

RURAL DEVELOPMENT COMMITTEE

Tuesday 15 January 2002
(*Afternoon*)

Session 1

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RURAL DEVELOPMENT COMMITTEE

2nd Meeting 2002, Session 1

CONVENER

*Alex Fergusson (South of Scotland) (Con)

DEPUTY CONVENER

*Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP)

COMMITTEE MEMBERS

*Rhoda Grant (Highlands and Islands) (Lab)
*Richard Lochhead (North-East Scotland) (SNP)
*Mr Jamie McGrigor (Highlands and Islands) (Con)
*Mr Alasdair Morrison (Western Isles) (Lab)
*John Farquhar Munro (Ross, Skye and Inverness West) (LD)
Irene Oldfather (Cunninghame South) (Lab)
Mr Mike Rumbles (West Aberdeenshire and Kincardine) (LD)
Elaine Smith (Coatbridge and Chryston) (Lab)
Stewart Stevenson (Banff and Buchan) (SNP)

*attended

THE FOLLOWING ALSO ATTENDED :

Roseanna Cunningham (Perth) (SNP)
Murdo Fraser (Mid Scotland and Fife) (Con)
Maureen Macmillan (Highlands and Islands) (Lab)
Alasdair Morgan (Galloway and Upper Nithsdale) (SNP)
David Mundell (South of Scotland) (Con)

WITNESSES

Robert Balfour (Scottish Landowners Federation)
Ross Finnie (Minister for Environment and Rural Development)
Neil Fleming (Scottish Executive Environment and Rural Affairs Department)
Simon Fraser
Maggie Fyffe (Isle of Eigg Heritage Trust)
David Gass (Scottish Enterprise)
Andrew Hamilton (Royal Institution of Chartered Surveyors in Scotland)
Dr Maurice Hankey (Scottish Landowners Federation)
Jim Hunter (Highlands and Islands Enterprise)
John Watt (Highlands and Islands Enterprise)

CLERK TO THE COMMITTEE

Richard Davies

SENIOR ASSISTANT CLERK

Mark Brough

ASSISTANT CLERK

Jake Thomas

LOCATION

The Chamber

Scottish Parliament

Rural Development Committee

Tuesday 15 January 2002

(Afternoon)

[THE CONVENER *opened the meeting at 14:01*]

The Convener (Alex Fergusson): Good afternoon, ladies and gentlemen. It is just past 2 o'clock and I would like to begin the meeting, if possible. I welcome the witnesses, whom I will introduce to members later.

I start by giving the statutory warning to all members and members of the public to switch off their mobile phones for the rest of the meeting. I have received four apologies, which is most unusual: Elaine Smith, Stuart Stevenson, Irene Oldfather and Mike Rumbles have intimated that they are unable to attend. In part, their absence is made up for by the attendance of Roseanna Cunningham and Murdo Fraser. David Mundell will join us later in the proceedings.

Members will note that our clerk, Richard Davies, is not here. As he is not very well, he has been signed off for a fortnight. I am sure that all members wish him a speedy recovery so that he can get back among us.

Items in Private

The Convener: Item 1 is to consider taking items 6 and 7 in private. Does the committee agree to do so?

Members *indicated agreement.*

Land Reform (Scotland) Bill: Stage 1

The Convener: Item 2 is the continuation of our evidence taking on the Land Reform (Scotland) Bill. I remind witnesses and members that our focus today is on part 2 of the bill, which deals with the community right to buy. In particular, I remind members that the committee agreed to focus on the impact of the proposals on rural businesses.

We will hear from witnesses in three pairings, with about 40 minutes for each pairing. Although we will deal principally with the community right to buy, we will ask witnesses about all parts of the bill, to save them from coming back on a future occasion. I propose to spend roughly the first 30 minutes of each session on the community right to buy, following which I will ask witnesses whether they wish to comment on parts 1 and 3 of the bill. I will invite brief questioning from members as time allows. Members will be aware that the committee will hold another evidence session next week, specifically on part 1 of the bill, which deals with access.

I am pleased to welcome Simon Fraser, who is a solicitor and an adviser on previous community purchases, and Maggie Fyffe, who represents the Isle of Eigg Heritage Trust. Rather than asking you to repeat your written submissions, I ask you to introduce yourselves briefly and to outline the relevance of your evidence to the debate. I advise all witnesses that members have received your written submissions. The idea behind today's opportunity to give evidence is for members to inform themselves, through questioning, about any aspect of the legislation in which they are interested. I ask Mr Fraser to lead off.

Simon Fraser: As you said, convener, I am a solicitor; I work in private practice and am based in Stornoway. I have been involved in assisting a considerable number of communities to achieve community ownership over the past 10 years or so. I think that that is all that I need to say at the moment.

Maggie Fyffe (Isle of Eigg Heritage Trust): I have lived on Eigg for 25 years. I was involved in all stages of the community buy-out. I am the company secretary of the Isle of Eigg Heritage Trust and I currently work as the administration secretary.

Simon Fraser: I am accompanied by John Hutchison, who is the Highland Council area manager for Lochaber. In that capacity, John has been involved in the council's efforts to support a number of community ownership initiatives throughout the Lochaber area of Highland Council.

The Convener: I was just about to ask you to

introduce Mr Hutchison. Thank you, and welcome to the committee, Mr Hutchison.

Thank you for keeping your opening statements so brief. Obviously we get maximum benefit from questions and answers and I am happy to open up the meeting to questions from members and visiting members.

Rhoda Grant (Highlands and Islands) (Lab): Are the witnesses happy with how the bill identifies communities? We have been told that polling districts are the preferred option. However, yesterday the Justice 2 Committee took evidence that showed that postcode areas might be preferable.

Simon Fraser: I am concerned that, as drafted, the bill is unnecessarily restrictive. Identifying communities by polling district might be appropriate in one area, whereas using the postcode might be appropriate in another. Either might be completely inappropriate in many situations. I suspect that, in any given situation, a community can readily identify itself. I am more in favour of an enabling provision that would allow a community to be identified by reference to the polling district, postcode or some other appropriate means, but would leave it to the community to identify itself. It would then be for ministers to decide on the best option.

Rhoda Grant: Evidence that we have taken states that that is the communities' preferred option. The problem is that there has to be a legislative area of people who can be balloted. If the bill did not restrict the way in which a community could be identified, two separate communities from roughly the same area might use two different ways of identifying themselves.

Simon Fraser: I appreciate that. The case of Gigha was straightforward because the polling district is the island of Gigha. Eigg, however, is included in a polling district that comprises all four of the small isles, so using the polling district to identify the community would have been inappropriate in that case. There are other instances where, for administrative reasons, a postcode is drawn to take in a very large area that might have no social or other relevance to the core community that is interested in a piece of land. I cannot suggest how you ought to draft the provision. I am merely suggesting that, at the moment, the bill is overly restrictive.

The Convener: I hope that all the witnesses will feel free to catch my eye if they want to make a comment. I will leave it up to them to do so.

Murdo Fraser (Mid Scotland and Fife) (Con): I am interested in the economic impact of part 3 of the bill. If a community buys a piece of land, what sources of income are open to that community that would not be available to a private landlord? For

instance, I know that Eigg has had bad landlords in the past. However, would there be anything more beneficial in community ownership than in a good landlord? Would the community have access to external sources of funding that are not available to a private landlord?

Maggie Fyffe: The Isle of Eigg Heritage Trust has charitable status and there are certainly some areas where funding is available to charities that is not available elsewhere. In the five years since the Isle of Eigg Heritage Trust bought the island, the difference has been like night and day. Prior to the buy-out, there were no opportunities for individuals because of security issues and lease issues. Since the buy-out, there has been a complete change on the island, not only because of what the trust has done, but because a climate has been created in which individuals can create their own businesses. The climate has changed completely from one in which people had virtually no employment to one in which there is almost 100 per cent employment.

Simon Fraser: The essence of community ownership is that the land and the assets of the community are managed in the interest of the whole community and not in the interest of a single part of, or single economic entity in, the community. As Maggie Fyffe demonstrated, we are not necessarily talking about a community running an estate that it may have purchased as a single business entity. When the Isle of Eigg Heritage Trust took over ownership of the island, an initial plan demonstrated clearly that to attempt to run the place as a single business would require a substantial amount of annual revenue support. That plan was not followed. The economy of the island diversified and—it would seem—pluralised. The community buy-out allowed a host of rural businesses to develop, which in turn allowed the economy of the island to develop.

Substantial funding seems to be available to community organisations. That is because the remit of those organisations is not solely economic. In the case of Eigg and the other community buy-outs with which I am acquainted, the organisations' remits sought also to bring social and environmental benefits to their areas. That enabled those organisations to tap into a wide source of funding that would otherwise not have been available to them.

Murdo Fraser: Could you give me some examples of other streams of income that may be available?

Simon Fraser: The Eigg example illustrates the point well.

Maggie Fyffe: Initially, we were able to source funding from Lochaber Enterprise for a purpose-built building on the pier, which houses three

separate businesses. Only one is run by a subsidiary company of the trust; the other two are leased to individuals. That is a good example of the funding that was brought to the island.

Roseanna Cunningham (Perth) (SNP): My question is on the same general point that was implied in Murdo Fraser's questions. Murdo asked about the difference that community ownership makes, but the money is either there or it is not. The right to buy is not the issue. That may be an unfair paraphrasing of what he said, but I want to explore it a little further.

I may be being subjective, although I do not apologise for asking for your subjective views on the matter, as they are important. Not all communities want to exercise the right to buy. The assumption that every community in Scotland wishes to do so is mistaken. Some communities do not wish to because they are satisfied with what is happening, but others wish to because that is not the case.

Perhaps all three witnesses could tell us the circumstances that have, in the past, given rise in communities to the demand for the right to buy. Given that we know that the right to buy will not extend to all communities, what will be the circumstances for those to which it will apply?

Simon Fraser: Given that there is currently no statutory right, all community ownership organisations have competed and bought on the open market. In general, they have bought as and when an opportunity has arisen. Often that has been on the back of bad history—the community's experience of the way in which things were run in the past—or on a perception of a future threat. If the opportunity has presented itself—because a place comes on the market—some people have decided to go ahead with a proposal to buy and others have decided not to. The bill seeks to increase the opportunities.

14:15

Roseanna Cunningham: I am asking you to list subjectively the kind of circumstances that would provoke communities into feeling that buying is their only option for the future.

Simon Fraser: A number have taken the step when there has been an opportunity and a bad history, if you like.

Roseanna Cunningham: Can you go into the bad history concept?

Simon Fraser: The circumstances on Eigg were that, when the last landlord left, the economy of the island was completely flat and dead; an economic desert had been created. The whole business of the place—the farms and the employees—was rundown. All the estate cattle

were sold off to pay the wages of the remaining people; when that money ran out, those people were made redundant. There was nothing left because the landlord controlled everything about the island's economy. After that, the only way was up and, as you know, the islanders took the decision to go ahead with their buy-out. That is a fairly extreme example.

In Assynt, the perceived threat was that the whole estate would be chopped up into little bits and owned by many different people. More recently, because of the successes in places such as Assynt and Eigg, people have discerned not only an opportunity to counter a threat but a major opportunity for developing their communities through taking over ownership. Public thinking has perhaps moved along a little from defending against a major threat or a perceived threat to taking advantage of a big opportunity.

Maggie Fyffe: Not only was the island in a completely rundown state but the community was completely demoralised and we were in danger of losing people. In a small community such as ours, to lose a couple of families would have been a huge loss. What has happened in recent years has completely turned that around. Not only do the families feel secure and stable in their whole way of life, but new people have begun to come to the island. Some of our young folk have come back and started their own businesses. The issue is about the whole climate for a community and whether it sees a future in what is happening.

Roseanna Cunningham: So the buy-out has led to economic regeneration on Eigg.

Maggie Fyffe: Totally.

The Convener: We have been talking about a community buying a whole island. The bill's provisions will apply equally to a community in another part of Scotland that wishes to buy a tiny bit of field for a playground. Given the variety of circumstances that one can envisage, do you think that the bill is flexible enough on the number of people required to become a registered body? Some people might want to buy a whole island, while others might just want to buy a tiny bit of a field. Do you think that more flexibility is required or does the bill cover that variety of circumstances?

Simon Fraser: The proposals are nowhere near flexible enough. First, on the issue of the number of members, 20 is probably too high for some communities. Secondly, the bill does not explicitly envisage the possibility of partnerships in the ownership organisations. Eigg, for instance, is a partnership between the residents association on the island, Highland Council and the Scottish Wildlife Trust. Knoydart is a bigger partnership. Those partnerships can be extremely powerful and

effective. I would like the bill to flag up the role of partnerships.

There are one or two other little difficulties. We have not talked about the pre-registration requirement. The pre-registration requirement to put in place a company limited by guarantee, to bear the cost of setting it up, to do the annual returns, to hold board meetings regularly, to appoint directors and to keep things going in the faint hope that the place might come on the market is too difficult a test. I would be far more in favour of allowing a representative organisation within the community to register an interest. If the place came on the market, moving to register a company pretty quickly after that would be a simple matter.

The Convener: It was said that, in some cases, 20 members might be too many. Do you accept that there could be circumstances in which 20 members could be seen as too few? The provision might allow a minority interest within a community to register a right of interest. Do you accept that there are justified fears along those lines?

Simon Fraser: There are opportunities in any community for difficulties to be created by small groups taking control. Under the bill, the right would have to be open to everyone within the community and everyone would have a say in the matter. From that point of view, the bill is fairly well drafted; it ensures inclusiveness rather than providing an opportunity to be exclusive.

John Farquhar Munro (Ross, Skye and Inverness West) (LD): The community might be defined by postcode or by other means. Some of the communities might not have a unanimous view. In your view, what would be an acceptable percentage of people in that community voting to approve the acquisition of the asset?

Simon Fraser: I have no firm view on that. Clearly, we would want a substantial percentage of people to vote in favour—more than 50 per cent would probably be reasonable. We will never get 100 per cent agreement on anything. To pitch the acceptable percentage too high would place an unnecessary hurdle in the way of the community. However, I do not have a hard view on the matter.

John Farquhar Munro: Do you appreciate the fact that a marginal majority might create a difficulty? I am not suggesting that communities should have a unanimous view, although in some circumstances they might. Somewhere in the region of, for the sake of a figure, 75 per cent of the community in a given area might be acceptable.

Simon Fraser: That is far too high in my view. We tend to find that in the earlier stages of discussion of a proposal there is a core level of support. Only as the buy-out gradually becomes a

reality does the support firm up and increase. I recently saw that happening in a place with which I was involved. A 75 per cent threshold at the outset, before the buy-out becomes a reality, is unnecessarily high. About 50 per cent is probably about right.

Mr Alasdair Morrison (Western Isles) (Lab): Maggie Fyffe has already ably covered a number of the points that I was going to raise with her, but I have one question. If the community had not bought and assumed control of the island, where do you think that you and the island would be today?

Maggie Fyffe: I am sure that I would still be there, but who knows the answer? The whole point of the bill is that, at present, land sales in Scotland are a total lottery. If the trust had not bought Eigg, who knows who might have bought it and what the future might have held? I know that, before the buy-out, a lot of people relied on the owner for leases of houses and businesses. People were completely restricted because they did not have leases, which meant that they could not access any development grants. The ability to do so has made a big difference on Eigg. Who knows what might have happened otherwise?

Mr Morrison: Thank you. I wish you and your fellow islanders the very best in the years to come.

I want to take Mr Fraser back to the issue of another organisation registering an interest. What kind of organisation could specify an interest in land?

Simon Fraser: I am sorry; I am not sure what you mean.

Mr Morrison: As far as registering an interest in the purchase of land is concerned, are you talking about a community council or a local authority?

Simon Fraser: Any body, such as a community association or community council, could do it, as long as that body was representative of the area.

Mr Morrison: Why would that be an advantage?

Simon Fraser: At the moment, only an organisation that qualifies under section 31 of the bill will be able to register an interest. As a result, that organisation will have to exist already and be registered with the registrar of companies. Furthermore, it will have to hold annual meetings, make annual returns and carry out all the usual business associated with keeping a company alive, in the faint hope that the property might come on the market. That would be difficult and would impose an unnecessary burden on any district or any community. Most initiatives start with community bodies. If a representative body could simply register an interest, that would hold the position and allow the appropriate type of organisation to be set up.

Mr Morrison: I read your submission with interest, particularly the sections dealing with the developments in Eigg and the Assynt estate. I have been trying to reconcile the contents of your submission with statements made not only in this chamber only seven short days ago by the Highlands and Islands Rivers Association and the Crofting Counties Fishing Rights Group, but outwith this chamber in the press. It was clearly articulated that, since the crofters assumed control in Assynt, the fishery has been diminished. Holding up that assertion against the evidence that you have submitted and subsequent statements by John MacKenzie, a crofter from Assynt, I must come to the conclusion that the earlier statements represent a reprehensible smear on that community. As an independent solicitor, will you expand on the reality as you know it?

Simon Fraser: I agree whole-heartedly about the use of that tactic. Those who resort to disparaging communities and the good things that they have achieved bring shame on themselves and lower the tone of the debate. I hope that we will not hear that sort of nonsense in future.

Some of the recent comments either border on being defamatory or probably pass the defamatory test. They were all totally unnecessary and totally untrue. In the case of Assynt, a successful small hydro scheme was constructed on a river in which a small migratory run has been discovered. A few fish got through the screen on the way into the generator. However, the solution is a simple matter of putting on a different size of screen to ensure that that does not happen again.

The issue is minor compared with the way in which the fishery in Assynt has been developed. The fishery provides the single largest element of income to the estate, which, working with the north-west Sutherland fisheries development trust, has improved enormously what is known as the Manse loch system. The salmon and sea trout that used to be in the river completely died off because of coastal netting. Over a few years, the fishery has been entirely redeveloped; it now has a substantial sea trout run and about 200,000 smolts and parr have been put into the system. It will be opened as a commercial fishery this year. The fishing that the estate makes available and manages plays a huge part in sustaining the area's tourism economy. Frankly, I do not know where the criticisms come from, but they are entirely inappropriate and wrong.

Mr Morrison: Do you believe that other private landowners, and indeed public landowners, could learn from the crofters of Assynt about the management of fisheries?

14:30

Simon Fraser: I know that the committee does not want to talk too much about fisheries now—I am aware that crofting communities' right to buy salmon fishings is covered under part 3—but I will make one point. I do not believe that the power to buy salmon fishings will be used in respect of the rivers Halladale or Grimersta or other rivers of that order. I see a huge potential for what I call the second-division and third-division salmon rivers. Nobody has done any research into the number of salmon there, but there are a large number of salmon rivers in Scotland that historically had salmon or sea trout in them but no longer do.

The Assynt crofters have shown that it is possible to get a wee river system up and running again. The vast majority of such defunct salmon rivers are owned by private landlords, who are doing nothing to manage or develop them. There seems to be a huge opportunity, not just for people but for salmon, in the redevelopment of many of the little systems. I view some communities as ideally placed to take on those systems.

Rhoda Grant: When Maggie Fyffe was talking about the economy on Eigg prior to and after the community buy-out, she said that many families were unemployed before community ownership. How many families were dependent on benefits from the state to survive during the period of private ownership?

Maggie Fyffe: Approximately 50 per cent of the adult population were in receipt of some kind of benefit.

The Convener: Before calling Fergus Ewing, I signal to members that we are now into the last 10 minutes of this part of evidence taking.

Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP): I have read Simon Fraser's written submission, and would like him to tell us about a community buy-out about which we have not heard so much today: Inverie, in Knoydart. Could you describe—as you have done in your written evidence—the consequences of community ownership for that community?

Simon Fraser: The circumstances there were that the previous landowner had, quite spectacularly, gone bankrupt. The whole community depended on that landlord for everything in the place: not just employment, but their electricity supply, which came from a private hydroelectric scheme. The biggest scheme that has been taken on in Knoydart is the refurbishment of that hydro scheme, which is now close to completion.

Quite a lot of the housing in the area was owned in hand by the estate. If someone's tenancy is very

short, they cannot access improvement grants, so many of the houses have been passed over in a way that enables people to obtain housing improvement grants for their properties. The management of the forestry has been devolved to a separate organisation, the Knoydart Forest Trust, which now employs one or two individuals and is managing the forest in a sustainable fashion.

The substantial deer population there is being managed by the Knoydart Forest Trust. It may interest members to know that, although many private landlords do not seem to be able to do this, the people in Assynt and Knoydart are able to achieve their deer cull targets. The trust is assisting with the management of forestry in other places too.

Fergus Ewing: So the residents in Inverie, as on Eigg, now have security of tenure, which they previously lacked.

Simon Fraser: Yes. However, the area concerned goes beyond Inverie—it goes well round the coast.

Fergus Ewing: If a different community, for example on the island of Rum, where the landowner is not a private landowner, but an agency, wished to exercise the right to purchase, or if the residents—who, I understand, are based exclusively in Kinloch—wished to exercise or consider a right to purchase, you would broadly support that.

Simon Fraser: Yes.

Fergus Ewing: I wish to raise an argument that has been put to us from the other side of the debate: that the bill will encourage cherry-picking, whereby communities opt to purchase only the pieces of land that are most valuable, or from which most money can be raised through development. What is your response to that line of argument, much of which has been put to us?

Simon Fraser: I have not witnessed cherry-picking taking place in practice. The Knoydart estate, for instance, had to be bought lock, stock and barrel, whether the community wanted the big house or not. My view is that communities do not want a big house. However, the trust in Knoydart was able to sell on the house and get a good amount of capital into the trust. The house was sold on to an appropriate individual, who was not necessarily the highest bidder; it went to somebody who came to live there and set up their own business, thus adding to the economy of the place. I have not encountered cherry-picking. My advice is to avoid a big house if it is possible to do so, but to put it to good use if it is not.

Fergus Ewing: Would you follow that advice in respect of the big house on Eigg?

Simon Fraser: Yes, definitely.

Fergus Ewing: I have a final question for Maggie Fyffe. I understand that not only did one of the previous landowners on Eigg, Mr Schellenberg—who is not characteristic of all landowners—not grant security of tenure, he sought to evict two residents. Is that correct?

Maggie Fyffe: It is.

Fergus Ewing: Mr Maruma was of that ilk.

Maggie Fyffe: All I could say about Mr Maruma is that he visited Eigg for a total of four days during his two years' ownership. He did not do anything during his time as owner.

Fergus Ewing: Did you ever get to see any of his fire paintings?

Maggie Fyffe: No.

Mr Jamie McGrigor (Highlands and Islands (Con): I have two questions, the first of which is probably for Simon Fraser. Section 73 of the draft bill contained provisions that controlled the disposal of land that was purchased by a community body, but there is no such provision in the bill as introduced. There is therefore the possibility that, as Fergus Ewing said, a community could register interests in the more valuable parts of a property and then sell them on for profit, leaving the rest of the area less valuable. Should there be provisions in the bill on the disposal of assets?

Simon Fraser: There ought not to be any unnecessary restrictive conditions of that nature. Most community owners, like any other owner, will find themselves in the position of having to or wanting to dispose of bits of land for a whole variety of reasons. If a community body that passes the test of the bill were to sell an asset, the funds would have to come back in and be used for the community body's purposes. The funds could not be distributed to its members or anything like that. If there were a disposal, it would doubtless be made with the agreement of the membership. The money that would be generated could be put to other good purposes, such as the development of the remainder of the estate.

Mr McGrigor: Alasdair Morrison posed a question about the river in Assynt. You said that it was the one in which the hydroelectric scheme had been built. Am I right in thinking that you said that there was a small migratory run on that river? I believe that that dam was built without a proper fish pass. Concerns have been expressed to me about that. First, to my knowledge, doing that is illegal. Secondly, it is not an example of good practice in fishery conservation. Why do you defend it?

Simon Fraser: I understand that it was

subsequently discovered that there was a small amount of migratory fish in the system. I understand that the facility there enables migratory fish to pass up and down. That is my information.

Mr McGrigor: My information is that salmon smolts were found first in the tailrace of the turbines and that the area above the dam was then electrofish monitored by scientists, who found evidence of large numbers of parr and smolts. That dam had been put in without thought for that. As such, it is completely illegal without a fish pass.

Simon Fraser: I cannot comment in that level of detail. All I can say is that I understand that the dam was constructed in a way that would allow fish to pass through. There are many other aspects of that scheme of which the committee might be unaware.

There are also populations of pearl mussels that are protected actively and a host of issues to do with black-throated divers had to be taken into consideration. It is not as though the dam appeared overnight. It went through the various tests and had to clear the difficult hurdles of also being in a Natura 2000 site. The dam was built with the full knowledge of all the appropriate authorities. To suggest that it is illegal is unfair.

Mr McGrigor: I am asking you whether you know that it is illegal to construct a dam on a migratory river without a fish pass.

Simon Fraser: I can say only that, as far as I am aware, the dam went through all the statutory controls.

Richard Lochhead (North-East Scotland) (SNP): I have a question for both witnesses. In the light of your clear reservations about some aspects of the bill, what impact do you think it will have on the pattern of land ownership in Scotland? I understand that roughly 15,000 people own the vast majority of Scottish land. Will the bill have a modest, significant or massive impact on land ownership in Scotland?

Simon Fraser: The provisions in part 2 are an extremely difficult maze to go through. It is a game of three-dimensional snakes and ladders, perhaps with more snakes than ladders, in which we have to throw several double sixes before we get past the starting line. It is far too restrictive and far too difficult. Part 3 will change the situation, but part 2 is far too restrictive.

Maggie Fyfe: I do not have much to add to that. I certainly welcome a climate that encourages change. When the community on Eigg first thought about buying the island, very little support was available to us. Since the buy-out on Eigg, the community land unit has come into existence, as have a variety of other things, including the bill, which will go a long way to help communities such

as ours.

Richard Lochhead: I see where Simon Fraser is coming from: we have waited about 100 years for land legislation that will not have much impact on land ownership.

Simon Fraser talked about bureaucracy. He referred to the bureaucracy involved in the pre-registration phase. If I understand that correctly, a community that wants to register an interest in land must register an interest in each piece of land that has a separate owner. I expect that community bodies—especially existing community bodies—cover areas in which there are many land owners. They would therefore have to pre-register for any bit of land within the community areas that they wanted to buy should the opportunity arise.

Would it not be better for the community body to be able to register an interest in the locality? Is that a sensible way forward? Do you have any comment on that concept? A community body would simply register its interest in the locality and if any land came up for sale in that locality, the community body would have a right of pre-emption.

Simon Fraser: In principle, that sounds a good idea. Given that the bulk of land registration is moving to a map-based system, I suspect that once all the land is in the land register, it will be much easier to do. At the moment, it is difficult to get information on the ownership of land, although the Highland Council has done a lot to investigate land ownership in its area. It can be difficult to get information. In the absence of that information, I do not see how it would be possible to register the interest. However, you have a valid point.

Richard Lochhead: Many community bodies know their boundaries and know exactly who owns what land within their boundaries.

Simon Fraser: Sometimes they think that they know, but if the owner is an anonymous Liechtenstein trust for somebody or other, they do not really know who owns the land.

14:45

The Convener: Time is up, but before I ask you to step down, are there any comments that you want to make in reference to the two parts of the bill that we have not addressed, parts 1 and 3—although we have touched on part 3? I would be happy to hear any specific remarks that you have to make, but it is not compulsory.

Simon Fraser: My only continuing beef in respect of part 1 is the issue of liability of persons who access land. That needs an overhaul, but that is a personal position.

The Convener: That subject has come up and I

am sure that it will do so again next week when we discuss access.

Thank you for the evidence that you have given and for taking the time to come here today. I ask you to step down. You are more than welcome to stay and listen to the rest of the afternoon's proceedings. We will take 30 seconds while we replace the witnesses.

I am happy to welcome David Gass, who is representing Scottish Enterprise, and Jim Hunter, who is representing Highlands and Islands Enterprise. I ask you both to make a brief introductory statement and to introduce anybody whom you have brought with you.

David Gass (Scottish Enterprise): I am David Gass, chief executive of Scottish Enterprise Borders. I also chair Scottish Enterprise's rural group. I am accompanied by Dr Julian Pace, who is director of strategy and planning at Scottish Enterprise Borders. Is it appropriate to make a short opening statement at this point?

The Convener: Please do, but briefly.

David Gass: Scottish Enterprise supports the bill and believes that it should create new opportunities for local economic development and help to support the integrated approach to rural development and the development of confident communities, as set out in "A Smart, Successful Scotland". It should, for example, support the development of land and resources that might otherwise be left unutilised and create the potential for new jobs and increased income in rural areas. That could include opportunities for new start-up businesses and existing small rural businesses and tourism. In addition, the bill provides the opportunity to harness and find an outlet for local skills to build the economies of local communities through retraining and the retaining and attracting of talented people.

Jim Hunter (Highlands and Islands Enterprise): I chair the board of Highlands and Islands Enterprise. Since 1997, Highlands and Islands Enterprise has had a community land unit, which has assisted the community purchase of land and associated assets. We have now assisted getting on for 60 such purchases. The unit is headed by John Watt, who is with me today.

By way of general introduction, I stress that—in a UK and west European context—the development of the rural economy in the Highlands and Islands has in some ways been a success story of late. There has been a 20 per cent increase in population and a huge increase in the number of people in work. Unemployment rates are at an all-time low across the area. I have no doubt that the initiatives that there have been in respect of community ownership of land have contributed substantially to that progress. Without

exception, such ownership has assisted the unleashing of entrepreneurial effort in the localities where it has occurred. Those localities are important to us developmentally for that reason.

I wish to emphasise—particularly in the light of the questions that members have asked—that it is because the process contributes substantially and positively to the creation of business opportunities in a rural setting that we welcome the general thrust of the bill.

Richard Lochhead: I want to repeat the question that I put to the previous witnesses. What impact will the proposals have on land ownership patterns in the Highlands and Islands? Perhaps David Gass can comment on the impact on the rest of Scotland.

Jim Hunter: The proposals will be of assistance in moving us towards a greater diversification of ownership. As I mentioned, even without the benefit of the bill, there has been a substantial increase in the number of cases of and amount of land in community ownership. The bill is clearly designed to assist that process. It is a definite move in the right direction.

David Gass: I echo those comments. Lowland Scotland would see an increase in community land ownership, although it is impossible to say how big that increase would be. The bill will stimulate demand and provide for communities to consider their opportunities in relation to local land. The Scottish Enterprise network has participated in more than 10 projects that have involved communities purchasing their own land.

Richard Lochhead: My second question relates to the impact of the legislation outwith the Highlands and Islands. You might be aware that had 20 MPs voted a different way in a vote in the House of Commons in the 1880s, Aberdeenshire would have enjoyed the same legislation as the crofting counties, and our rural areas might be much more vigorous today. Do you propose any amendments to the bill that would help to diversify land ownership in lowland Scotland? Should tenant farmers be given the right to buy to help to achieve that?

David Gass: In answer to your first question, the enterprise companies would consider each case on an economic development basis. We have tended to focus not on the ability of communities to purchase the land, but on the purpose of purchasing it and what benefits it would bring to the wider community.

What was the second part of the question?

Richard Lochhead: I asked whether tenant farmers should be given the right to buy and whether that would help to diversify land ownership.

David Gass: Most tenant farmers in lowland Scotland with whom we work have good relationships with their landowner at present. The option to buy would be possible.

The Convener: Members may not be aware that the National Farmers Union of Scotland is currently consulting its members on the tenant right to buy.

Jim Hunter: I will resist the temptation to talk about the 1880s—I would be here all day.

I endorse unreservedly the notion of giving tenant farmers a right of purchase. Much the most radical, far-reaching and beneficial land ownership measure taken in these islands was carried out 100-odd years ago by Conservative Governments—for what it is worth—which removed private estates from the island of Ireland by giving all tenant farmers an absolute right of purchase. That resulted in an owner-occupation structure across rural Ireland. That was an excellent thing to do at that time and where that has happened in Scotland—it has happened extensively in Scotland—it has been positive and excellent.

It is a fact that, 100-odd years ago, almost without exception all agricultural land in Scotland was tenanted; today, a relatively small proportion is tenanted. Let me use an example from the Highlands and Islands, which is the locality for which I am responsible. Up until about the 1920s, Orkney was composed of 12 to 15 large estates, which have long since disappeared. All farm land in Orkney is under owner-occupation. Although that is by no means the only explanation for the relative success of Orkney's rural economy, it is part of the explanation.

I have yet to meet an owner-occupying farmer anywhere in Scotland who wishes that his predecessors or ancestors had not exercised the opportunity to acquire ownership. I believe in diversifying the ownership structure, encouraging enterprise in the rural areas, and enabling farmers to access the finance that they need so that—particularly in these times—they can diversify their businesses. Anything that would promote owner-occupation of farm land would be a beneficial move.

The Convener: I wish to continue that thread briefly. I should perhaps declare an interest, in that I am a landowner with tenants.

What do both witnesses think of the argument that the very existence of a tenant's right to buy would be likely to dry up the supply of land from a method that is one of the few ways by which young people can get into farming? For people who lack the capital or other means, tenancy is one of the few ways into farming that exist. Indeed, in the debate in Glasgow, Ross Finnie

said that he could think of nothing that would dry up the flow of land on to the market more quickly than a tenanted right to buy. What is your answer to that argument?

Jim Hunter: I appreciate the force of that argument and recognise its validity, but I point to the experience elsewhere. I have already mentioned as an example the island of Ireland, in which—both north and south of the present border—owner-occupation of farm land is absolutely universal. Under that system, all sorts of mechanisms have been found to create, in effect, the equivalent of tenancies to allow people to come into farming. Although there are difficulties everywhere in western Europe for young people who want to go into farming and agriculture, I do not think that the tenurial position is critical in that regard.

David Gass: I echo that. The issue comes down to the need for the right mechanism to allow that to happen. I return to the point that, as an enterprise company, we consider the economic development benefit across the board, although individual situations may have many strengths and merits. It is a question of finding the right mechanism to allow that to happen.

Rhoda Grant: What support systems are in place at present for communities that wish to buy? Given the fact that companies would have to register their interest, how would those support systems need to change in the light of the bill? How would what we do at present need to change? Would such change create difficulties?

David Gass: To date, most of our involvement has been twofold. Individual enterprise companies have examined the economic development case that has been made by the community or organisation that sought to purchase the land. They have considered whether the purpose or use to which the land would be put was sustainable and they have looked at any funding issues.

The second part of the question was about how our role would change. By and large, in the 10 cases that I mentioned, we had a role both pre-purchase and post-purchase of the land: we advised on feasibility, worked with the applicants on their plans and looked with applicants at other funding sources to allow their project to go ahead.

Rhoda Grant: Do you envisage that you will have to put in place support for communities to create companies? Will the enterprise companies get involved in that?

David Gass: Possibly, if that is the best way forward for a project from an economic development viewpoint. We have a virtual land community unit, which works in line with the Scottish Enterprise rural group. We offer advice and utilise the advice and expertise that have

been built up by HIE in that area.

15:00

Murdo Fraser: I want to ask Jim Hunter of HIE about economic development in the Highlands, in which I am interested not least because I used to work for HIE's predecessor, the Highlands and Islands Development Board.

Are you concerned that the bill might deter investment in the Highlands? Last week, we took evidence from the Highlands and Islands Rivers Association and the Crofting Counties Fishing Rights Group—I think that you are familiar with the latter organisation. HIRA said that potential investment of some £2.3 million was not coming in as a result of the right to buy salmon fishings in part 3 of the bill. In part 2 of the bill, there is a wider impact in respect of the right to buy. Will the bill deter investment? Are you concerned, as a result, about the future economic development of the Highlands?

Jim Hunter: No.

Murdo Fraser: Given the evidence that the committee heard last week, why not?

Jim Hunter: As you indicated in your question, I have spoken to some of the gentlemen from whom the committee heard last week. I understand fully their concerns, as employees of river fishings, that their jobs and the activities in which they engage may be jeopardised by the bill, particularly under part 3 on the crofting community right to buy salmon fishings.

Following discussions with the organisation in question and colleagues in Inverness, we have agreed to undertake work in collaboration with the organisation in question—I hope—to try to bottom out the facts. From exchanges involving previous witnesses, we have heard that there is much dispute about facts. We want to establish what the economic impact on salmon fishings might be if the bill is enacted and we will endeavour to do that. In particular, we want to establish how, under community ownership of salmon fishings, the assets could continue to be managed and how they could continue to employ people.

I endorse Simon Fraser's comments. It is perfectly understandable that there has been focus on rivers that are relatively well managed under current ownership arrangements and where employment is held to be at stake, but, equally, there are potentially many unrealised opportunities in rivers—particularly in the west Highlands and Islands—that are, in effect, not managed at all under current ownership arrangements. Simon Fraser was eloquent about what has been achieved in Assynt in that respect. I want to find out what can be done.

It is in the nature of land reform, particularly reform that is explicitly designed to enhance the rights of communities, that those rights will be enhanced, to an extent, at the expense of the current owners' rights. That is an inevitable consequence of land reform. If land reform is to be meaningful, it will transfer rights and responsibilities from one set of people to another. Therefore, there will be people who feel legitimately and understandably that they are losing out as a result of the process. However, from a developmental perspective, our experience suggests and underlines that the gain in respect of the overall level of economic activity from such an initiative will be substantial. That is why I welcome it.

As chairman of Highlands and Islands Enterprise, I am concerned about the overall level of economic activity in the Highlands and Islands. I have no doubt that the overall consequences of this type of initiative, which will enhance the prospects for entrepreneurial activity in difficult rural areas, are wholly beneficial. That is why I favour the proposal, and why HIE favours it.

Fergus Ewing: Perhaps Mr Hunter can help me understand why many of the bill's opponents have used the word "expropriation" in relation to this part of the bill. The Scottish Landowners Federation states in its written evidence that it is "wholly opposed" to it and to the community right to buy.

The Convener: Are you talking about part 2 or part 3 of the bill?

Fergus Ewing: I am talking about part 3, concerning the crofting community right to buy. I would like Mr Hunter to comment on that part of the bill.

The SLF submission says that the bill introduces "a straightforward expropriation of private land by a private company".

Such language is redolent of a Mugabe-style land raid. However, is not it the case that section 85—and section 55, which relates to the general Scotland-wide right to buy—quite plainly prescribes that, wherever a right to purchase is exercised, the price paid to the landowner must be "the market value", which is defined as the value that the land

"would have on the open market as between a seller and a buyer both of whom are, as respects the transaction, willing, knowledgeable and prudent"?

Do you see the legal position under this bill as being that, when the right to buy is exercised, full compensation will be paid to the landowner?

Jim Hunter: That is my understanding. With members' permission, I will ask John Watt, who has much more experience of the detail of this

issue than I have, to respond to Fergus Ewing's question.

The Convener: I suspect that that completely contravenes procedure, but I will take the rap for it later.

John Watt (Highlands and Islands Enterprise): In our view, as well as financial compensation for owners, a substantial number of safeguards are built into the bill. I will run through those steps quickly, as fears about expropriation have been exaggerated.

Salmon fishings could be bought only after a community had bought the land in question. Fishings would also have to be bought within one year of the community's having purchased that land. A crofting community company, consisting of at least 20 members, would have to be set up. That company would have to include community members, as well as crofters. Before such a company could exercise its right to buy, it would have to hold a ballot in which at least 50 per cent of the community participated, a majority of whom would have to vote in favour of the proposal. A feasibility study would then have to be done to establish whether the proposal was worth while, and the company would have to apply to Scottish ministers to get permission to exercise its right, which would have to be in the public interest. Finally, the company would have to raise the money required, presumably by persuading public sources that the proposal was in the public interest and financially viable. A huge number of safeguards are in place to prevent expropriation.

Fergus Ewing: So one would need to be an Olympic athlete to navigate successfully the many hurdles that you have very helpfully described.

Jim Hunter: That is why I—and, I am sure, many others—took exception to the description of part 3 of the bill by some of its opponents as legitimising a Mugabe-style land grab. The process that is set out in the bill was developed following immense consultation with members of the Rural Development Committee, their colleagues and others. As John Watt just outlined, the process involves a series of complicated steps under law. To compare that with what Mr Mugabe's thugs are doing in Zimbabwe is utterly offensive, which is why I was somewhat outraged when that comment was made.

Fergus Ewing: I have one further area to explore. How much money has been invested from the land fund to enable the purchases that went ahead? How much is left of the allocation of the land fund for future purposes?

Jim Hunter: Are you asking about the Scottish land fund or Highlands and Islands Enterprise's community land unit?

Fergus Ewing: I am asking about the whole of Scotland. My suspicion is that the money that is left will enable no more than a small number of purchases. If that is right, some of the more extravagant fears that have been expressed by certain landowners might be misplaced because it appears that a relatively limited amount of the land fund is available for community land purchases.

Jim Hunter: I stress that I do not speak for the Scottish land fund; I think that the committee will hear directly from a representative of that organisation. Of the £10 million in the Scottish land fund, which has lottery funding, around £4,447,000—that is the figure before me—has been allocated. That is around half of the total. Highlands and Islands Enterprise has also invested in land purchases. Although we have a community land unit, which has notional figures attached to it, as a development agency, our funding is discretionary. If community groups come to us for assistance, we can treat each application on its merits and decide to help finance groups when it makes sense to do so.

We have discussed safeguards in the bill. I should emphasise that Highlands and Islands Enterprise is duty bound—and would wish—to be assured, prior to assisting any community takeover, that the proposal made sense developmentally. We will not invest public money in ventures that would clearly have a negative economic impact. We could properly be called to account if we did so. We will be interested in investing only in ventures for which we have good grounds, after exhaustive investigation, to believe that they are moving in the right developmental direction.

The Convener: Whether or not Mr Hunter approves of the phrase “Mugabe-style”—and I understand why he does not—the legislation seeks to introduce a compulsory right to buy without a right of appeal for the individual who owns the title. How do you feel about the right of appeal for the individual, particularly over the valuation? Should there be a right of appeal?

Jim Hunter: In the context of crofting, I take slight exception to your claim that the bill introduces the right to buy. The bill does not introduce that right: it has existed since 1976 for inby croft land. Since 1976, all crofters have had an absolute right to purchase their inby croft land from the landowner for a price roughly equivalent to 15 times the annual rent of the croft, at a time of the crofter's choice and whether or not the landowner wants to sell it. If agreement is not reached, the matter is subject to arbitration by the Scottish Land Court. Those who argued for what is now incorporated in part 3 of the bill—I have made the case for a long time in various capacities—sought to extend the right that has existed for

quarter of a century. The right should be extended from the inby land to all land that is under crofting tenure. I stand to be corrected, but, to me, the bill will in principle extend a right that already exists.

The Convener: I accept what you say, but when it comes to the right to buy the salmon fisheries, we are on new territory. Do you or do you not agree with the right of appeal?

Jim Hunter: I accept that that is new territory. However, again, words such as “compulsory acquisition” have been—

The Convener: Yes, but do you agree with the right for the current owner to appeal if they do not agree with the valuation and if there are no rentals at stake in terms of the fisheries? How relaxed are you about the introduction of a right of appeal for the existing owners?

Jim Hunter: I will think about that.

The Convener: Thank you. It took a while to get there.

15:15

Mr McGrigor: I have a question for Dr Hunter or Mr Gass. Generally speaking, it is accepted that many estates, especially in the poorer land areas, run at enormous losses. In the past, those estates have been subsidised by private business, private ownership or private money. There might be money in the land fund to buy, but where will the money come from to deal with losses if they accrue under community ownership?

David Gass: Again, that goes back to a previous point. Community ownership might well open new funding avenues through trusts, through European Community funding and through other avenues that a community would be able to pursue.

Mr McGrigor: Those are suggestions, but nothing is in place to pay for losses if they start mounting up. Would the councils pay? Would HIE pay? Who would pay?

Jim Hunter: I want to make it clear why HIE favours moves in such a direction. I take issue with your description of land use and where it fits in to wider development. We should consider many parts of the rural west Highlands and Islands that are successful today.

I will take an extremely successful example—the Sleat peninsula of Skye. There are hundreds of households and a thriving and diverse community that has grown in numbers and where the gross domestic product, as it were, has increased substantially in recent years. That is because we have succeeded in creating in Sleat a highly diverse and successful rural economy. Very little of the total economic activity in that locality is

derived directly from land or land-based activity. Sleat is successful because the economy is diverse, and many of the activities have nothing to do with the land. However, the land ownership and land use structure is critical, because the crofting landholding structure that prevails in Sleat has allowed many people who want to live and work in such an environment so to do. It is possible for people to get a home and a few acres of land in that sort of setting.

Highlands and Islands Enterprise favours moves in that direction because we are trying to replicate that success elsewhere. I do not think that there is a glittering rural economy to be created in the 21st century on the back of the type of estate that Mr McGrigor described. That is going nowhere. It is dependent, and will always be dependent, on external subventions from people who might have an interest in running that type of estate at a particular time in their lives and careers. All experience shows that those people are likely to lose that interest at some point and, apart from any other consideration, they will eventually die.

If we can create a flourishing and successful rural economy with a range of enterprises and activities, and if we can use, modify and change the landholding structure to make that more possible, we will be moving forward in the constructive way that we have seen in some parts of the Highlands and Islands. Given the sort of reform that we are discussing, and other reforms, I believe that there would be more general success.

David Gass: We included Borders Forest Trust in our evidence as an example of the process of establishing a robust business case. The trust took into community ownership what was previously commercially unviable hardwood forest. Borders Forest Trust has a focus and a development potential that has seen new businesses grow and the trust become viable. To date, our experiences in the Scottish lowlands have not seen loss leaders.

Jim Hunter: Let me be specific about the two cases in which we have assisted community ownership—Eigg and Knoydart. Members have asked about estates as businesses, but I will leave that aside for reasons that I tried to explain earlier. In the relatively small period of time since those two estates were taken over, we have assisted the development of six new, privately owned businesses on each of them. Part of the explanation for that is the new climate that is created by that type of ownership. Maggie Fyfe and Simon Fraser tried to indicate that. People feel empowered. Their morale increases greatly, they are more self-confident and their self-esteem is higher. In those circumstances, people are much more likely to take entrepreneurial steps to create new businesses on their own account.

I wish to emphasise that sometimes, in the media and elsewhere, community ownership is presented as if it were a collectivist, almost quasi-Marxist approach to rural development. My opinion, for what it is worth, is that community ownership is the precise opposite of that. It is about ending the dependency culture that was so often associated with the types of ownership that prevailed in the past in those settings. It is also about liberating people as individual residents in those localities to undertake businesses and develop economic initiatives on their own account. We are seeing that happen. Far from inhibiting rural business, community ownership is increasing and enhancing it. We have demonstrable evidence that that is the case.

Lord Forsyth—he was Mr Forsyth at the time—visited Assynt, as Secretary of State for Scotland, and was greatly impressed, for the reasons that I indicated. He was a strong supporter of the assistance that HIE gave to the Assynt crofters. I remember him asking the crofters how community ownership could be made to happen more widely. Those are the reasons that we are in favour of this sort of development.

Mr Morrison: Jim Hunter's exposition of community ownership was so eloquent that we should move straight to stage 3 of the bill and be done with it.

I will continue—with a theme that was begun by Fergus Ewing—by asking Dr Hunter or John Watt about the detail of the HIE community land unit. Jim Hunter was reminiscing about Mr Forsyth. I fondly remember the days when Brian Wilson, a colleague of ours, established Highlands and Islands Enterprise's community land unit shortly after the 1997 election. Will Dr Hunter or Mr Watt give us an indication as to the success or otherwise of the unit?

Jim Hunter: As Mr Watt has run the unit for the past few years, I will defer to him.

John Watt: I am not sure that I am the best person to ask that question of.

Every month, we get about 20 new inquiries about the acquisition of land. The demand is substantial. Some inquiries lead to formal land acquisitions, others die and others go away and think about it and come back later. In total, we have assisted about 60 acquisitions. It is important to stress that that ranges from big estates and high-profile cases, such as Knoydart, Eigg and Assynt about which we have been talking, to smaller, more modest pieces of land that communities have identified as being of strategic importance for the sustainability of their communities.

We will assist with anything from one acre to, in the case of Knoydart, 17,000 acres. It is important

to acknowledge that there is a range and diversity of interest. That is why we welcomed the provision in the bill that communities can now register interest in smaller tracts of land, not just large estates.

Many of the community acquisitions are new. The Stornoway Trust has been going for 75 years, but apart from that, most of the community acquisitions date from within the past decade and particularly the past five years. There is still a lot of evolving and growing.

As Jim Hunter mentioned, many of the communities are going through a process of changing their traditional land use management patterns into new ones in which the community not only owns the land, but encourages other people to own land and develop businesses on it.

There has been considerable success so far. One of the things that we recognise, although it is difficult to measure and put figures on, is the raising of self-confidence in the communities. Many of them had become run down, as had the estates, through migration and so on. The increase in the confidence of people to deal not only with collective ownership, but develop personal businesses has been one of the spin-off successes to date.

Mr Morrison: In the broadest terms, of the 60 acquisitions, how many would have foundered without your subvention?

John Watt: We assist in many ways other than simply giving money to acquire land. A lot of our effort goes into giving technical assistance and advice and paying for small feasibility studies, legal assistance and advice. Maggie Fyffe mentioned earlier that she went through the process without such assistance. It is possible without assistance, but it is much easier and quicker with it. The effort that we have put into many of the communities in the pre-acquisition stage has been of great importance and has been at relatively modest cost in terms of public expenditure.

Jim Hunter: Although the sums of public and land fund money that are involved in this are by no means negligible, it is interesting to put them into context.

We are talking about a land fund of £10 million. We are talking about the much smaller aggregate sums that we as an agency have invested in the activity over a number of years. We can compare that with the £550 million that goes to agricultural support annually. I am the last person to argue that that figure should be reduced or curtailed and I speak as someone who is interested in rural development and expansion. However, it is worth keeping in mind the fact that on the whole, the vast sums of money that go to agricultural support

are simply sustaining that which already exists and which, in employment terms, is constantly contracting. The comparatively tiny sums of public money that are going into enhancing community ownership opportunities are, as we have been at pains to stress, unleashing and enabling new activity. They are expanding the rural economy. I would argue that, from a purely developmental perspective, on a pound-for-pound basis the gain from that type of spending is far larger than that from agricultural support spending.

Mr Morrison: I want to return lastly to the question of Assynt. We have established clearly, having read and listened to Mr Fraser's evidence, that the crofters of Assynt have been denigrated by two recently formed lobby groups. As a small aside—and this is not a political point—I urge colleagues who readily quote so-called evidence from those organisations to treat it with caution, given the way that they have so systematically denigrated one—

The Convener: Can we have a question please, Mr Morrison? We have covered this ground already.

Mr Morrison: I said that I would make a small aside, which was meant to be of assistance to my colleagues.

If you were to reflect on the success or otherwise of Assynt, given the context of what has been happening in that community since the days of community ownership, where would you stack the evidence that we have heard from organisations such as the Highlands and Islands Rivers Association, evidence that we heard from Mr Fraser and that of your own experience?

Jim Hunter: I agree with Simon Fraser's points and have no need to repeat them. It is a great pity. As one who is seen as being on the other side of the argument, as it were, I should make it clear that there are many privately owned Highland estates that are making substantial contributions to the process of Highland development. I have always recognised that. I am thinking in particular of those that have diversified radically out of the traditional activities of such estates, engaging instead with new ventures of many kinds. Their contribution is substantial and has been recognised. Highlands and Islands Enterprise will continue to be pleased to assist such private owners of estates.

However, I ask the wider, responsible land-owning lobby to dissociate itself—for reasons touched on earlier—from some of the gratuitous assaults that have been made on communities that are endeavouring to get themselves up and running in the face of considerable difficulty. In the context of rural and community development, it is not helpful—to put it mildly—for communities to

have their efforts trashed in such a way. Having said that, I recognise that such trashing is the work of a very small minority and is not something that responsible landowners in the Highlands and Islands or elsewhere would identify with. Mr Morrison is right to say that some of the wilder statements that have been made about community landowners should be treated with a degree of caution.

15:30

The Convener: I apologise to those members who wanted to come back in, but we have already overrun slightly. Do you have any brief remarks on access? We have already covered part 1 fairly well.

Jim Hunter: I would like to make a general point on the access provisions. Experience suggests—and work by ourselves and others demonstrates—that the amount of economic activity generated in the countryside by hillwalking, climbing, birdwatching and people having access to land for recreational and holiday purposes is hugely more important now than activity generated by bloodsports, salmon fishing, deerstalking and so on. I personally, and Highlands and Islands Enterprise as an agency, have no problem with any of those activities and we welcome them. However, in the greater scheme of developing the rural economy they form a minority sector. The other sector, which enables people to get into the countryside, to walk and pursue leisure and holiday opportunities, is far more important as a contributor to rural wealth. Therefore, as a general principle, we strongly welcome anything that enhances and strengthens rights of access to the Scottish countryside. It can only be good for the rural economy and should be welcomed. Anything that inhibits access is, in principle, to be discouraged. Having said that, I recognise that there are legitimate inhibitions regarding access. However, as a general principle, the more access that we can have, the better.

We are concerned about the sections in the bill that deal with access for commercial operators, whom we wish to have access to privately owned land for activities such as guided walks and the like. In our view, anything that would inhibit that sort of enterprise and commercial and business activity would be very regrettable. We ask members to be as flexible as possible in accommodating that activity.

David Gass: As I am conscious of the time, I simply echo Mr Hunter's final comment. We welcome the principles of the bill—in which the right balance has been struck—which offers rural areas a huge opportunity.

The Convener: Thank you for your evidence,

which is greatly valued. I ask you to step down in order to make way for our final group of witnesses.

Mr McGrigor: Convener, I believe that you said that, after questions on part 2, there would be a chance for members to ask questions on part 3.

The Convener: I did, but I also said that we would try to keep to 40 minutes per session. We had 50 minutes on that particular set of witnesses. I am sorry, but we have run out of time.

Mr McGrigor: You said that we could ask further questions so that the gentlemen would not have to come back. Will they now have to come back for a second time?

The Convener: No. I do not think that there is any way in which we could get them back for a second time. However, if there are specific aspects of their evidence that you would like to raise with them, I am sure that you could write to them or telephone them in order to make those inquiries. We have simply run out of time, for which I am sorry. As members are well aware, one of my concerns about the procedure is that we do not have enough time to investigate thoroughly all the issues that I believe we need to investigate.

Mr McGrigor: I wish to record my protest that we did not have enough time to—

The Convener: You have done exactly that. Thank you, Mr McGrigor.

We move on to our final set of witnesses. Mr Andrew Hamilton represents the Royal Institution of Chartered Surveyors in Scotland and Dr Maurice Hankey, together with Robert Balfour, represents the Scottish Landowners Federation. As with the previous two sets of witnesses, I ask them to make a brief introduction and to introduce anyone whom they may have brought with them.

Andrew Hamilton (Royal Institution of Chartered Surveyors in Scotland): My name is Andrew Hamilton and I represent the Royal Institution of Chartered Surveyors in Scotland. In order to put into context the reason why surveyors might be interested in the bill, I should explain that I am a rural faculty member of the RICS. Professionally, we are involved in anything to do with rural land. We are involved in the management, valuation, purchase and sale of rural land and in almost anything else relating to rural land that members can imagine. We are a completely apolitical, professional body and are not lobbying on behalf of anyone. Our clients—or our employers—range from landowners, tenants and farmers who are owner-occupiers, to non-governmental organisations, charities, companies, local councils, central Government and so on. We cover a broad spectrum and our interest is in the workability of the proposed legislation. I have with me Lynne Raeside, who is the head of policy at

the RICS in Manor Place.

Robert Balfour (Scottish Landowners Federation): My name is Robert Balfour and I am the convener of the Scottish Landowners Federation. I have with me Dr Maurice Hankey, who is our director. In attendance—sitting behind me—are Marian Silvester, who is our access adviser, and Michael Smith, who is our legal adviser.

I will make a couple of points before we answer questions. First, the SLF has no objection to communities buying land. There was some discussion earlier of the word “expropriation”, which I used. I am not a specialist in English—I was trained as a scientist—but I imagine that a dictionary definition of expropriation would include the removal of property from an individual who did not want to sell it, such property being purchased in favour of a potentially small country body and therefore not as a benefit to the wider public.

Secondly, reference was made to some African states. I would like to put on record the fact that the SLF has never even alluded to that style of land raid and we would not want to be associated with such comments.

Finally, some of our objections to the bill arise from a statement that was made by the late Donald Dewar when he introduced land reform. Mr Dewar said that good landowners would have nothing to fear from land reform. However, good landowners have things to fear about some of the matters that are covered in the bill as introduced.

Murdo Fraser: I have two questions, one for each group. The first question is for the Scottish Landowners Federation. We heard an eloquent contribution from Jim Hunter about the benefits that he thought that community ownership would bring to the Highland economy. He suggested that community ownership would not inhibit rural development, but enhance it. The implication, certainly in some cases, is that the pattern of land ownership we have at the moment is not delivering the sort of Highland economy that we would want. How would you respond to that?

Robert Balfour: We would start by saying—Dr Hunter said as much himself—that many of the businesses that he referred to did not involve large tracts of land, but were small businesses in a rural community. I suggest that the restriction on the development of businesses is to do not with the pattern of land ownership, but with the planning system.

Dr Maurice Hankey (Scottish Landowners Federation): Common to both previous sets of witnesses was the opinion that things are already changing in the Highlands. We have heard about what is happening on Skye. It is about economic pressure. That is the way things are going. We

would like to think that the legislation would aid and assist that process, but we are concerned that certain aspects of it may stall the process. We would love our owners to get more actively involved in diversified activities on estates—we will be doing more to help encourage that process.

What I am concerned about, particularly in part 3 of the bill, is the message that people are being encouraged to invest in their estates. It is possible—it depends on how much faith we have in the process that is described in part 3 of the bill—that that land will be taken off the owner at some stage in the future. For us to try to encourage people to invest in their estates while that risk exists puts us in a difficult position.

Murdo Fraser: My second question is to Mr Hamilton and in some ways follows on from that answer. The RICS is involved professionally in the valuation of property and in its marketing. What impact will the bill have on investment in rural Scotland by private individuals and companies? Is there any prospect of a blight on rural Scotland as a result of the right to buy?

Andrew Hamilton: As the legislation is not yet in force, we have no evidence of what will happen. What we do have is anecdotal evidence from our members, who are used to valuing land and are aware of all the criteria that affect the valuation of land. The general view of members is that there will be a blighting effect, where potential purchasers of or investors in land will be faced with a choice of investing in land in Scotland that may be taken from them—if that land is in a crofting area or where its value may be affected—and buying in England, Wales or elsewhere.

On whether there will be a blighting effect on land that is registered under the community right to buy, again, when considering the scenario of two otherwise identical properties—one that has a community registered interest and one that does not—the suggestion is that the one that has a community registered interest will be blighted. In fact, it is suggested in the bill, under the valuation exercise, that the effect of the community registration of interest in land is to be disregarded. That would seem to be a tacit admission from those drafting the bill that there will be an effect on that land.

Mr Morrison: I want to begin with Mr Hamilton. In the second paragraph of your submission, you say:

“RICS Scotland has a commitment, as part of its Royal Charter, to protect the public interest”.

Further on, you state:

“our aim is to ensure that the legislation has no negative effects on the sustainable management of the land resource, in economic, environmental and social terms”.

I read your submission carefully, and found it peppered with phrases such as “seriously disappointed and concerned” and

“extremely concerned about the implications”.

In the light of the evidence that you have just heard from Highlands and Islands Enterprise, Simon Fraser and a representative from a community under community ownership, would your institution be prepared to reassess its position?

15:45

Andrew Hamilton: Most of what has been said this afternoon has been perfectly eloquent and logical. The institution's submission makes it clear that we have absolutely no objection to community ownership. As far as the ownership pattern in Scotland is concerned, I imagine that the best scenario is to have a whole series of different types of initiative involving private individuals, charities, local authorities or communities. However, we are concerned that one section of the land ownership community—if I can call it that—will be preferred over others and that community ownership has been given a distinct advantage and a leg-up over all other types of ownership. It has not necessarily been proven that, in all cases, that is a preferable form of ownership to the other types that are available.

Mr Morrison: You state that your institution represent neither the interests of landowners nor the interests of tenants or community groups. How would you respond to the charge that you are in hock to land-owning interests?

Andrew Hamilton: My response would be that it was utter nonsense. As I said at the outset, we act for all types of people with an interest in land. Some of those people might be owners; a lot of them are occupiers, tenants or people who are simply interested in land. For my part, I act on behalf of landowners, tenants, Scottish Natural Heritage and charities. Your point is not well made.

Mr Morrison: Thank you for your response.

I turn to the representatives from the Scottish Landowners Federation. It is good to see you again, gentlemen. You have rightly assumed an honourable position in dissociating yourselves from the Mugabe-style raid comments that we heard about earlier. Would you also accept Dr Hunter's invitation to dissociate yourselves from remarks made by some of the lobbying and interest groups in relation to fishing, in particular the statements denigrating the Assynt community?

Robert Balfour: It is not up to us to comment on how people run their estates; in particular, we have never made any comments about how

Assynt is run. When the Assynt Crofters Trust was formed some years ago, my predecessor at the time—I cannot remember who it was—wished it well and in fact hoped that the body would become members of the SLF. We represent all forms of land ownership.

Mr Morrison: Last week—

The Convener: I am sorry, Mr Morrison, but I must interrupt. I hope that you are going to ask questions about the issue that we are here to discuss, instead of trying to denigrate some of the witnesses appearing before us.

Mr Morrison: I am not trying to denigrate anyone; I am merely questioning the witnesses.

The Convener: I really do not think that your previous question related to part 2 of the bill, which is what we are asking about.

Mr Morrison: With all due respect, convener, you should have intervened then.

The Convener: Well, I am intervening now.

Mr Morrison: Thank you, convener.

Last week, Mr Balfour promised me a copy of his code of practice. Since then, I have checked my mailbox every morning, but I have yet to receive it.

Dr Hankey: It is on its way to you.

Mr Morrison: I am delighted to hear that. Last week, I asked for the definition of a bad landowner and how many you represent. Will you direct me to the relevant passage in your code of practice—when it finally arrives on my desk—that will help me to deduce what a bad landowner is?

Robert Balfour: Our code of practice defines what we would expect a good landowner to do. By inference, if they are not doing those things, they are not as good a landowner as they might be.

Fergus Ewing: At the risk of embarrassing Robert Balfour, I should declare a potential interest in that he and I are trustees of the Carbeth trust, which is designed to promote the interests of the Carbeth hutters. I have been working with Mr Balfour to that end for some time now.

I want, for both the SLF and the RICS, to put on the record what I regard as facts. The language of your opening statements was about land being taken off landowners and taken from them. I presume that neither of you would challenge the bill procedure that will provide for full market-value compensation to be paid to landowners. That is, without a shadow of a doubt, the position that is set out absolutely in parts 2 and 3 of the bill.

Robert Balfour: I should perhaps declare an interest in that I, too, am a chartered surveyor. The bill does not use the words “open market value.”

My understanding is that there will be full market-value compensation. Parts 2 and 3 of the bill do not have the words “full open market value.”

Andrew Hamilton: I agree with that, to a certain extent. It appears that the bill is trying to arrive at a new method of valuation. Various methods of valuation are set out in compulsory purchase statutes and so on. The RICS in Scotland has a valuation manual that defines how valuations are to be carried out and what is to be taken into account when they are.

I find strange a couple of aspects of the bill's suggested valuation method. The most significant of those is that the valuer is to receive statements from the purchaser and the vendor that he should take into account when arriving at his valuation. Speaking for professional valuers, we pay absolutely no heed whatever to what the seller or buyer thinks the land is worth. Our job is to establish the correct market value, so I find that part of the bill a little strange, to say the least.

The RICS in Scotland provides a perfectly good methodology for valuing land at full market value. I suggest that that methodology be followed. I agree with Mr Ewing that full market value should be the correct measure of compensation, if the bill is passed.

Fergus Ewing: I listened carefully to what you said, but I cannot help commenting that section 85(5) plainly states:

“The ‘market value’ of land or interests is the value it or they would have on the open market as between a seller and a buyer both of whom are, as respects the transaction, willing, knowledgeable and prudent.”

Section 55 is similar. The definition does not use the phrase “open market value”, but it says:

“‘Market value’ ... on the open market.”

As a lawyer, I think that it would be difficult to argue that there is much difference between those two definitions.

Andrew Hamilton: Is not that definition qualified thereafter?

Fergus Ewing: Section 85 goes on to say that “account may be taken” of various factors. However, perhaps it is wrong to get into too much detail, because we are talking about the bill's principles.

Am I right in saying that the current system of conveyancing has a creature that is called “a right of pre-emption”? I understand that, if land goes on the market, that right gives a specified individual the right to buy that land. The right's characteristic use in the past was to allow the seller of a piece of land to retain a right of pre-emption over that land. The right has been a common feature of the Scottish conveyancing system. Is not that broadly

true?

Andrew Hamilton: Yes.

Fergus Ewing: Given that that is true and that you are against the state—in that it would give communities a right of pre-emption—I presume that in the past the RICS in Scotland and the SLF were also opposed to private landowners having the right of pre-emption, which has existed for centuries?

Robert Balfour: We have not said that we are opposed to communities having a right of pre-emption.

Dr Hankey: The issue is that the traditional use of the right of pre-emption was in order to match a received bid by making the sale of land openly known and so attracting other bids. Many of our members would be much happier with that sort of process—they are not in any way convinced that the amount that the valuer is likely to fix through the process that the bill describes is likely to match what they would probably get on the open market.

I appreciate that going to the open market will not necessarily give an answer tomorrow, but there is the issue of considerable delay in the right-to-buy mechanism under part 2. One could receive a good offer for one's farm tomorrow from a private individual but, under the bill, one would have to go through a protracted process to arrive at a figure that is perhaps much less than the offer that was received. In addition, that offer is not necessarily to be taken into account.

If property is being taken from someone—whether that property is the person's car, house, estate, fishings or whatever—and the person does not wish to sell that property, there is a huge issue other than simply fixing of the market value. That links back to the blight that we spoke about a moment ago.

Fergus Ewing: I hear what you say and I appreciate that there are many niceties and points of difference, but there has been a right for private landowners to create a right to buy back land if they wanted to do that. That right has been imposed in many feu dispositions for decades and centuries and, as far as I know, neither the SLF nor the Royal Institution of Chartered Surveyors has offered one word of protest about it. Although I appreciate that it is not identical to what is proposed in the bill, both your bodies support in principle private landowners' being able to provide for themselves an automatic guaranteed right to buy land, but you are not so keen on that right when it comes to communities. Perhaps I am exaggerating the position slightly, but it is disappointing that your two bodies—both of which are reputable and which I respect, and which I know do not represent the likes of Schellenberg and Maruma—are taking an overly negative

approach to the broad concept of the bill.

Dr Hankey: In our response to the draft bill—I appreciate that perhaps not all committee members have read our evidence—we suggested that the mechanism that is proposed under parts 2 and 3 of the bill could be handled through a classic right of pre-emption; that is, instead of registering to buy in the way that is described in the bill, communities could in effect register to be granted the right of pre-emption along the lines that I have just described. However, that would involve property being put on to the market and finding out the market demand for that land.

Andrew Hamilton: The right of pre-emption—where a landowner sells a bit of land to a person, but if that person sells it the landowner has the option to buy it back again—is very different from an entirely new body being given a right to buy land. In what is to some extent an echo of Maurice Hankey's point, one of the Royal Institution of Chartered Surveyors' earlier suggestions was that giving communities a right of pre-emption would at least ensure that full market value was paid, instead of there being a rather artificial system of evaluation.

Fergus Ewing: Finally, am I right in saying that the bill specifically provides that, where communities are seeking to exercise their right to buy, the cost of the valuation—which may be expensive—will be met by ministers? I have a question for Mr Hamilton. By opposing that measure, is not he opposing new business for chartered surveyors, who will be called upon—with the state paying the bill—to carry out valuations, which no doubt would be of great benefit to members of his profession, in particular in the north of Scotland, where the survey fee may be linked to the value of the land, and therefore may be substantial? Would the potential exist for a strong minority of the RICS to be tempted to rebel against the official line that we have heard from Mr Hamilton today?

Andrew Hamilton: You will find that our members tend to be instructed on any land sale, whether it is a community-right-to-buy land sale or not. I am not convinced that the legislation will result in more land sales and therefore more business but, even if I was, business for our members is not necessarily the reason why I am here. We mentioned our royal charter earlier. We are here to secure the optimal use of land; we are not here to secure maximum fees for our members. The Law Society of Scotland would say something similar, but I am sure that Fergus Ewing could advise me on that.

Roseanna Cunningham: I want to raise a point in relation to access, and the specific point of the exclusion from access rights in section 9(2)(a) of business and commercial activities. Jim Hunter

has already commented on that—he was not happy about it. Both your organisations—the SLF and the RICS—have welcomed that measure, but a lot of concern is being expressed about it by so-called business and commercial enterprises, some of which comprise only one individual. I would like some indication of how both organisations envisage the activities and their extent being defined and whether you consider that the provision opens the way for wholesale charging for access.

I know that some hypothetical cases, which might be considered rather tenuous, have been put to you, but I will put a concrete case to you. I am indebted to the Scotland-based outdoors magazine *The Great Outdoors* for the example. The Dartmoor National Park Authority—I appreciate that Dartmoor is not in Scotland, but sometimes things that happen elsewhere also happen here—has taken to charging commercial photographers £500 if they wish to come on to Dartmoor to take photographs. That extends to press and media photographers—I see Robert Balfour screwing up his face. Unfortunately, that is current practice. It is a charge for access to take photographs that are considered to be commercial. I presume that that applies to people such as Colin Baxter, the press and the media who wish to have access to the land to take photographs. Would either of your organisations defend that practice? How would the bill prevent such a practice from becoming widespread in Scotland?

16:00

Dr Hankey: I start by repeating what I said last week to the Justice 2 Committee. The bill, if passed as introduced, would create new rights. It would not preclude other activities. Commercial activity already takes place on land throughout Scotland. I do not see why any of that should not continue by mutual agreement between the organisers of such activity and the landowners concerned.

The SLF has never raised the issue of charging. There may be issues if the activity is a particularly commercial venture, for example, the staging of a commercial show in a rural area. However, that would be a matter of charging for facilities, but not for the right of access per se. The Dartmoor example is one of private land starting to be used as part of such a commercial venture, such as the launch of a motor vehicle. Again, charging would depend on the facilities that were being afforded. If it is a matter of parking in a lay-by, there would be no question of charging. If it is a matter of making use of estate tracks to demonstrate vehicles, we are into a totally different situation.

Robert Balfour: We would never condone

charging somebody to take a photograph. The SLF has never condoned the idea of charging for access. The landowner can charge for facilities, such as car parking, loos and shops.

On the wider issue, guided walks have been mentioned. No facility is provided on a guided walk other than the footpath, for which the landowner cannot charge; the landowner cannot charge for access, but to charge for a car park is different. If landowners have school parties, for instance, on their land, they do not charge. We would expect that the organisers of such a school party would get in touch with the landowner to ensure that the party did not interfere with, or impinge on, other rural activities, because a lot of people would be involved.

Roseanna Cunningham: You would therefore have no objection to an explicit bar on such charging as is practised in Dartmoor national park.

Robert Balfour: With respect, there is no suggestion in the bill that a landowner would be able to make such charges.

Roseanna Cunningham: There is no suggestion in the bill that such charges would be barred, either. That is my point.

Andrew Hamilton: The RICS supports section 9 and the fact that the right of access does not extend to access for commercial use, because owners or occupiers of land have it as an asset from which they can derive economic benefit or income, whether from farming, forestry or tourism. In our view, if someone else wants to derive a profit from that land, which may to some extent conflict with the use to which the owner or occupier is putting it, it is only equitable that permission should be sought for that. There should not be a free-for-all in which anyone can make a profit from the use of land that they do not own, do not pay rent for or do not occupy in any way. It is self-evident to me that such a free-for-all would be wrong. Am I missing something? I would be glad if members could provide me with elucidation.

Roseanna Cunningham: I welcome your comments, but the problem is that none of that is stated in the bill.

Andrew Hamilton: Our submission states that we have always argued that those who wish to make a profit from exercising rights of access should seek permission to do so. That seems perfectly reasonable to me.

Roseanna Cunningham: I presume that the Dartmoor National Park Authority sees its position as being perfectly reasonable as well.

Andrew Hamilton: I do not know that authority's position, so I cannot comment on it.

The Convener: It has been put to me by a number of different organisations that it would be better for many of the exemptions to be removed from the face of the bill and dealt with in the code. They argue that anomalies of the sort that Roseanna Cunningham has identified would be dealt with better and more easily after the bill is passed, through statutory instruments rather than primary legislation. How do you feel about that?

Robert Balfour: That would be fine. However, if we proceed in that way on this issue we must do the same with other items that are dealt with in the bill, in order to restore the balance that has been lost in the provisions on access between the draft bill and the bill as introduced. For example, a so-called criminal offence for access takers has been removed from the bill, but landowners and land managers can still be taken to court over certain actions that they take. If the bill is to regain some of the balance that we believe it has lost, either those items should be dealt with in the code or the other items to which the convener referred should be dealt with in the bill. However, I do not disagree that those items could be dealt with in the code.

Rhoda Grant: Many of the points that I wanted to make have already been made. However, I would like clarification on some of the matters that have been discussed.

Fergus Ewing talked about the bill providing for land to be sold at its market value. The bill not only does that, but allows for the value of the land to be increased if the landowner knows of someone who is willing to buy the land at a higher price, if there is any depreciation in the value of the land, and if the sale of the land would create any disturbance to the person who is selling it. I have concerns about those compensation provisions. Do you think that those provisions favour the interests of the current owners of land, rather than a community buy-out? Might not communities end up paying much more for land than its market value in open sale? That would compensate for any blight that was placed on land by the registration of a community interest in buying it.

Andrew Hamilton: Many of the extra provisions to which Rhoda Grant refers reflect the present situation in compulsory purchase. Under current legislation, the purchasing or taking away of a piece of land often causes a loss that is greater than simply the value of the land. That is why the bill refers to factors such as disturbance.

The situation in which a community is liable to end up having to pay most over the market value is one in which there is cherry-picking. Unlike the draft bill, the bill as introduced requires communities to buy not land as advertised, but only land in which they have registered an interest. That can result in a loss to the seller, because the remaining part of his land might have decreased in

value. For example, a community might be interested in purchasing only the low ground in a farm that also includes high ground, but high ground is not worth very much to someone if they do not own any inby below it. Under the bill, if the community buys only the low ground, it will also have to pay for the drop in value of the high ground that it is not buying. That is probably bad value.

Our institution has suggested that the bill as previously drafted was preferable. That suggestion followed a change that was introduced by the original original draft suggestions, that cherry-picking should not be allowed.

Rhoda Grant: However that, too, gives comfort to the seller rather than to the buyer.

Andrew Hamilton: I think that the bill as introduced also gives comfort to the buyer, in that the community might end up paying an awful lot more than the market value for the piece of land that it wants to purchase, because of the injurious affection, as it is called—in other words, the blighting effect—on the residual of the estate or land.

Rhoda Grant: I do not agree; we can agree to differ on that. I also wish to ask about access and to develop further Roseanna Cunningham's points. You say that there might be conflict between commercial users of land and the owner of land. Do you agree that any conflict could arise only as a result of irresponsible use of access? Given that the bill allows for responsible access, such conflict should not arise.

Andrew Hamilton: The question is; what happens if access is defined as irresponsible, and what sanctions would then be available to the occupier or owner to do anything about that? As far as I can see from the bill, the answer is that they could do very little. On the question about a conflict about use of land, whereby someone who occupies the land wants to use it for one thing and someone who does not occupy it and who has no connection with it wants to use it for something else, I would say that the norm in wanting to use a piece of land to make money out of it would be to pay rent for it. I am not sure why it should instead be a free-for-all.

Rhoda Grant: My question is about someone accessing the land, for instance a mountain guide. I can understand why the Scottish Landowners Federation says that someone who provides facilities would rightly charge for the use of those facilities. However, where it is a matter only of access to the land—by a photographer or guide, for example—I cannot understand why people should be charged for that use of the land, nor can I understand why they should not have full access.

Andrew Hamilton: I would like to correct one

thing. You have been using such phrases as “should be charged” for access to the land. I do not think that the bill says anything about charging for access. It says only that that is not included in the right of access, so people have to seek permission from whoever is occupying the land. It is not a matter of charging—that is one step on, and might or might not happen.

Rhoda Grant: Can you guarantee to me that no charges would be levied for use of or access to land by a commercial user?

Andrew Hamilton: Undoubtedly not. If a commercial user wishes to use a piece of land to make a profit, what is the difference between that and a farmer wanting to use a piece of land to keep his sheep on it? That is dealt with in the current market through the payment of rent. I do not understand the point about whether there could never be a charge for somebody other than the occupier of the land using the land commercially. That does not make sense, I am afraid.

Rhoda Grant: I am talking about people, for example mountain guides, who are presently allowed to use land to conduct their business. They currently have the right to use land without permission, as long as they use it reasonably. They do not have to pay for that access. If the right of access is removed from them, they will have to seek permission from the landowner and it is then quite feasible that the landowner might levy a charge for granting that permission.

Andrew Hamilton: I do not disagree that there is a problem there. A distinction is to be drawn and we come up against definitional problems. The work of a photographer or a guide—as well as other sorts of commercial activity—on the land is generally ancillary to the use to which the occupier puts the land. I suggest that the problem that will have to be sorted out in the wording of the bill is that there is a difference between those two uses. I hope that you see the difference to which I am alluding.

The Convener: I call Dr Hankey to speak on that point—I can see that he has been itching to get in.

Dr Hankey: I would differentiate between the mountain guide, with whose trips the landowner probably has no difficulty, and—I will avoid the temptation to use the word “extreme”—the rather different position whereby the bill grants the right for someone to do the same thing, but on horseback. If that commercial access constitutes an interest in the district, with regular use being made of someone's property—for example through a pony trekking centre, with horses making regular and frequent use of the land—costs will be associated with that. How do you

propose to differentiate between a charge for a service and the user's contributing to the cost of maintaining the upkeep of the facility that he is using?

Rhoda Grant: The definition that I would give is that if one is using land responsibly, one is not causing damage to it. If one is causing damage to it, that is not responsible use of the land.

Dr Hankey: However, if—as was mentioned—that pony trekking centre continues to use that route, and the so-called responsibility is defined only in a code that the landowner cannot enforce, we are unwilling to grant commercial access as a right.

16:15

Rhoda Grant: I understand that an interdict could be taken out against someone who is using the land irresponsibly.

I have one small, quick question to the witness from the Royal Institution of Chartered Surveyors. Is it correct that a fair amount of your members' work involves factoring for estates? Is it the case that that factoring service is more likely to be used by absentee landlords?

Andrew Hamilton: Yes, our members are involved in factoring estates. What was the second question?

Rhoda Grant: Is the factoring service more likely to be used by absentee landlords than it is by people who are based on their estates?

Andrew Hamilton: Statistically, I suspect that that is probably correct.

Mr McGrigor: My question is for Mr Hamilton. Your written evidence states that part 3 of the bill

“could seriously harm investment in very fragile rural areas”.

Most of the angling bodies to whom I have spoken would agree. Will you enlarge on that? Do you think that if the section on the compulsory right to buy fishings was removed from part 3 of the bill and included in part 2, that would alleviate the problem?

Andrew Hamilton: The first question was about whether we think that the compulsory right to buy will affect investment in communities. From evidence from our members about how owners of land make investment decisions, the concept of the land being bought from them when they do not want to sell it will have a serious effect on how they consider valuing their land. The question is about confidence.

Another matter that affects confidence is uncertainty. For all those who own land and who are making investment decisions about whether to

invest in land, it will not be entirely clear whether they will get the full return on their investment when the valuation is carried out if that land is bought by the crofting community. It is all about confidence. The value of land and investment in land is built around how confident in the returns they might get are those who make the investments.

To our members, it seems to be self-evident that the risk that the land might be bought without the landowner's consent will shatter confidence in investing in the land—especially rivers, I imagine. A lot of investment goes into rivers that does not immediately come back in income or capital value. I am sure that Mr McGrigor is aware that one can spend a lot of money on bank and other improvements to a salmon river. That might not be reflected in income for many years and, because capital value is derived from numbers of fish, it might not be reflected in capital value.

What was the second question?

Mr McGrigor: If the right to buy rivers was in part 2 of the bill instead of in part 3, would that alleviate the problem?

Andrew Hamilton: Which problem?

Mr McGrigor: The problem of the lack of investment in rural areas.

Andrew Hamilton: Do you mean that if salmon rivers could be bought only when they were advertised for sale?

Mr McGrigor: Yes. Part 2 of the bill is about the community right to buy rather than a compulsory right to buy.

Andrew Hamilton: If I interpret what you say as meaning that salmon rivers could be bought only when they were being sold voluntarily, that would have less of an effect than would land being bought whether or not the landowner wanted to sell.

The Convener: Does the SLF want to add to that?

Dr Hankey: Only to say that we agree with all those answers.

The Convener: We have come to the end of this part of the meeting. I thank the witnesses for giving evidence.

I thank all the witnesses for the way in which they have given evidence today, and for giving up their valuable time to enlighten the committee as it makes its report. The committee's report will become part of the Justice 2 Committee's report and will be debated by the whole Parliament at the end of stage 1.

We will have a five-minute comfort break while

the minister takes his place. I am afraid that we will not have time for coffee—I think that we will be doing overtime tonight.

16:19

Meeting adjourned.

16:26

On resuming—

Subordinate Legislation

Inshore Fishing (Prohibition of Fishing for Cockles) (Scotland) Amendment Order 2001 (SSI 2001/449)

The Convener: Ladies and gentlemen, welcome back. I apologise to the minister for keeping him waiting, but the convener's need of a comfort break was probably greater than anybody else's. I point out to members that the minister must leave at 5.15, so I would be grateful if we could conduct our business within that time scale.

Agenda item 3 is renewed consideration of an instrument subject to the negative procedure. I welcome the minister and thank him for giving up his time to come here today. The Inshore Fishing (Prohibition of Fishing for Cockles) (Scotland) Amendment Order 2001 (SSI 2001/449) was discussed by the committee on 18 December. Members will have received a copy of the minister's reply to the letter that I wrote following the evidence that we heard from witnesses on that day.

It is fair to say that members were concerned that the scientific basis for the ban, which was explained to them on 18 December, was not clear enough for them to come to a concrete decision. Since then, we have received a considerable amount of extra information: the marine laboratory report, to which the Executive officials referred; the RSPB Scotland research paper on hand gathering; the Solway firth shellfish management plan, which was submitted by Jim Smith from Dumfries and Galloway Council; and other items of written evidence, including a letter from Russell Brown MP, who is the local MP for the area, who opposed the ban. The clerk has also received the responses to the consultation that the Executive undertook before the order was made and those have been circulated to the members who requested them. We have therefore received the further background information for which we asked on 18 December.

I invite Ross Finnie to speak to us.

The Minister for Environment and Rural Development (Ross Finnie): I apologise if the amount of information that was available was insufficient for the committee's purposes when it first considered the issue. I am sorry if that gave rise to confusion about the basis on which we laid the order.

The matter is relatively complex but I will turn to the essentials. Our decision is founded on the material that is contained in the marine laboratory

report, which sets out the position in some detail. As the report explains, the crucial fact is that the reported cockle biomass shows a substantial decline, which has been rather more dramatic in the past year than in previous years. Allied with poor recruitment, that means that the biomass in the fishery is, in the opinion of our scientific experts, now so low that any further fishery exploitation is unsustainable and cannot be contemplated.

I want to make that quite clear. The biomass has reached a critically low point—below even the level at which there have previously been closure orders in the area. According to the advice that I have received, which we place before the committee this afternoon, I cannot underscore heavily enough that we are at a level at which any further exploitation of the fishery is unsustainable.

A considerable amount of time has passed since the report was prepared. In response to concerns that were raised at the committee's meeting of 18 December 2001, during which it was suggested that we had rushed into the measure, I stress that we consulted on the closure in October 2001. The committee discussed the level of exploitation and uncertainty about the biomass. Mr Ewing was concerned about the imprecise nature of the figures. I do not think that the exact amounts are relevant. The issue on which we must focus is that, at the current critical level, any exploitation of the biomass is not sustainable; the issue is not that exploitation might be sustainable at a certain level. The level has dropped to a point at which the scientific advice is that further exploitation of cockles in the area is not sustainable.

16:30

We understand the concerns of those involved. Many people have benefited from the improvements that resulted from the closures of 1992 and 1994. We are concerned that some of the pressures on the Solway stocks might be a result of displacement because of cockle stock closures in parts of England and Wales. I deeply regret that, but it is a fact of life.

I want to pick up on one or two other points that were raised at the committee's meeting of 18 December and which I read in the *Official Report*. At no stage have we suggested that the collapse of the biomass from 13,400 tonnes in May 2000 to 6,400 in May 2001 is solely a result of hand gathering. Additional elements might be natural mortality, predation, the environment or geophysical effects. However, the central argument is unchanged. If we close the cockle bed and continue to monitor it, we might find further information to show that natural elements are at play. That does not obviate the need for our saying that, while stocks are at a critical level—

6,400 tonnes of biomass—we cannot afford to take the risk of allowing the fishery to be fished out. The situation has parallels in a range of other areas where sustainable fishing is a concern.

We are aware of the local efforts to produce a regulating order. I will deal with the matter head on. I deeply regret that a regulating order has not emerged, but that is the fact of the matter. I wish that one would, but the process of introducing an order could take several months. In the absence of a formal application, or of that process having started, the option of a regulating order—which might have given rise to a number of possibilities—is, regrettably, not open to me. Therefore, the matter is not wholly relevant. I deeply regret the departure of Mr Geddes and his group from the process. During the past three years, they have been important to it.

It has been suggested that we have been pushing dredging. I do not know where that suggestion emanated from; it is not an Executive policy and I do not think that the suggestion is supported by our actions. As the convener made clear, we are not considering a regulating order or a management plan. However, I put on record that it is a pity that a regulation was not proceeded with.

To summarise, Nick Bailey and the report found that only just over 6,000 tonnes of cockles were left on the Solway grounds in May 2001. The biomass is widely scattered. The evidence is that recruitment is poor and that a significant proportion of what is left is being removed. Such removal would not be countenanced in any other part of the European Union. We received the scientific advice in September and consulted in October. On the basis of the assessment that action is urgent, we firmly believe that we must—with regret—prevent degradation and over-exploitation. In laying the order, we have taken a responsible decision, which is in the interests of a sustainable future for the fishery—that is our objective. I am cognisant of the human impact, but there will be no cockle fishery unless we take suitable action to protect the dangerously low biomass in the cockle fishery.

The Convener: I thank the minister. Scottish Natural Heritage applied for a temporary closure order, I think, last April—if not, it was in May—which would have stopped fishing on the beds in the summer. If that had been done, closing off the entire bed might have been prevented. Why was the temporary closure order never implemented? Was it held up in the bureaucratic processes to which you referred in relation to the management plan? Had the order been implemented, we might not be where we are.

Ross Finnie: We are not sure about that. It is regrettable that the report, when it hit the light of

day, revealed a much more dramatic fall than there had been previously. There are reports every year and anyone who has read them will have observed a decline. The decline was much more substantial than previously. We must proceed on a scientific basis. SNH expressed concern about that. A solid basis on which to proceed is required to explain a closure order. The report gives us the necessary information.

Fergus Ewing: If the order is necessary to prevent the extinction of cockles in the Solway, we would be crazy to oppose it. Shortly before our meeting in December began, we were presented with information that did not appear to contain any reliable information about the quantities of cockles taken by hand gathering. Do you have a reasonable estimate of the tonnage of cockles taken by hand gathering in each recent year?

Ross Finnie: Not in all the years. As you know, there is no measurement. I accept that the figure might be somewhere between 1,500 and 2,000 tonnes, which might represent only about 30 to 35 per cent of the total degradation figure, but that is not the point that I am making. Even if the actual figure is at the lower end of that scale, the biomass is at the critical figure of 6,400 tonnes.

I cannot do anything to interfere with natural occurrences, although I would like to find out more, but if natural events are taking place in the Solway firth, a year of measurement may give us some clues as to why. However, now that the biomass has reached 6,400 tonnes, even if natural phenomena are occurring, I cannot take the risk of allowing anything in the order of 1,500 to 2,000 tonnes to be extracted by natural fishing. The biomass has reached a critical level and is in danger of not recovering.

Fergus Ewing: Is the minister absolutely confident that the biomass has been diminished to that extent and that, at May 2001, it was definitely 6,400 tonnes or thereabouts?

Ross Finnie: Yes. That is the clear opinion. It is not an isolated report; survey work is carried out annually and the same methodology has been applied. One cannot be absolutely precise, but we are reasonably satisfied. The objective is not to close the fishery. The objective of the work is to provide us with sufficient information so that we can be confident about the fishery continuing. The report has revealed a dramatic collapse in the biomass. It would be irresponsible of me not to take prudent action.

Fergus Ewing: I understand that. I am sure that you have been informed that the report was not circulated to members of the committee.

Ross Finnie: I prefaced my remarks by apologising for the paucity of information.

Fergus Ewing: Mr Robert Geddes raised a specific point in his evidence on 18 December. He said:

"The cockles that we take are 30mm plus. They are old cockles; their removal does not affect rejuvenation".—*[Official Report, Rural Development Committee, 18 December 2001; c 2652.]*

What is the minister's view on that?

Ross Finnie: That is slightly partial. One must consider the area as a whole. The report makes clear the dispersed nature of the biomass. For us to be confident about the recovery of the biomass, what is important is not what is removed, but the absence of new growth. The absence of new growth against the background of critically low biomass and the absence of evidence of class in 2001, 2000, 1999 and 1998, contribute to what is quite a complex issue. The report gives the opinion of our scientific people in relation to how one judges the viability and sustainability of the cockle biomass.

Fergus Ewing: I listened with care to that answer. It is unfortunate that it differs from the view of Mr Geddes and the scientists with 50 years' experience whom he employed. Their assertion was that the removal of old cockles would not affect the position or threaten the biomass. If the minister is saying that he is absolutely sure that that assertion is misplaced, we are left in the position of having two sets of scientific advice, which seem to be diametrically opposed. We are in the unfortunate position of being asked to effect a ban that might put out of work 80 people and cut the money that pours into the rural economy.

Ross Finnie: I am sorry. I was trying to talk about the total situation. I do not wish to get into a personal argument with Mr Geddes. However, I have to say that if one considers the biomass as a whole, the removal of older cockles contributes to its deterioration. Nick Bailey could perhaps confirm that. There is a conflict between the two views.

Mr McGrigor: I agree with Fergus Ewing's comments. Is not having a fishery that employs 80 people as hand rakers, who have a system whereby they pick up only the two-year-old cockles, preferable to reintroducing boats, which in many cases seem to have caused the problem in the first place? Boats drag everything on board and although the cockles are riddled, a great many are damaged and fall back onto the sea bed. Does the shellfish management plan seek to reintroduce boats rather than look after the more important interests of local hand pickers?

The Convener: I am sorry, but I have to interrupt. The discussion is not about the pros and cons of the management plan; it is about the proposed ban on all cockle fishing that was

introduced on 1 January.

16:45

Mr McGrigor: Okay. In that case, is the hand pickers' method of fishing, which is to pick up two-year-old rather than one-year-old cockles, sufficiently detrimental to force the minister to close the fishery? The one-year-old cockles breed the best. The evidence does not seem to show that, in the past, hand pickers have done the damage; it seems to have been caused by boats and tractor dredgers. If that is the case, I ask the minister to keep the fishery open to local cockle rakers, who otherwise will be put out of employment. I understand the conservation issues, but the hand pickers are not the cause of the problem.

Ross Finnie: The difficulty with Jamie McGrigor's assertion is that boats were banned in 1992 and tractors in 1994. I return to my original proposition, which is that hand pickers are contributing to the reduction. The problem may not be simply local—displacement from other areas may be taking place. There is no suggestion that we should revert to the past scenario, as boats and tractors are banned.

We can argue about the odd tonne here or there, but the report revealed that the biomass has reached a critical level. Although I appreciate that a management order is not what is in front of us, such an order could have given us the power to give a local management group the specific controls to do what needs to be done. We do not have such an order, so we are faced with the proposition that, in addition to local hand gatherers, outside hand gatherers are involved.

In its present condition, the biomass cannot sustain the fishery. I do not come to that decision lightly. I am extremely concerned that we have reached this point. However, if there is to be a future for the hand gatherers, we have to protect the cockles and take action to ensure that the fishery is sustainable. As Jamie McGrigor knows well, that situation is mirrored in Scotland's other fishing interests.

Mr McGrigor: I am sorry to refer again to the shellfish management plan, but it sets out—

Ross Finnie: I am sorry but, as neither the Scottish Executive nor anyone else has agreed the plan, there is no point in saying that we are pursuing the plan actively. If someone suggests dredging, I will oppose that. I cannot comment on a draft plan that is produced by other people. I am not about to promote actively a form of fishing that would be more dilatory and damaging to the fishery. My personal view is that I wish to give some sort of future to the local people, but if the biomass continues to deteriorate at the present

rate, they will have no future.

The Convener: I would like to expand on a point that you made about outside hand gatherers. I am sure that Alasdair Morgan and David Mundell would back up the fact that many of this year's problems, in particular with the biomass of the cockle beds, resulted from the number of outside hand gatherers who came into the area. The minister rightly made the distinction between local hand gatherers and outsiders. There may be 50 to 80 local hand gatherers, but this year we have seen scenes of well above 200 people fishing the Solway beaches. That is part of the problem.

I understand that genuine, full-time local hand gatherers require a total allowable catch of approximately 350 tonnes per annum. Would not it be possible to consider a local licensing scheme to protect local jobs, by introducing a local TAC of 350 tonnes? I cannot believe that that would be detrimental to the overall biomass of the area. Has a temporary scheme been considered?

Ross Finnie: Further applications for an increased TAC might then be received from the other side of the river. It is difficult to give precedence to applications for low levels of catch when we do not believe that the biomass can be sustained without taking action.

Neil Fleming (Scottish Executive Environment and Rural Affairs Department): The idea of having a regulating order is to establish an overall, agreed management system. No one has a specific right to the cockles. Many interests that have fished in the area in the past would argue that they have a historical right to return there, following its closure to boats and dredgers. We have been working towards bringing the various groups together, so that they can agree on a form of management. Putting in place a fair and proportionate management system that allows for micromanagement on the scale that the member suggested would be very challenging and resource intensive.

Mr Morrison: In this instance, it is a distinct advantage not to be familiar with the fishery or the area. My view is based firmly on the evidence that I heard at the end of last year and on Mr Finnie's opening remarks. I understood Mr Finnie to say that any exploitation would result in the total destruction of the fishery. Will he confirm that?

Ross Finnie: Regrettably, we believe that that is a real danger if the biomass falls much below 6,400 tonnes. Although there may be external factors at play here, we cannot contemplate human intervention at the level suggested. That would reduce the stock further.

Mr Morrison: On the basis of that statement and the evidence that we heard last year, I have no doubt where I stand on this matter. However, I

would like to secure two assurances from the minister. First, the decision will have an immediate impact on employment. Will the minister, in conjunction with the Minister for Enterprise, Transport and Lifelong Learning, ensure that local agencies play their full part, in the normal way? Secondly, if an application for a regulating order is made, will the minister and his officials ensure that the order progresses as swiftly as possible through the Scottish Executive Environment and Rural Affairs Department?

Ross Finnie: I can give an absolute yes to both questions. However, as I have indicated, even with our best efforts, it will take time to put in place a regulating order; local consultation is a lengthy process. Although that is not the matter before us, I wish that we had an order in place. It would help us to manage the diversity of the biomass and would make it possible to consider isolating certain parts of it. A lot of local management control is needed to ensure that objectives are met. It is much more difficult, if not impossible, to do that by general orders of the kind that we are contemplating today.

Alasdair Morgan (Galloway and Upper Nithsdale) (SNP): I understand that the minister has a difficult decision to make. However, given that the view has been formed that 6,400 tonnes is an unsustainable biomass, someone must have worked out a figure for the biomass that would allow some kind of recovery to recommence. What is that figure? The introduction of a regulating order is surrounded by all sorts of problems, and I cannot see agreement being reached on that within a meaningful time scale.

If the survey for next year or the year after that shows that the biomass has recovered to the figure that I hope the minister will be able to give us, is any option open to him, other than simply to reverse the order that is going through Parliament at present? Can a local licensing system be introduced to allow at least some of the local hand gatherers to get back into the fishery, once the figure reaches a sustainable level?

There seems to be a lot of uncertainty about the effects of hand gathering on the sustainability of the crop. Could you put in place a scientific investigation so that, when we discuss this issue again, we will be able to do so with more certainty?

Ross Finnie: You asked several quite difficult questions. Our position on the matter is that there is no doubt that the removal of older cockles contributes to the imbalance in the biomass. Therefore, without having a precise scientific assessment of the levels, we still say that the removal, fishing or exploitation of those stocks has a detrimental effect.

You asked at what point we would reintroduce or reverse the order. That is a difficult question, without prejudice to the separate question of how we could do that. One can talk about broad levels, but, in the lead-up to today's meeting, Nick Bailey and I discussed the difficulties both of establishing the total and of satisfying the scientific advice that, within that total, sufficient numbers exist within the classes of cockles at various ages to make us confident that the reproductive phase will happen. I am sorry if that sounds vague, but a scientific assessment of the figures must be made. However, it is perfectly possible that, over a period, we could get back to the situation that you and I wish for. There is no point in keeping fisheries closed just for the sake of it; scientific assessment of the situation must be made, and we are carrying that out.

Your key question was whether we could introduce legislation to confer a particular right on a class of people. That would be slightly difficult, in so far as the population has a general right to fish. Of course, that is the purpose of having regulatory orders. In a mini-referendum of those who live in an area, one might find that local people are prepared to promote an order that takes account of the various interests in that locality and that confers specific rights on local people. However, it is much more difficult to do that the other way round. As I understand the situation, that is the difficulty that my officials have been in. I would be slightly depressed if your opinion was that it will be difficult to get those people round to that view, as I seriously believe that that would be by far the best approach to the introduction and implementation of legislation.

That approach would lead to local management control over the fishery, which would allow people to take specific decisions about areas of the biomass, to manage geographic areas and to impose penalties on those who breach the legislation. It would be much easier to take such an approach, which, although complex, would be negotiated at the local level, than it would be to construct a statute that would confer particular rights without giving rise to a precedent for other parts of Scotland.

David Mundell (South of Scotland) (Con): Given the comments that you just made, minister, and the clear determination to press ahead with a ban that you expressed in earlier comments, might you or your officials not have a role in trying to bring together the interests? That approach, which would fall short of implementing the formal regulatory order, would allow you to see whether a way forward can be found that would have everyone on side, both scientifically and in relation to the development of a future for hand gathering. Once the ban is in place in isolation, how will we sustain the hand gatherers so that they can come

back to the fishery when the regulatory order is in place? I do not see mechanisms being put in place to ensure that that happens. One of the frequently expressed concerns is that, if we got to a stage at which gathering was to be allowed again, the local hand gatherers would no longer exist because economics would have forced them out. Large commercial concerns would come in to gather.

17:00

Ross Finnie: You talk about the abstract notion of the minister and officials trying to dragoon in some kind of scheme. I am not sure that that is helpful because, as far as local management arrangements are concerned, what we really want is that the orders be approved by or at least passed through the ministry. I know of some of the impediments to that. Perhaps more knocking of heads together at a local level is needed. As I said, I was slightly depressed by Alasdair Morgan's comment, although I am conscious of the difficulties that have emerged.

It seems to me that the problem must be tackled at a local level. If it is going to be resolved, it has to be resolved from the bottom up, not the top down. That is the danger of ministers becoming involved. Ministers will ultimately have to present regulating orders for approval. We are becoming judge and jury. If that does not work, we will not sustain the fishery. There has to be a slightly bigger effort at a local level.

I appreciate what you are saying. One would wish to preserve the rights of the local people on the matter for historical reasons and for current employment reasons.

David Mundell: Whom do you envisage doing that at a local level? Alasdair Morrison referred to support from agencies. What role will the agencies have in keeping the tradition alive—for want of a better expression—pending a resolution?

Ross Finnie: I have not heard recent evidence other than the evidence that was given by Dumfries and Galloway Council. We are talking about Scottish Natural Heritage and the Solway Shellfish Management Association. We also have the complication that, to make the order more effective, we have to deal with the Cumbrian side of the firth. Perhaps a new form of local forum is needed to get across the message that the fishery is more likely to open more quickly, at least in part, under a regulating order. I do not wish to pass the buck back, but local members who are present may have a role to play in emphasising that point. The council has played a pivotal role. That its efforts have not resulted in the production of or an application for an order is extremely disappointing. I am not blaming the council. I am merely saying that the situation is disappointing.

Mr McGrigor: On the regulating order that Mr Fleming mentioned, one of the greatest concerns is that if the fishery is eventually opened to boats, only Scottish boats will be able to be boarded because of the interaction between Scots and English law. Boats from elsewhere in the United Kingdom can fish willy-nilly as much as they like. As boats have a track record of only about five years of cockle dredging in the Solway and hand gatherers have a track record of at least 100 years, surely it would be more sensible to have a regulating order that gave more attention to hand gatherers and did not open the fishery to any boat to fish anywhere, which would not be in the interest of conservation.

Neil Fleming: When we receive an application for a regulating order from a local fishermen's management group, for example, we must take on board a large number of issues, among which are the sustainability of the fishery, details of previous historical rights to the area and a great deal of science.

Mr McGrigor: I mentioned track records.

Neil Fleming: I am unwilling to go into that sort of detail before we have even seen an application.

Ross Finnie: I make it clear to Mr McGrigor that the Executive is not promoting an order that seeks to rejuvenate fishing by boat or dredging. That might be in the plan. If so, perhaps other people should tell the people who are putting together the plan that that is a daft idea.

As Neil Fleming has just said, after the plan has been put together, in the regulating order we will have to take account of what is in the best interests of the sustainability of that fishery. If hand fishing is the obvious sustainable element, it will be given more credence.

Richard Lochhead: To clarify Jamie McGrigor's point, unless I am mistaken, the fisheries protection police can board any boat in Scottish waters, but outwith Scottish waters can board only Scottish boats.

My question to the minister is about his earlier comments regarding displacements from English and Welsh cockle beds. Can he elaborate on that? Does that mean that one reason why stocks have gone down locally is because of people coming in from outwith the area? Or is it a question of local people going down to English and Welsh cockle beds and having to come back up?

Ross Finnie: I do not know. All we know is that there has been a recorded fall in the biomass. Part of that must be accounted for by the degree of fishing. In the committee's most recent hearing, the local fishermen gave evidence that their fishing amounted to relatively little. I acknowledged that it is perfectly possible that, because the Solway firth

is close to other cockle areas, which were closed, the fall in biomass in the Solway firth might be part of a displacement process. However, trying to control and manage that without having an order in place is extremely difficult.

Richard Lochhead: In pursuance of Alasdair Morgan's point, would the minister favour a system that ensured that local people benefited from local stocks?

Ross Finnie: We are back again to the fact that that would be the most likely outcome of a developed regulating order.

Richard Lochhead: Through a licensing system, for instance?

Ross Finnie: A regulating order that is managed locally will almost inevitably give rise to local management giving preference to those who are party to the management plan.

Rhoda Grant: I have a small question of clarification that follows on from what everyone else has said.

Your view is that if a local management plan were available at the moment, it would have to close the area to fishing altogether, regardless of what was in place, because the biomass is so low.

Ross Finnie: The answer is clearly yes. There is no question but that the biomass has fallen too low. If a management plan were in place for the clear management of that fishery and if the report in any given year indicated that across the spatial dispersion of the biomass particular areas were recovering more quickly than others, it is more likely that some of those areas could be reopened, with the clear understanding that that could be controlled through the measures and agreement of a local management plan.

The Convener: I think that members are now content that they have asked the questions that they wanted to. I am sure that the minister and others will have noted the sincere reservations that have been mentioned by many members around the table, but I do not detect—the committee will correct me if am wrong—a desire to oppose the statutory instrument, despite the fairly severe local consequences that it will have.

The minister said—I completely agree—that he would encourage the hand gatherers to get back into the negotiating circle and to participate in drafting the management plan, so that the regulating order can be introduced at the earliest point. Is that a correct synopsis of the committee's position?

Members indicated agreement.

The Convener: In that case, members have no further recommendations to make to the Parliament on the instrument.

May I suggest that brief comments will be drawn up by the clerks for the committee report, based on the *Official Report*. That will reflect both the original view, as expressed on 18 December, and the view expressed today following the minister's evidence. Is that agreed?

Members *indicated agreement.*

The Convener: Thank you for your time and for explaining things to us, minister.

**Sheep and Goats Spongiform
Encephalopathy (Compensation)
Amendment (Scotland) Order 2001
(SSI 2001/458)**

**Rural Diversification Programme
(Scotland) Amendment Regulations 2001
(SSI 2001/484)**

The Convener: Item 4 covers two further items of subordinate legislation. No members have intimated that they wish to comment on the instruments. Are members content with the instruments?

Members *indicated agreement.*

Integrated Rural Development

The Convener: We now come to item 5. Members will recall our discussion on 18 December, when the committee agreed to pursue the theme of integrated rural development, initially through a series of visits. Suggestions for visits were invited. Last week, we agreed that the clerks should produce a paper on the suggestions that had been put forward, and they have done so. A possible four visits have been drawn up from the suggestions made.

My only view—members may agree or disagree—is that we should try to avoid overnight stays. However, that may at some stage be inevitable. I wonder whether what we would learn in Kintyre would be much different from evidence that we might gather in Lochaber—but members with more knowledge of those areas may inform me otherwise. However, I support the principle of the four visits, on the basis that three or four members might be able to attend each one. I do not think that we should expect all members to attend each visit.

Fergus Ewing: I think that we decided that four visits should be made. I see that four candidates for destinations are before us, so that means that there is space for them all to get elected. I hope that that is agreed. There are practical difficulties, particularly for the visit to Colonsay, but I hope that those will not deter us from making that visit. As Rhoda Grant pointed out previously, going to a place that is difficult to get to and difficult to develop is really the point.

I disagree with you slightly about the second part of the paper before us, which is about involving local people at the first and second stages. I entirely approve of that approach. However, if we agree about that, does that not assume that we will not decide now whether the full committee will go to each of the four places, and that we will make that decision later, once we have gauged the response from the local people. In other words, the first stage will be to elicit the response from each area. If there is a thirst to have a full committee meeting, I would very much like that thirst to be quenched. I would not want now to rule out having a full committee meeting; we could revisit the possibility.

I appreciate that we will have to approach the conveners liaison group to get the money. I had envisaged that the visits would involve the full committee. It would detract from and devalue the process were we to decide now, willy-nilly, that we will not have full-blown committee meetings. If we decide to hold full meetings, it would provide a galvanising force for Lochaber, for example, to be aware that the committee is coming. As a result, we might get a large response from people with

their own ideas, not just the ones that I and others have suggested in the paper. People should get not just the poor-relation option of a visit by one or two members, but the full Monty of the committee in its full splendour.

The Convener: The mind boggles. My only difficulty with that is the timetabling for the conveners liaison group's financial approval. Essentially, we have to present the CLG with a paper by Friday, for consideration next Tuesday. If we slip past that deadline, it will be a matter of approaching the CLG at the end of March. I would hope that a couple of visits will have taken place by then, as if we do not fit them in in March or April, we will have severe difficulties with our work programme. As always, I am open to suggestions.

Richard Lochhead: I am relatively happy with the paper. Involving local people is important. During our previous inquiry, we were getting 70 folk at some of the meetings that involved members of the public.

Instead of just inviting witnesses and the great and the good from the usual organisations, it is important that we give an opportunity for ordinary people to come to meetings. We did that with our previous inquiry, which was successful. That inquiry did not involve official committee meetings, but I agree with Fergus Ewing—if that option fits in, we should go for it, but it is not a priority.

If we go to Colonsay, let us go the same way that the public go, rather than making special arrangements. The only way that we can get a grasp of the issues that face ordinary people is to do exactly what they do. Why should we hire a special boat to take us over?

The Convener: I do not think that that will happen.

Richard Lochhead: I feel strongly about that.

The Convener: I could not agree more, given that one of the reasons for going to Colonsay is the difficulty of access, as Rhoda Grant pointed out last week. That is a perfectly fair point.

17:15

Rhoda Grant: Given that we must get costings in by the end of the week and you said that you hoped that at least two visits would be over and done with before the next agenda—

The Convener: That is only my thinking.

Rhoda Grant: Would it be easier for the clerks and the committee if we pick the two simplest options and get the costings in for the end of the week, so that we can go sooner? Perhaps then we could work up the costings for the two more complex visits, with a view to doing them later on.

The Convener: So you are in favour of applying for two visits now and a further two at the next round of bidding.

Rhoda Grant: Yes. We might have more chance of getting all the visits if we apply for them that way, especially if we accept Fergus Ewing's point and go for full committee meetings. If we go for full meetings, we will need the *Official Report*, security and so on, which is expensive and difficult to organise. However, for communities that feel a wee bit away from the Parliament and perhaps think that we do not always listen to them, it might be a good idea to hold full committee meetings there.

The Convener: So your suggestion is that we apply for two visits now and two at the next round of bidding, and that we apply for the full committee to go. That is not a bad idea at all.

Mr McGrigor: If Colonsay is too difficult, Mull is another obvious option.

The Convener: I do not think that Colonsay is too difficult; it is just a question of fitting it into the bid, if the whole committee is going to go. It would be sensible to spread the cost over two separate bids to the CLG. When I talk to the CLG about the first two bids, I would be happy to mention that that is only half the programme. If members are agreeable to that route, I suggest that as the visits to Lochaber and Dalry are probably the simplest—those places are easy to get to and the visits will be shorter—we should go for those two first. That would give the clerks and those involved a little more time to work on the logistics of the other two meetings.

Rhoda Grant: I am quite happy about going for the two simplest visits first, as long as the work on the other, more difficult visits continues so that it is ready for the next round of bids.

The Convener: I take it that we are talking about visits of the whole committee, or as many of the committee as possible.

Richard Lochhead: Usually, the arrangement is that everyone can go if they want.

The Convener: A formal visit of the Parliament is different in that it involves taking many more officials than are required by an inquiry such as that on the impact of changing employment patterns.

Fergus Ewing: To take up Rhoda Grant's suggestion, we can put in the two bids for formal meetings of the committee at Lochaber and Dalry. We can review that in light of the responses that we receive, should it transpire that it is necessary to do so.

The Convener: I must clarify whether we are talking about a fact-finding visit by members of the

committee—which is not necessarily accompanied by the full force of officials and others behind us and therefore is considerably less expensive to conduct—and an official visit of the committee, with the full force of officialdom behind us.

Richard Lochhead: There is an argument for chancing our arm and saying that we want all four visits to be full committee meetings. Why not? We are the Rural Development Committee, but we have had fewer visits out of Edinburgh than other committees.

The Convener: My view is that the visits stem back to our desire to be proactive, which we identified at the away day at the end of the summer recess. The visits are the only proactive exercise that we have on the agenda. I have no difficulty about arguing the case at the CLG.

Richard Lochhead: We will try for four visits. If the CLG says that we can have only two visits, we will accept that.

Rhoda Grant: We can start with a committee meeting and have a fact-finding visit as well. What Fergus Ewing said was right—having an official committee meeting might attract people to come and speak to us. If they watch a committee meeting and see how we deal with business, they will realise that they can speak to us—that we are human, which is not something that the press usually portrays. Perhaps people will come forward and give us more information as a result.

Richard Lochhead: The Parliament will also receive a lot more publicity.

The Convener: Do members want to go forward with two full visits of the committee to Lochaber and Dalry? That is the bid that we will put in on Friday.

Richard Lochhead: Do we agree on the principle of going for four visits? Will we definitely do that?

The Convener: Yes.

Richard Lochhead: Are we able to say to the people in Huntly that they will have a visit?

The Convener: You cannot say anything until the CLG has agreed it. We will prepare a bid to go to the CLG. The paper has to be in on Friday, although I think we have until Monday. A full committee meeting is also subject to the identification of suitable facilities, but that will not be a problem—certainly not in Dalry. I am sure that we can manage in Lochaber too.

Fergus Ewing: There will be no problem there.

The Convener: We must also draw up a formal remit for the inquiry. Are members content that I cast an eye over that and approve it in the paper? The exact remit of the inquiry has never been laid

down in the *Official Report*. I understand why that is required. Are members content on that item?

Members indicated agreement.

The Convener: We will deal with the final two items in private.

17:21

Meeting continued in private until 17:25.

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