordon Jackson: I am not suggesting that we do not pass the regulations now—I know that there are important issues relating to outlying courts—but I would like these matters to be considered as part of the continuing changes to the regulations.

Euan Robson: When might the further amending regulations be ready, minister?

The Convener: Minister, the question that is being asked is one that I, too, would like to ask. What kind of time scale are we talking about in terms of amendments to the statutory instrument? I do not want to pin you down, but we would like some sort of indication of how long we are likely to have to wait. How would the time scale be affected by the issues that have been raised today?

Angus MacKay: In my presentation, I tried to explain what the time scale might be. We are, to an extent, in the hands of the Law Society. The time scale involved will depend on how far and how wide the Law Society wants to consult. We want to act as soon as possible. We will act quickly to get the regulations to the Law Society for consultation and we already have a draft worked up, but it needs some more attention.

I am unable to give you a more fixed time scale, but that gives you an indication of what we are bound by.

The Convener: There is concern that, if we proceed today on the basis of the assurances that amendments will be made, we might have to wait six months or a year for them. The time scale should be short rather than long, particularly because the longer we take, the more likely it is that people might be affected by the omissions.

Angus MacKay: I can assure you that the time scale will be nothing like the one that you are concerned about. We want to conclude the matter before the end of the year.

I am happy to consider the issues that were raised in the Law Society's letter that arrived yesterday. It will be part of the dialogue that we will have when the issue is raised, just as we will take on board the issues that have been raised here today.

The constraint on discussing the broader issues of fixed payments is unfortunate. Some of those issues relate to a much broader area, such as the whole point and practice of the fixed payment scheme, how it is intended to operate, what it is intended to deal with and how the simplicity and size of the payments cover a range of types of work. Nonetheless, I am happy to give the assurance that those issues will be given proper consideration in the reply to the Law Society and in any subsequent dialogue.

Pauline McNeill: If the Law Society consults on the issues that it raised with you in the letter, the likelihood is that it will get feedback along those lines about matters that it thinks might not be covered by the pre-trial fee. If that is what the Law Society comes back with after consulting, will there be scope to include that?

Angus MacKay: There are two separate issues. We intend to write back to the Law Society about the regulations that we are outlining to you today. The Law Society will consult its members about them. A separate, although related, issue was raised in yesterday's letter. We will have discussions with the Law Society about that, first in my reply to the Law Society. We will see where those discussions take us, before I give any undertaking about what we may do. The Law Society may make an argument that persuades the Executive. We must see the substance of its concerns.

The Convener: We are concerned that you do not exclude further consideration of the possibility of a trial happening without the witness being sworn.

Angus MacKay: I am happy to give that matter consideration. I am not necessarily personally persuaded by those arguments. We will have a dialogue about this issue. If a persuasive case can be made, we will consider it.

The Convener: For our guidance, what evidence would persuade you? For example,

would factual evidence of a trial that has gone on for four or five hours without a witness being sworn help to do so?

Angus MacKay: I do not want to pre-empt the discussion that we have with the Law Society. It has a case that it wishes to make, which I will be happy to hear. This is only a one-page letter, which outlines some potential circumstances. It says that it is by no means an exhaustive list and it does not go into any great detail. We must wait and see what the Law Society produces.

Phil Gallie: I recognise the need for a definition, although we appear to have got by without one for some time. Are there any cost implications? Will savings be made?

Angus MacKay: The purpose of providing a definition is not to make cost savings. There may be cost consequences if we do not define when a trial begins. I cannot quantify that for you, but the purpose of the regulations is to nail down an area that was imprecise and therefore did not serve the interest of any relevant party. It is not intended primarily as a cost-saving device.

Phil Gallie: I accept that it is not intended to be a cost-saving device, but there should be an indication as to what the cost implications would be. Have any estimates been made?

Angus MacKay: I am advised that it will have almost no cost implications.

Phil Gallie: Thank you.

The Convener: Since you have indicated, minister, that you will have further consultations with the Law Society prior to the amendment being finalised, I ask that the committee be kept informed as the process continues, rather than having to wait until we see the final amendment. That would help us all.

Would you like to add any further comments?

Angus MacKay: No. The matter has been dealt with straightforwardly. Everyone is clear about what we are attempting to do. I hope that that puts the committee and all interested parties' minds at ease.

The Convener: Since I moved the motion, it is incumbent on me to bring the debate to an end by saying one or two words about it.

Given that what the minister has said this morning is reassuring, especially in terms of the time scale and his intention to consult the Law Society further, I will withdraw the motion. The Justice and Home Affairs Committee has drawn attention to its concern and the Executive has responded. We are grateful that the response has been so positive. There is little to be gained from insisting on the motion because, as has rightly been said, there would be negative financial consequences for a number of rural practices. We must take that on board. Given the reassurances that we have heard this morning, I am happy to withdraw the motion. Does any member of the committee object to the motion being withdrawn?

Members: No.

Motion, by leave, withdrawn.

The Convener: Thank you, minister. You will be glad that the motion has been withdrawn, but we look forward to being kept apprised of the further consultation.

The committee now has to meet in private because, notwithstanding the fact that the motion has been withdrawn, we must report on this matter to Parliament. I am advised that that means that you, too, must leave, minister. You do not get to join in the discussion on our report.

12:11

Meeting continued in private.

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