RURAL DEVELOPMENT COMMITTEE

Tuesday 29 October 2002
(*Afternoon*)

Session 1

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25th 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)

COMMITTEE SUBSTITUTES

George Lyon (Argyll and Bute) (LD)
Mr John McAllion (Dundee East) (Lab)
Alasdair Morgan (Galloway and Upper Nithsdale) (SNP)
John Scott (Ayr) (Con)

*attended

WITNESSES

Robert Balfour (Scottish Landowners Federation)
Ross Finnie (Minister for Environment and Rural Development)
Leslie Gardner (Scottish Executive Environment and Rural Affairs Department)
Andrew Hamilton (Royal Institution of Chartered Surveyors in Scotland)
Stewart Jamieson (Scottish Tenant Farmers Action Group)
John Kinnaird (National Farmers Union of Scotland)
Sandy Lewis (Scottish Estates Business Group)
John Lodge (Scottish Executive Environment and Rural Affairs Department)
Angus McCall (Scottish Tenant Farmers Action Group)
Ian Melrose (National Farmers Union of Scotland)
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CLERK TO THE COMMITTEE

Tracey Hawe

SENIOR ASSISTANT CLERK

Mark Brough

ASSISTANT CLERK

Jake Thomas

LOCATION

Committee Room 1

Scottish Parliament

Rural Development Committee

Tuesday 29 October 2002

(*Afternoon*)

[THE CONVENER *opened the meeting at 14:02*]

The Convener (Alex Fergusson): Good afternoon, ladies and gentlemen. I trust that all members had a good recess. They have obviously forgotten that committee meetings start at 2 o'clock. I hope that they will remember it in future.

The Minister for Environment and Rural Development (Ross Finnie): The clocks went back.

The Convener: Indeed they did, minister. If a lot of people turn up at 3 o'clock, we will know why.

I welcome everyone to this Rural Development Committee meeting. We have a number of witnesses and members of the public with us today, whom I very much welcome. I begin with my usual reminder to ensure that mobile phones are turned off. We have received apologies from Irene Oldfather and from Stewart Stevenson, Jamie McGrigor, Alasdair Morrison and Elaine Smith, who are at an extra meeting of the Justice 2 Committee dealing with the Land Reform (Scotland) Bill. They hope to join us later. However, we are quorate, so we will move to agenda item 1.

Subordinate Legislation

Codes of Recommendations for the Welfare of Livestock: Animal Health and Biosecurity (SE/2002/273)

The Convener: Item 1 is the affirmative instrument Codes of Recommendations for the Welfare of Livestock: Animal Health and Biosecurity. Copies of the draft instrument have been copied to all members, along with a paper from the Executive. I welcome the Minister for Environment and Rural Development, Ross Finnie, and John Lodge, Leslie Gardner, Jill Tait and Sandra Sutherland, who are here with him. I will invite the minister to make some opening remarks about the instrument, after which I will open up the meeting for members to ask questions while we have the officials at the table.

I point out that the Subordinate Legislation Committee has made no comment to us on the instrument. When members have asked for any clarification that they wish to receive, we shall move to the debate on the motion. At that point, we will not be able to involve the officials in answering questions, so I urge members to ask questions early on.

Ross Finnie: As many members will be aware, the biosecurity code was drawn up by the Scottish Executive with industry support in the aftermath of the foot-and-mouth outbreak. The code is very much a Scottish initiative addressed at Scottish farmers; it is not a GB or UK initiative.

I will put the instrument in its wider context. We are all aware that, despite the best endeavours, we have no absolute guarantee that highly virulent contagious animal disease can be kept out of Scotland. Moreover, we cannot, under present arrangements, exclude the spread of other less damaging and more common, but nevertheless uncomfortable, animal ailments, which can affect not only the welfare of the animals concerned, but the viability of individual farm businesses. Therefore, we have set out, in partnership with the farming industry and others, to try to prevent animal disease from getting a hold on farms in the first place. It is our firm belief that enhanced on-farm biosecurity is one area where positive, inexpensive action can be taken to accrue substantial benefits.

Other measures that I have asked my officials to take forward to complement the biosecurity code include tightening controls on imports, although relatively few third-country meat imports come directly into Scotland. Stopping rapid market movement of livestock is another area where the Executive has been able to cut the risk of transmission of animal disease. The 20-day standstill on stock that has moved is another

example of action that we have taken, but of course—and I stress this—the 20-day rule will be reviewed in light of the comprehensive cost-benefit analysis and risk assessment that was called for in the recommendations of the Anderson report. Finally, the Executive's revised contingency planning arrangements will, I hope, strengthen the Executive's responsiveness to any animal disease.

Biosecurity is a set of management practices that, when followed, together reduce the possibility of the introduction or spread of disease-causing organisms on to and between farms. The first part of the document is the code, which explains why biosecurity is the responsibility of everybody who is associated with livestock. It gives advice on what to do if there is any suspicion of a notifiable disease and explains how such disease could be spread and the steps that can be taken to reduce such risks, for example by reviewing farm management procedures and paying close attention to vehicles, buildings, farm equipment and people. It also provides advice on the introduction of new animals to farms. That is by no means new advice, but it is certainly good advice, which the best of our farmers already apply and respect. Our aim is that all farmers should do so. There is also sound advice on the use of medicines, slurry and manure and there are other risk-reducing measures.

The code has been extensively discussed with stakeholder groups and other interests. It has widespread support from industry organisations, including the National Farmers Union of Scotland, which acknowledges that the code provides practical advice to reduce disease risk.

The code is being promulgated under the welfare provisions of the Agriculture (Miscellaneous Provisions) Act 1968. We could have issued the biosecurity advice without legal recourse, but it is important to reinforce the message about disease risk by means of a statutory code. Most of those who responded to the consultation supported that view.

Parts 2 and 3 of the document provide separate advice for official visitors to farms and recreational users of farmland. That advice complements the code, but it is not covered by it, as the Agriculture (Miscellaneous Provisions) Act 1968 does not extend to those areas. In consulting on access issues, my officials took account of what countryside interests, including the access forum, had to say. The document that the committee has before it today has the broad support of those interests. Again, we have sought to provide practical advice in a way that people who access farms and farmland can readily understand.

Subject to parliamentary approval of the code, my department intends to distribute widely all three parts of the document. The document, together with the one-page laminated summary, will be sent to all farmers. Approval of the code today will represent an important step in the Executive's strategy to help to reduce the impact of disease in our livestock industry. I commend the code to the committee.

The Convener: Thank you, minister. We move to members' questions.

Richard Lochhead (North-East Scotland) (SNP): If the code leads to the required change of culture on farms, it has to be welcomed. However, there is concern that the Executive perhaps has a lack of power in relation to the real causes of the recent foot-and-mouth outbreak, such as the illegal importation of meat, for example. In the attempt to prevent foot-and-mouth disease, what is the balance of risk between adopting the 20-day rule and the code, for example, as opposed to preventing infected meat from coming into the country in the first place?

Ross Finnie: It is illegal to bring infected meat into the country—there is a legislative framework that says, "Thou shalt not do it." The problem is that we are talking about illegal imports. We must put in place more rigorous measures to try to stop illegal imports. Although that work is well under way, it has not been completed—there is still work to be done. Increased powers of seizure have been given to local authorities.

We were rightly criticised because there was insufficient information at points of import, such as airports. For the first time in this country, we have done more about that. We have linked up with the importation authorities. The issue is about gathering intelligence and disseminating that information. The use of sniffer dogs is being experimented with on a UK-wide basis. Sniffer dogs have been deployed at Heathrow airport to assess their effectiveness in difficult circumstances. One could not get a greater concentration of people than at Heathrow.

We have obtained the European Commission's agreement that the 1kg personal allowance for meat imports will be removed from January 2003. We continue to build on that work. On one hand we are trying to get farmers to take biosecurity more seriously. The other side of that coin is that we in government must do as much as we can to minimise the risk of illegal imports. We are taking steps in that direction.

Richard Lochhead: I assume that some sort of assessment of the risk of foot-and-mouth disease breaking out again in Scotland has been carried out. The veterinary representative might be able to comment on that.

Ross Finnie: Foot-and-mouth is not the only risk; exotic diseases present a risk.

Richard Lochhead: Is there still a risk of foot-and-mouth breaking out in Scotland and, if so, where does the source of that risk lie?

Ross Finnie: There is a risk of any exotic disease breaking out. I will leave the answer to the expertise of Leslie Gardner.

Leslie Gardner (Scottish Executive Environment and Rural Affairs Department): The measures to prevent disease from entering the country or spreading within the country are not mutually exclusive. We are discussing a range of measures that are aimed at dealing with a common problem.

There is a risk of exotic disease entering the country. If such disease enters, there is a risk that it will spread within the country. One can come to an intuitive veterinary judgment on the risks, or one can commission a more detailed, formal risk assessment. Such an assessment is under way. It was commissioned jointly by the Scottish Executive and the Department for Environment, Food and Rural Affairs and is being carried out by the Veterinary Laboratories Agency. It will examine the risk of meat entering the country illegally, the risk of that meat being contaminated with an infectious agent and the risk of that infectious agent being spread throughout the country. A formal risk assessment is in place. We expect to have first sight of that assessment shortly—perhaps next month. In due course, when it has been completed, the assessment will be published.

Richard Lochhead: If farmers adopt the code, is there an increased likelihood of the 20-day rule being removed, given the inconvenience and cost that it is causing for farmers across Scotland, many of whom have never had any contact with exotic diseases or with foot-and-mouth?

Ross Finnie: We want that to remain the case. I remind Mr Lochhead that a full risk assessment was one of the key recommendations in the Anderson committee's report. Such an assessment is being carried out. The committee recommended that, until we had the results of that assessment, current arrangements should continue.

I cannot give a definitive answer because I must wait for the results of the assessment. We will feel better if we have in place a range of measures to control disease, including measures that deal with the problem of importation. We must have active biosecurity on farms. Simply publishing the code will not instantly change biosecurity habits on every farm. Let us be absolutely clear: there are farms on which biosecurity arrangements are very good, but, unfortunately, arrangements are extraordinarily variable. Distribution and education questions must be asked to raise the standard of biosecurity arrangements to that which the code recommends.

14:15

Richard Lochhead: It would be helpful if the minister indicated that, if farmers adopted the code, there would be an increased likelihood that the 20-day rule would be relaxed.

My final question relates to a practicality. The code refers to 30 separate regulations, by my count. If the code is to be abided by, 30 regulations must be referred to. Does the minister sympathise with farmers, who have to work with so many regulations? Is any effort being made to reduce or streamline the regulations?

John Lodge (Scottish Executive Environment and Rural Affairs Department): I would like to say something about that, if I may. We are required to refer to the legal basis on which some of the guidance in the code is given, but in essence we are trying to give sound and principled advice to farmers in the livestock industry rather than refer to the legislation under which certain items are relevant. The 30 or so recommendations are general advice. The intention is to issue a one-page summary of that advice for farmers' daily use.

The Convener: I want to ask about the educational process that the minister thinks will be required. It is inevitable that some farmers will take the recommendations on board with more enthusiasm than others. Although there are many other diseases, I suspect that the further that we get from the foot-and-mouth outbreak, the more tempting it will be to cut corners on the code. How do you intend to pursue the educational process?

Ross Finnie: We have to deal with that issue with the industry. We have consulted the NFUS and we must pursue the matter with it. Once the code is promulgated, printed and out there, we will deal with the industry. There is no point in our trying to teach farmers how to do their business. We must work with the industry.

The Convener: So the process is on-going; this is not a one-off development.

Ross Finnie: Absolutely.

John Farquhar Munro (Ross, Skye and Inverness West) (LD): The draft code stresses the importance of biosecurity for everyone who lives, works and visits the countryside so that there will be a reduced risk of spreading disease. I am sure that everybody in the countryside and beyond will welcome that approach.

However, I received a letter from a Highland vet this morning, who is part of the Highlands and Islands veterinary services scheme. He pointed

out that the meat hygiene service, which is part of the Food Standards Agency, recently awarded a contract for veterinary meat inspection at abattoirs in Wick, Kirkwall, Dornoch, Dingwall and possibly others that I do not know about to a company that is based in York. That seems to be a retrograde step that will remove business from local vets who have performed the task for many years professionally and without any apparent problems. I need not say that it will undermine the local viability of the veterinary service and possibly lead to a reduction in disease surveillance as a whole.

I accept that the meat hygiene service is not the minister's direct responsibility, but its actions seem to undermine overall Scottish biosecurity, which the Executive is trying to tighten up. Will the minister give a commitment to consider the situation and its possible effects on the economic viability of rural veterinary services and the businesses that are associated with them?

The Convener: Although the minister is free to answer that question, I do not think that it relates to the code that we are discussing today. As a result, I would not hold him to account if he did not wish to answer it.

Ross Finnie: I will make a brief response. John Farquhar Munro was not the only person to receive such a letter. Indeed, at the convention of the Highlands and Islands in Oban yesterday, I became one of few ministers to have received ministerial correspondence by hand after I was given the letter by those in the Highland area who were also affected by the problem. Since the matter has been raised with the committee, all I can say directly is that—as John Farquhar Munro has rightly pointed out—it is a matter for the meat hygiene service. However, given that I have received a similar letter, I want to look into the matter and to find out whether there are any potential ramifications for funding and the economic viability of the veterinary service. I will deal with the matter when I respond to my copy of the same letter.

John Farquhar Munro: But are you prepared to consider the representations?

Ross Finnie: Of course I am. I never simply say, "Thank you for your letter." As members know, I always give a very thoughtful response.

Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP): I am sure that we all recognise the importance of the code and of taking proper biosecurity measures both to protect against the initial infection and to deal with the possibility of swift transmission, which was such a feature of last year's foot-and-mouth outbreak.

Is the minister happy with the research that is being carried out in light of foot-and-mouth disease and BSE? Has the Scottish Executive sought any financial aid from the European Union? I understand that, although aid is available for such research, the UK is the only country in the EU that has not taken it up.

Ross Finnie: This is perhaps not the afternoon to go into the ramifications of the Fontainebleau agreement or the availability of aid. I will ask Leslie Gardner to comment on the matter, but I should point out that there have been concerns about the quantity of veterinary research. The matter has been highlighted by the incidence of the diseases that you mentioned over the past few years. Indeed, funding has been made available to veterinary colleges to increase the level of research and therefore the retention of veterinary students who would undertake such research. The key issue is that we in Scotland at the Scottish veterinary colleges—and indeed the UK, as we are all one epidemiological unit—will have access to that resource.

Leslie Gardner: Mr Ewing has referred to the research programme into both BSE and FMD. Over the past 10 years, the funding for BSE has consumed a huge proportion of the research fund that is available to the UK. However, a large and continuing programme of research is still being funded into the epidemiology and spread of BSE, and the dissemination of the disease throughout the tissue of animals. The issue is not over and done with; it is a real and continuing concern.

The control of transmissible spongiform encephalopathies is not only a matter of research; we have to implement methods of removing and dealing with TSEs in general. Members will be aware of the effort that is being injected into the control of scrapie in particular.

Although research into FMD is continuing, it is constrained by the level of biosecurity that is necessary in research establishments, which must have a certain level of containment to deal with the most contagious animal virus of which we know. The programme has to be focused very much on establishments that are capable of handling the virus. The research effort is continuing into areas of FMD control that were highlighted in the epidemic and the inquiry recommendations, particularly in relation to the use of polymerase chain reaction testing, which can distinguish between infected animals and vaccinated animals. That is a key issue in disease control.

Fergus Ewing: I am pleased to hear that. I understand that there is an EU budget line of around £84 million available for research into animal disease and I am informed that the only country that has not applied to access that resource is the UK. I ask the minister to look into that.

Ross Finnie: I shall certainly pursue the matter.

Fergus Ewing: It would surely be folly not to take the opportunity to carry out much-needed research into such diseases, the causes of which are yet unclear.

Ross Finnie: I understand that. There are two issues: first, whether we have applied for the funding; secondly, whether it is money that we get or whether the Fontainebleau agreement produces a completely different formula arrangement. I shall pursue that matter. I am grateful to Fergus Ewing for drawing it to my attention.

The Convener: I have a final question, which the minister may not be able to answer. Is there any measure by which it is possible to say how much the spread of foot-and-mouth disease might have been reduced had the code been implemented two years ago and followed to the letter?

Ross Finnie: The convener has obviously not had a lot to do over the past fortnight but think up good questions. The spread of foot-and-mouth disease cannot be ascribed to one factor. What is absolutely clear is the experience of people such as Leslie Gardner, all the vets and the people who work in animal welfare and everybody who partook in the crisis of foot-and-mouth disease. It would be an understatement to say that they were disappointed at the level or the absence of biosecurity, although there were exceptions—I do not want to castigate the whole of the Scottish industry. We would not be promoting the code if we did not think that, along with the other measures to which I referred in my opening remarks, improving dramatically the level of biosecurity in farming would have a material effect on any future outbreak. There is no doubt about that.

Some of the mechanical spread of the disease during the outbreak could have been seriously inhibited if solid measures had been in place. The difficulty of my returning to the chief vet on the issue is that, as a matter of professional practice, Leslie Gardner does not enter any livestock premise without going to the boot of his car and taking out overalls, disinfectant and a pair of boots. Our chief vet regards that as normal, yet he was one of few people who were following that practice at the outbreak of foot-and-mouth.

The Convener: I hope that that was a fair question.

Ross Finnie: Indeed.

The Convener: You are saying that no exercise has been undertaken to assess how the code might have affected the situation.

Ross Finnie: No. However, veterinary practice indicates that simple measures are extraordinarily effective in seriously attacking the risk of the spread of contagious diseases.

The Convener: Would it be fair to say that, had there not been an outbreak of foot-and-mouth disease, we would not have been discussing the code today?

Ross Finnie: That is probably true, although I know the irritation that the chief vet feels when he visits premises that do not adopt his practices. He might have cajoled me, but I suspect that you are right.

The Convener: There are no other questions. Do you have any closing remarks to make, minister? It is not compulsory to do so.

Ross Finnie: On that injunction, I make no further remark.

Motion moved,

That the Rural Development Committee recommends that the Code of Recommendations for the Welfare of Livestock: Animal Health and Biosecurity (SE/2002/273) be approved.—[*Ross Finnie*.]

Motion agreed to.

The Convener: I invite the minister and his officials to step down, with our thanks for joining us this afternoon.

Ross Finnie: I am obliged.

Agricultural Holdings (Scotland) Bill: Stage 1

The Convener: Under agenda item 2, we begin our consideration of the Agricultural Holdings (Scotland) Bill. This is our first day of taking evidence at stage 1. We will also meet on Tuesday 5 November and Tuesday 12 November, when we will consider more oral evidence.

14:30

Today we will hear from three panels of witnesses. Members will have the opportunity to ask questions after each panel's opening statements. Before we start taking evidence, it is required under bill procedure that I declare an interest in that I have a registered landholding in south-west Scotland. I have tenancies, but not under any arrangement that will be affected by the bill.

I invite any other members who wish to do so to declare any interests. If any other members arrive late, I will invite them to declare any interests that they might have. However, looking around the table, I think I am right in saying that there will be no interests declared other than Mr Munro's croft—I remember that being mentioned.

John Farquhar Munro: I have a wee croft in the west Highlands that is struggling and is not viable.

The Convener: It is obvious that crofters can diversify as well.

We come to the first panel. I welcome Robert Balfour from the Scottish Landowners Federation, Andrew Hamilton from the Royal Institution of Chartered Surveyors in Scotland, and Sandy Lewis of the Scottish estates business group. I ask each member of the panel to make their opening statements as brief as possible—as near to two minutes as they can make them—as we have received written evidence from them. After that, I shall open up the meeting to members' questions.

Andrew Hamilton (Royal Institution of Chartered Surveyors in Scotland): I am a member of the Royal Institution of Chartered Surveyors in Scotland and a past chairman of the rural practice division of that institution. I am currently the chairman of the RICS agricultural holdings working party.

I will briefly describe the institution. We have 9,000 members in Scotland, drawn from all aspects of the property and construction industry. Several hundred of those members are involved in rural practice work that relates directly to the bill.

We have a royal charter that directs us to act in the best interests of those who are involved in land and property and to secure

"the optimal use of land and its associated resources to meet economic and social needs … and to maintain and promote the usefulness of the profession for the public advantage".

In summary, we interpret that to mean that we are an apolitical organisation—we lobby neither for one interest nor for another. We are a professional body and our members are probably involved in nearly all tenancies on agricultural land in Scotland, whether they act for the landlord or for the tenant, or as arbiters in disputes about matters of rent, for example.

We therefore approached our consultation on the bill and our opportunity to give evidence to the committee with the attitude that it is not only in the interests of our members, but it is a duty under our royal charter to ensure that the bill is as workable as possible and that it acts in the interests of the farming industry and the whole rural economy.

Robert Balfour (Scottish Landowners Federation): The Scottish Landowners Federation is a major stakeholder in the agricultural tenant sector in Scotland. We might be perceived as representing only lairds but, in reality, many of our members who let land let only one or two farms. Many of our members rent land as tenants in addition to owning their own holdings. Equally, a large number of our members are also members of the National Farmers Union of Scotland.

The SLF supports the aims of the proposed legislation and we are proud of the agreement that we reached with the NFUS. That agreement was the product of many months of work and it is recognised as providing the foundation for the proposed legislation. We believe that our agreement with the NFUS demonstrates willingness for the parts of the industry to work together on a wide range of issues. In particular, we point to our agreement with the NFUS on new tenancy vehicles, which offers a major step forward from existing legislation. Our members want to let land and to have confidence in doing so. That is their business.

There has been widespread comment and media coverage on the provision for tenant farmers of a pre-emptive right to buy. Our organisation has proposed an alternative to that provision that would give tenants greater benefits than would the suggested pre-emptive right to buy. Our proposal would also reassure and give confidence to landowners, particularly the small-scale landowners who would be most affected by the pre-emptive right to buy.

Some people are in favour of extending the pre-emptive right to buy to make it an absolute right to buy. We oppose that suggestion strongly, as do the NFUS, the Scottish Executive and the RICS. We believe that an absolute right to buy would shatter confidence in the land market and that it

would be far from a magic solution to the problems in the tenant sector.

Above all, we believe that the bill must meet its stated aim of stimulating the agricultural sector. Our members want to let land. All recognised industry organisations—and the Scottish Executive—support a vibrant tenanted sector. We acknowledge that there are difficulties in the sector and we hope that the bill will go some way towards eradicating them. We support the idea of a tenant farming forum—the SLF is committed to that goal and is grateful for the opportunity to assist the committee. It will do so in any way that it can.

Sandy Lewis (Scottish Estates Business Group): The Scottish estates business group represents large and small estates that are committed to a progressive approach to rural business and to environmental and socioeconomic issues. Tenant farming forms a significant part of estates' activities.

The SEBG supports the aims of the bill, particularly that of securing a successful tenant farming sector alongside the owner-occupier sector. Both those sectors are, in our view, essential to the future of Scottish agriculture. We also share the minister's vision that there will be a vibrant tenanted sector that will contribute to delivering the forward strategy for Scottish agriculture.

Our members support the vast majority of the bill's provisions, but we have proposed an alternative to the pre-emptive right to buy. The farm purchase scheme would end, by statute, the possibility of farms' being sold over tenants' heads. The scheme would provide a tenant with the first opportunity to buy a farm as a special purchaser. In line with the SLF, the NFUS and the RICS, we believe that extending the pre-emptive right to buy to make it an absolute right would have extremely serious consequences for the Scottish agricultural sector.

Evidence has been submitted to the committee suggesting that fragmentation of estates through an absolute right to buy would be in the public interest, but we believe that that is a distortion of the true picture. Well-run estates provide considerable public benefit through tourism, leisure, employment and environmental management. We hope earnestly that the committee shares the minister's view that the bill should be about the interests of tenant farming and not about the existence of estates.

The farming industry has more than its fair share of problems and we can all contribute to finding solutions. It is vital that confidence is restored to the tenant-landlord relationship, which should be modernised to become a relationship that is built on partnership. To that end, we recommend that the bill should establish a tenant farming forum, which we believe will allow the industry to resolve the wide variety of issues that it encounters, such as investment issues, retiral schemes and the much-needed encouragement of new blood into the industry. That suggestion is proposed in good faith and is not designed to supplant any decision that the Parliament makes on the right to buy. We envisage the forum as being a long-term body that would operate for the good of the industry and which would bring confidence.

Our membership understands the need to modernise and it is willing to do so. We hope that our suggestions, particularly those on the tenant farming forum, are regarded as constructive. We are delighted and pleased to have the chance to assist the committee.

The Convener: I thank the witnesses for keeping their statements relatively brief. We will move straight to questions.

Fergus Ewing: I will start by quoting a brief extract from a speech that Donald Dewar made in 1998, after he had considered as part of the land reform consultation exercise at that time several case studies that tenants submitted to him about their experiences as tenants and the treatment that they received from landlords. He said:

> "The words 'stifling' and 'stultifying' recur again and again in these case histories. These are not people looking for an easy life; quite the reverse. These are people keen to make the best of the opportunities which should be available to them, keen to build a better life for themselves and their families and communities, but held in check by the action or often inaction of external powers."

The late First Minister's words reflect the concerns that many of us have about the existing system.

I will ask each witness about the system and about the impact of tenancies under the Agricultural Holdings (Scotland) Act 1991—1991 tenancies—about which we are principally concerned and which are the secure tenancies of tenant farmers who in some cases have held farms for generations. I will restrict my remarks to 1991 tenancies. Under such tenancies, a tenant who makes a capital investment in his farm will see that investment's value passed to the landlord over time, and the landlord cannot require vacant possession unless rent is not paid for six months or more, a bad husbandry certificate is issued or other matters of that ilk occur. The landlord has a disincentive to invest, because he cannot recover possession of the property.

Does not the system create a disincentive for tenants to invest because tenants who invest will lose their money, and a disincentive for landlords to invest because they cannot get back vacant possession? Is not the system a recipe for economic stagnation? Is not it the opposite of entrepreneurs' aim of maximising investment in

the countryside rather than stifling it, as does the legal structure of 1991 tenancies?

The Convener: It is up to the gentlemen to decide who speaks first, but perhaps Sandy Lewis could start.

Sandy Lewis: Fergus Ewing's question involves a misunderstanding about the tenant and landlord relationship. I understand that the Agricultural Holdings (Scotland) Act 1991 ensures that tenants can call on landlords to equip farms to a satisfactory standard. Tenants may require investment in the land for several reasons—it might not be strictly for farming, but for diversification.

The case that Fergus Ewing makes does not undermine the relationship. A landlord may consider that rental income is what he wants from his property. If he invests and then obtains a higher rent from his tenant, he may be satisfied with that. The arrangement is not necessarily stultifying. The landlord and tenant working relationship is a wonderful example of risk management in a business enterprise—one party brings the land and the other brings business expertise. Tenants can be preserved from suddenly paying higher interest rates. If a tenant had borrowed to buy a farm, for example, he might be in difficult circumstances in times of high interest.

I do not think that there is anything wrong with the system, but I concede that there are pockets where the relationship does not work properly. I suggest that proper legislation will set the framework in which tenants and landlords can operate correctly. Legislation should take a balanced, unpolarised and unbiased view and should not give power to one party. If it does, that will be a real step forward for let agricultural holdings in Scotland, which would then be in circumstances that are not dissimilar to those that apply to letting property in other areas, whether residential or commercial.

Andrew Hamilton: I question Mr Ewing's premise. If a tenant invests in improvement, the investment does not then become the landlord's and the tenant does not get nothing back for his improvement. As I understand the 1991 act, if a tenant invests in something such as a new building on the farm, he has the use of that building for his business. The tenancy may go on for generations, so the tenant will always have use of the building. If a tenant chooses to leave a tenancy, he will receive compensation for improvements based on their value to an incoming tenant.

Therefore, to say that tenants are put off investing in land because they never get anything back is to miss the point. It is clear that the tenant gets use from that investment and that he gets the value of it when he leaves the land. Similarly, if a landlord is considering investing in improvement to a holding, he can charge rent that is based on the increase in the value of the holding. That is how the landowner will get a return on his investment. It is in a landlord's interest for tenants to be as profitable as possible.

The most important thing, from a simple business point of view, is that landlords want to ensure that the rental income from assets is secured, which is why they want tenants to be as profitable as possible. That means that investments in buildings or in improvements that help tenants to be profitable are in the landlords' interests. I question what Fergus Ewing said about the arrangement being stultifying for either landlords or tenants. Bear in mind the fact that, if the tenant invests in an improvement, the landlord cannot charge rent based on that.

14:45

Robert Balfour: Ten years ago, when farms were doing well, tenants invested in farms because they could see a return from that investment. The difficulty at the moment is that agriculture is not going through happy times. Farmers want to get out of tenancies but cannot because they have not yet had a return on their investment. The issue is complex and it is not correct to say that farmers have no incentive to invest. As Andrew Hamilton said, their incentive is the rent that they receive from their asset; that is their return on their investment. All investments have a write-off period.

Fergus Ewing: I was thinking of examples in my constituency—not the Seafield estate, I should add. In one case, the landlord offered to invest in a particular improvement to farm buildings but sought a return of 10 per cent on the capital investment. The tenant disagreed with that and, although I believe that the Agricultural Holdings (Scotland) Act 1991 has machinery to resolve such problems, the result was stagnation. I am not convinced that the present system encourages investment and I am not quite satisfied with those answers, although I understand what you are saying.

A common element in the witnesses' written submissions is the view that the introduction of any form of right to buy, including a pre-emptive right to buy, would affect confidence and would therefore be deleterious. Do you agree that the issue of whether confidence would be affected by the move is a subjective judgment that cannot be objectively validated?

Robert Balfour: I accept that our view about the impact of the pre-emptive right to buy is

subjective. However, people are worried that the introduction of the pre-emptive right to buy will lead to an absolute right to buy. That risk is what is shattering people's confidence. By and large, the SEBG and the SLF could live with the pre-emptive right to buy, although we have proposed an alternative that would still achieve the minister's objective, but which would also give better benefits to tenants.

Fergus Ewing: Do the other witnesses agree with my view?

Andrew Hamilton: I do not agree. We have said that we are opposed to the pre-emptive right to buy because of the effect that it will have on the market. We are looking for more land to be let in order to ensure that we have a healthy tenanted sector. The more seeds of doubt that are sown in the minds of those who might let land, the more difficult it will be to ensure that the sector is healthy.

From the outset, we need to clear up the fact that most of the bill, apart from the part that deals with the right to buy, is concerned with new lets. Those lets will not be under the Agricultural Holdings (Scotland) Act 1991; they will be short or long limited duration tenancies. It is likely that many of those who might be inclined to let land will not be the owners of the great estates that some people have suggested should be broken up; they will probably be farmers.

I believe that the average age of farmers is now about 58. An awful lot of them might be considering retiring, although they will not necessarily want to sell their holdings. They might wish to let their farm to the chap next door, for example. The bill's effect—although this cannot be measured empirically—would clearly be to dent significantly the confidence of those who are thinking about letting their land, because farmers might lose their land or might not have the right to decide to whom to sell it in the future—the bill will take away farmers' right to decide to whom to sell their property.

Fergus Ewing: I wrote down your phrase, "cannot be measured". That phrase seems to confirm your fear that the right to buy would impact on confidence—which cannot be measured. That is my point.

Andrew Hamilton: Can Fergus Ewing give me an example of what can be measured? One must consider opinion in the industry. If the industry's opinion is that a measure that is introduced by statute will have an effect, it may not be possible to measure it empirically, but it may be judged that there would be an effect.

Fergus Ewing: The only example that I can think of was in the notes to the consultation paper. The minister estimated that the cost of an absolute right to buy would be £100 million. However, he has failed to date to provide any computation of that amount. The point, though, is that this is a subjective process and we cannot measure its impact. Therefore, when you say that the effect will be dreadful, that is an assertion; it is not something that can be proven. The opposite might be true: if more investment is unleashed by tenants' having the benefits of ownership, as do your members, confidence and the value of land could be increased. Is not that equally possible?

Andrew Hamilton: Much of that has been considered. One has to try to assess the views that are held, and the RICS commissioned a report from the University of Aberdeen. The university interviewed a large number of agricultural tenants, owners, land agents and agricultural lawyers to help inform the debate on the matter and to ascertain views. That report can be made available to the committee if members have not already read it. It gives the best indication that we could find of feeling throughout the sector. If members are seeking figures, the report contains a number of percentages.

Sandy Lewis: I, too, would like to respond to Mr Ewing. It must be understood that estates today are far removed from what they were hundreds of years ago. They are run very much along business lines, with risk management and investment management measurements and assessments being made day to day. Therefore, when something is introduced that undermines confidence, that will move towards risk aversion along whatever scale the proprietor has.

There are facts that substantiate our view. For example, members will find that there are currently no farms available for let in *The Scottish Farmer*, but there normally are. Agricultural lawyers are not merely responding to their clients' views; they are ensuring that they cover themselves, too. They are not recommending that land be let at the moment.

I will give a factual example. I understand that in Ireland, which has a history of land reform, it became legal to let land in about 1985. However, not a lot of land in Ireland is available for letting, because landowners are aware of what happened in the past and are reluctant to move forward. We must bear that in mind whenever doubt is introduced, irrespective of what the minister or the Parliament may say on the matter. Many of what we refer to as 1991 secure tenancies began as limited duration tenancies. The original documents—before tenants were given absolute security—were issued on a term basis. One can have a long enough memory to know that such things can change. Confidence can be dented, and will continue to be dented as long as there is a threat of an absolute right to buy.

Mr Mike Rumbles (West Aberdeenshire and Kincardine) (LD): We are here today to take evidence on the general principles of the bill that is before us, but the bill makes no mention of an absolute right to buy. We are focusing specifically on a pre-emptive right to buy, so I want to ask my questions on that.

The RICS in Scotland's written evidence says that

"we acknowledge that a pre-emptive right will simply formalise what generally occurs in practice".

The SLF's evidence says that it is usual

"for parties to willingly reach agreements between 65 and 80 percent of vacant possession value".

As we all know, if you are selling a farm without vacant possession you get less for it. If we are focusing on the general principles of the bill, I cannot understand why the terminology and written evidence of members of the panel before us now are so opposed to the pre-emptive right to buy, which simply recognises a situation that already occurs. The pre-emptive right to buy is good practice and gives the tenant farmer the first option. It would benefit landowners and tenants, so I cannot understand why there is such opposition to it.

Andrew Hamilton: We recognise that there is often concern that tenants may find themselves with new landlords without knowing anything about it, because the land has been sold from under them. We appreciate and understand such concern and have suggested that it should be a requirement that a landlord cannot sell his land without first informing the tenant and giving him an opportunity to bid. We prefer that to the pre-emptive right to buy because of what we discussed earlier—the question of confidence. If what we suggest were introduced, tenants would have the opportunity to buy their farms and would never miss that opportunity because there would be a statutory requirement on landlords to give them a chance to bid. However, moving one step further and introducing a pre-emptive right to buy has connotations that have affected confidence. We question the benefit of moving that extra step forward. That is what seems to cause the problem.

Mr Rumbles: I am still not sure how what you are advocating differs from what is proposed in the bill. Could you clarify that?

Andrew Hamilton: Giving tenants an option to bid is different from giving them sole right to buy.

Mr Rumbles: Whom would that benefit?

Andrew Hamilton: It would benefit the confidence of people who are thinking of letting land. If they feel that they have the opportunity to dispose of the land to whomsoever they wish without being restricted by statute, that will give them more confidence than if they are forced to sell land to one person.

Mr Rumbles: I still want to pursue that, because I am trying to think about the matter logically. I am a lay person, not a farmer, and what you are saying does not strike me as being logical. The bill will give a right to buy to a tenant farmer, and the landowner would get more for the farm if he sold it to the sitting tenant than if he sold it on the open market. Is not that true?

Andrew Hamilton: That is generally the case.

Mr Rumbles: So why are landowners against the provision? I do not understand what you say about confidence. If tenants may bid for the land anyway, how does that affect confidence?

Sandy Lewis: The distinction is that the use of the term "pre-emptive right to buy" indicates that the tenant possesses a right to acquire the capital. Our three organisations agree whole-heartedly that tenants should have a right to offer. The SEBG and the SLF have suggested slightly different versions of a similar idea, in which tenants would definitely have a statutory right to bid. Tenants would not need to register, but would have a right on the day when an opportunity arises that would suit their circumstances on the day, whether they have cash or not. The right would not depend on where the tenant was five years previously when he made the registration. The tenant would have an absolute right to offer.

The purchase procedure that we suggest is different in that it would allow tenants the opportunity to purchase, which is what they want. However, the suggestion still retains a possible reference to the market, if that is required, and it does not affect landlords' confidence to let in the future. We would therefore achieve what tenants want without disturbing landowners' confidence to use the rest of the bill, which contains much that is favourable.

Mr Rumbles: I get the impression that you are opposed to the absolute right to buy rather than the pre-emptive right to buy.

Sandy Lewis: Absolutely. I think that if it were not for the threat of an absolute right to buy, which has existed for several years in various forms, landowners would gladly have accepted everything that the bill proposes.

Robert Balfour: There is another issue, even in terms of the pre-emptive right to buy, because the bill gives tenants the right, in some instances, to fragment a property. A property could have other land uses that are just as profitable as the farming sector. For example, there could be a major sporting interest on the land. The ability to fragment the land could be detrimental to the whole property.

I largely agree with what Sandy Lewis said. If there were no threat of an absolute right to buy, we would be more or less content with the bill—subject to the changes that we have proposed.

15:00

Mr Rumbles: I am interested to hear you say that because I heard you speak on the radio when the pre-emptive right to buy was announced and you seemed then to be content with that right and did not see it as a threat. However, your evidence now seems to attack the pre-emptive right to buy as unhelpful.

Robert Balfour: We are not attacking the pre-emptive right to buy as unhelpful. Our fear is that that right might be extended and that what happened to property in Ireland might happen here.

The Convener: I want to pick up briefly on your point about other commercial interests on an estate. The two that strike me as most likely are sporting and forestry interests. I presume that there would be job implications if an estate that had those interests were to be broken up through the right to buy. Are those job implications quantifiable? Can you tell us how many sporting and forestry jobs exist?

Robert Balfour: Not off the top of my head. The job implications will vary for different areas in the country. They are not as relevant for lowland agricultural areas as they are for places such as Aberdeenshire. However, there will be job implications. I am sure that the Scottish Gamekeepers Association, for example, could inform you better than I can of how many jobs might be at risk in its field.

The Convener: On the topic of quantifying issues, I think you said that the threat of the bill has led to land on the market drying up. Is that quantifiable?

Robert Balfour: Not yet. The advice of professional advisers—who are worried about the issue of professional negligence—on letting property, is just to ca' canny until the bill becomes law. That is why people are doing other things.

Rhoda Grant (Highlands and Islands) (Lab): I will push a little in the direction of the absolute right to buy and tease out issues that are causing you concern. An absolute right to buy would have to come with compensation. If somebody pushed an absolute right to buy, they would have to compensate the landowner for the value of the property that they were buying. Further, they might not wish to buy things such as sporting rights, which would affect the overall value of the estate. If there were enough security to ensure that exercising the right to buy did not have a detrimental effect on the value of the greater property, would that make you happier about an absolute right to buy?

Robert Balfour: It would, but sporting rights cannot be alienated from the law of property. I am not a lawyer. I am only a surveyor. However, I am sure that Fergus Ewing will tell us that, other than salmon fishings, sporting rights cannot be alienated from a heritable property. Therefore, if a tenant bought the farm on a property, he would also necessarily buy the sporting rights.

Rhoda Grant: I understand that that is not the case in the crofting right to buy. Crofters do not buy the sporting rights and the landowner can still exercise those rights over the land.

Robert Balfour: A system of leasing back the rights is proposed within the crofting right to buy. However, the sporting rights cannot be retained under a different ownership from that of the heritable land.

Rhoda Grant: I am talking about the current individual crofter's right to buy and not the crofting community's right to buy as outlined in the Land Reform (Scotland) Bill. I am talking about comparing the crofter's right to buy with—

Andrew Hamilton: I can help with that. The situation is that when a croft is bought, the Scottish Land Court will award the use of the sporting rights back to the landlord, usually for a maximum of 20 years. However, the ownership of the sporting rights goes with the croft.

Rhoda Grant: We are now drawing up new legislation. If we were able to include something that would allow landowners to retain sporting rights, would that give you any comfort?

Robert Balfour: It would give us some comfort, but not a lot. If an owner has a farm that is let to somebody, there will be cottages within it that are not let and forestry that is not let. The situation is complex. If we sold a farm that is around the principal residence of the property, we would in effect be selling the curtilage of the house.

Sandy Lewis: Difficulties in separating out interests in the absolute right to buy have been mentioned. Estates with let land are models of integrated land use and they deliver public interest benefits. Integrated land use shapes the backdrop of much of our tourism industry. The system usually works relatively well. I understand why someone would want to buy a particular property, but I cannot understand why the present system should be lost, because I do not believe that there is anything seriously wrong with it. With the absolute right to buy, somebody's business property would be taken over by another individual.

Andrew Hamilton: The other problem with the absolute right to buy is the question of confidence. Somebody might want to spend their money buying a piece of land rather than buying stocks and shares, but if they feel that it could be bought off them whenever somebody else wants, rather than when they want to sell it, that will affect their confidence. We have heard about the £100 million that was in the original papers, although we do not know where that figure came from. There is an amount by which land would be devalued by the absolute right to buy. There are a host of reasons why people buy land, which are not just to do with its capacity to produce income. If somebody from an external source was thinking of investing money in land in Scotland and we said to them that the land could be bought off them at any time regardless of whether they wanted to sell it, that would dent their confidence in a big way and it would affect land value significantly. That is probably where many of the claims for compensation, which I know the Executive is concerned about, will come from.

Robert Balfour: It is perhaps relevant to say that the difficult circumstances within agriculture are part of the reason for the absolute right to buy. We have heard how the farming sector is aging and some people want to get out for whatever reason, perhaps because they have ceased to make a reasonable living from farming. The way in which compensation has been agreed to in the past has meant that they are not able to get out. We feel that the suggested tenant farming forum would be a way to discuss those issues and find solutions to the problems. We have already spoken to the Executive about solutions to those problems. We do not feel that the absolute right to buy is the panacea that some people think it is.

Rhoda Grant: The fact that any investment that a tenant makes in a farm is usually written off over a short number of years so that they do not get compensation when passing their farm back to the landowner, should they choose to do so, stagnates the market. If they had ownership of their investment and were selling it on the open market, they would have more confidence to move on and let young people come in. Farming would become a moving industry rather than a stagnating industry. At the moment, the tenant is between a rock and a hard place. They cannot invest, because if they do, they cannot get compensation if they give the farm back. Unless you are saying that landowners would pay tenants who give up their farms real compensation, the industry will stagnate. The other way of not costing the landowner anything is to give tenants an absolute right to buy whereby the landowner receives the money that represents the value of the land but the tenant gets ownership of what they have invested in.

Sandy Lewis: Some of the issues that you mention can be dealt with by the forum that we suggest. I have heard a number of claims for an absolute right to buy. I know that some of them come from a genuine sense of frustration with the existing system or with the particular circumstances that a tenant has with their landlord. However, I beg of the committee that it consider the industry as a whole and develop solutions that deal with the issues appropriately and that ensure that tenants are dealt with fairly. Those solutions need to be thought through. Investment and such issues often seem peculiar when seen in isolation. When they have been developed as part of negotiations on a larger scheme—such as adding land into a farm—they are sometimes understood far more readily.

Andrew Hamilton: Rhoda Grant said that the tenant gets nothing back. According to the 1991 act, that is not the case. I think that she might be referring to the fact that there are write-down agreements in some cases.

Sandy Lewis is saying that those write-down agreements are often wrapped up in other packages—for example, when a tenant wishes to put up an improvement and it is agreed that the improvement will be written off over something like 15 or 20 years. A write-down agreement might come out of a rent review. When the negotiations of the rent review take place, matters such as improvements, altering boundaries and giving extra land come into play. A tenant might have a write-down agreement with which they are not terribly happy. That can be addressed in the way that Sandy Lewis described.

Under the law as it stands, the tenant gets compensation for improvements that they make to the farm. There seems to be a misunderstanding that that is not the case. However, it is the case.

Rhoda Grant: That may be the case in law, but it is not often the case in practice. Until we change the balance of power—or at least get some equity into it—we will not change the relationship between landlord and tenant. One will always be the underdog to the other. If tenants are going to invest in diversification, they will almost be forced to agree to whatever their landlords ask. If the tenant wants to diversify and make changes to the way that they farm, they will need the landowner's permission. The landowner can say, "Fine. I'll only give you permission if you agree to this write-down agreement."

There is a problem with the balance of power. I do not see how a forum can deal with that problem with the balance of power and give the security that those in the tenanted sector require to invest and to change their businesses to make them profitable.

The Convener: Will Sandy Lewis explain how the forum would help in that?

Sandy Lewis: Through the bill, as amplified by the tenant farming forum working together to deal with such problems in the industry, and through a long-term continual review, we should end up with a framework that—if properly put together—will ensure that neither the landlord nor the tenant has power in any negotiations. That is the way that industry and business work.

It is acknowledged that there may be problems—you are dealing with some of them now—but they should be addressed, rather than dealt with through the introduction of an absolute right to buy. The whole industry, apart from a small group that is represented today, says that such a right would be bad for the industry. If we tackle the industry problems, we will have gone a long way towards satisfying the needs of tenants and landowners.

Robert Balfour: Rhoda Grant talked about diversification needing the landlord's permission. She has implied that there is a problem in being able to appeal to a higher authority. The bill also deals with diversification and dispute resolution. I think that we all agree that the dispute resolution under the 1991 act is not satisfactory, because it is expensive. The proposals in the bill have been designed to make dispute resolution more available to everybody.

Mr Ewing quoted the late Donald Dewar, but Donald Dewar also said that good landowners would have nothing to fear. A landowner might not wish to sell, so why should he be forced to do so? That is what the absolute right to buy would force people to do.

15:15

Andrew Hamilton: I fully understand where Rhoda Grant is coming from, which is that the balance of power is upset because tenants are not in a good negotiating position—that is certainly the case in certain circumstances. The view of the RICS is that we need to look at the issue from all sides. As Sandy Lewis almost said, we need a balance in these situations. We need to remember that many of the new tenancies that might be created after the bill is passed will come not from traditional landowners but from farmers.

If a farmer who is thinking of letting his farm to the chap next door views the whole system as being totally skewed towards the tenant—who may be a bigger and wealthier farmer than he is—that will put him off letting. I cannot see how that would be good for farming or how it would enable people to get more land on the market. We need to strive for balance, so that neither the landlord nor the tenant has the upper hand. In that case, we will get more land coming on to the market.

Richard Lochhead: I am trying to get my head round this concept of how a pre-emptive right to buy or an absolute right to buy would create a lack of confidence. What do you mean by lack of confidence? How is confidence in rural Scotland's tenancy sector expressed? Is it expressed by the number of tenancies?

Andrew Hamilton: A survey was done of how landlords and tenants thought the proposed legislation would have an impact on them. Our institution also consulted our members, who are involved in advising both landlords and tenants. We asked our members how they would advise people. Our assessment of the confidence is based on the fact that replies said that people are being advised not to let land. That is what we are talking about. We want a healthy tenanted sector, but if people are not letting land, you ain't got that. That is the confidence that we are talking about. If we remove the ability of one chap to let a field to the bloke next door, that dries up the source of land. That is bad for the industry.

Richard Lochhead: So is there total confidence in the tenancy sector at the moment? Are lots of new tenancies being created? If I wanted a tenancy tomorrow, could I go out and get one? Is that how it works just now?

Andrew Hamilton: No. As you are well aware, the Executive recognised a long time ago that, while we are going through the process of considering the new Agricultural Holdings (Scotland) Bill, there will be a slight reluctance to let, because no one quite knows what is going on.

Richard Lochhead: Has the reluctance to let arisen only because of the bill?

Andrew Hamilton: The reluctance to let has arisen because of the right-to-buy provisions that have been inserted into the bill.

Richard Lochhead: Was there total confidence in the tenancy sector, say, five years ago?

Andrew Hamilton: No. There have been calls for a review of the tenancy sector for a long time because of the secure tenancies that went on for generations. It was felt that such tenancies were stifling the amount of land that could come on to the market. That is why probably all the organisations here today welcome the fact that the whole thing is being freed up, so that we will be able to let for shorter periods.

Richard Lochhead: I have a question for Robert Balfour from the SLF. The whole debate about the pre-emptive right to buy and the proposed absolute right to buy centres around secure tenancies. How many secure tenancies have his members created during the past 10 years?

Robert Balfour: I cannot give figures on that. We believe that there are about 14,000 tenancies, of which about 1,400—10 per cent of them—are let by Andy Wightman's 100 largest landowners.

Richard Lochhead: All I want to know is, if the uncertainty has arisen because of the debate surrounding the bill over the past few years, when did we last have a confident tenanted sector in Scotland? For instance, when did landowners last create new secure tenancies?

Robert Balfour: Landowners have not created secure tenancies under the terms that are set out in the 1991 act for about the past 20 years. Over the past 20 years, most of the lettings have been made as limited partnerships under the Limited Partnerships Act 1907. The other underlying thing that must be recognised is that there has been a restructuring of the agricultural industry, as units have had to get bigger in order to survive economically.

Richard Lochhead: Perhaps Robert Balfour can see why I am confused. The Parliament's researchers have produced a table that shows that the tenanted sector has declined from 43 per cent in 1971 to 31 per cent in 2001. Landlords have not created a secure tenancy in Scotland for the past 20 years or so, yet Robert Balfour says that the creation of a pre-emptive right to buy or absolute right to buy for secure tenancies would lead to uncertainty in the tenancy sector. I cannot quite square those two things.

Robert Balfour: The secure tenancy was created under the 1991 act. Up until now, unless a tenancy was made with a limited partnership, it led to a total security of tenure. We are now at the stage where farms have had to get bigger, farmers are getting older and some people want to let land to their neighbours for economic reasons. The new legislation would give people the ability to do that and more land would be let as a consequence. We saw that happen in England when the introduction of the farm business tenancy freed up the tenanted sector. That resulted in an increase in the amount of land that was let.

Richard Lochhead: I accept that. I also accept that that is the debate about the new tenancies that are proposed in the bill. I am talking about secure tenancies, which are relevant to the pre-emptive right to buy.

Andrew Hamilton: You asked about confidence in the sector and why a lot of land was not being let. For a long time, there has been a call for the freeing-up of the tenanted sector in order to encourage more land to come on to the market. The RICS disagrees with the SLF and the NFUS in that it takes the view that we should have freedom of contract or something similar to farm business tenancies. We think that the business of five or 15-year lets does not serve the industry at all. The most common length of let under limited partnerships was between the two—it was eight, nine, 10 or 11 years. Such lets are going to be banned in Scotland and that is not going to do the industry any good.

The member says that no secure tenancies have been let in the past 20 years. That is not true. I have let quite a lot of land on secure tenancies. The reason for that in some cases was that I was acting for a charity that had no interest in getting the land back, but was interested only in the rental income.

The proposed right to buy means that bodies such as that are thinking twice about giving secure tenancies. The right-to-buy legislation has affected their confidence. We want to see a freeing-up of the tenanted market. If that happens, an awful lot of land will come on to the market. That would solve the problem to which the member alluded.

Richard Lochhead: Can you name a landowner who decided not to let land because of the bill?

Andrew Hamilton: I am not able to do that for reasons of client confidentiality.

Richard Lochhead: Have members of the SLF decided not to let land because of the bill?

Robert Balfour: Yes.

Richard Lochhead: Who are they?

Robert Balfour: Like Andrew Hamilton, I cannot give you names.

Richard Lochhead: Why not?

Robert Balfour: It would not be right to do that, Mr Lochhead.

I have spoken to a number of surveyors who are involved in managing properties. During the passage of the bill they are not letting land under normal tenancy arrangements. I would still rent land on a long-term basis if there were a pre-emptive right to buy, but I would not do so if there were an absolute right to buy.

Richard Lochhead: I have one final, small question about diversification. One of the motors of the bill was to encourage diversification in the rural economy. A number of stipulations exist whereby a landowner can frustrate diversification or raise objections. I would like you to comment on two or three of those. The first is the stipulation that the landowner should be able to object if the intended use of the land causes

"the landlord to suffer undue hardship".

The second ground for objecting is if the landowner thinks that the proposed diversification is not "viable". Would you be bothered if those

stipulations were removed from the bill? Some people might say that, from the tenant's point of view, those stipulations make the bill too inflexible.

Robert Balfour: Undue hardship is a provision of the 1991 act. It is a test that has been tested, as it were. Believe it or not, there are cases where the tenant might be a much wealthier person than the landowner. It may be the landowner who has a lot more to lose by allowing the diversification. Off the top of my head, I cannot give the committee examples of that, but situations could arise in which the landowner would suffer extra hardship as a result of the diversification going ahead.

I imagine that the number of instances in which the provision might be used would be small, but it has to be in the bill as a safeguard. The landowner's rights to object are not onerous on the tenant. It stands to reason that the tenant and the landowner want the diversification to be viable. As Sandy Lewis said earlier, tenant farmers need to make money in order to pay rent. It is in the interest of landowners to ensure that the tenant farming sector works.

Andrew Hamilton: Safeguards are built into the act. If a landlord uses one of those cases to—as Mr Lochhead put it—frustrate the diversification and the landlord's actions seem to be unfounded or unreasonable, the tenant should be able to do something about that. The tenant can go to the Scottish Land Court, for example. Giving examples is difficult, but I will highlight sporting interests, which are often reserved to the landlord and not included in the farm tenancy. If it looked as if the diversification on a tenanted farm that is in the middle of a shoot would do something that would damage the sporting interest, the greater hardship would be caused to the landlord. At the end of the day, the value of the sporting interests will be greater than the value of the diversification interest. Under those circumstances, it seems reasonable that the landlord can object.

Sandy Lewis: I endorse the view that it is in the landlord's interest for the tenancy to be as viable as possible, as long as that means that the opportunities for diversification do not damage the land irreparably for agricultural use. If the diversification would not so damage the land, the landlord would be 100 per cent behind it. However, the diversification must be seen to be viable and to be able to be carried through. The last thing a landlord wants is to find that he has a bankrupt tenant and everything that the tenant has half-built falls back to him.

Mr Rumbles: I refer to the written evidence from the NFUS, which is to give evidence next. In its submission, the NFUS refers to

"82% of the 2,500 respondents being in favour of the right which would mean fully secure tenants having first claim to buy their holding."

The submission then sets out the important statistic that

"This includes 75% of the landowners who responded."

Is that not a positive recommendation for the pre-emptive right to buy, as it is contained in the bill? Has Robert Balfour consulted his members in the way that the NFUS has done? If so, what are the statistics?

Robert Balfour: We have not consulted our members in the same way that the NFUS did. From talking to our membership, the indication that I have is that, in most cases, they would be content with a pre-emptive right to buy. As Mr Rumbles said, many of our members responded to the NFUS survey, as they are also NFUS members.

Mr Rumbles: It strikes me that they are more than okay about it. A 75 per cent positive response means that the measure is quite popular.

Robert Balfour: I have already said that I would let land on a long-term basis under a pre-emptive right to buy.

Mr Rumbles: The pre-emptive right to buy would be a popular measure.

Robert Balfour: It would not be an unpopular measure.

Andrew Hamilton: We conducted a study, as I mentioned earlier. If members do not have a copy of it, I would like to give one to the committee. The University of Aberdeen conducted the study with tenants, landowners and so forth. It showed that 88 per cent of landowners were against a pre-emptive right to buy and that 82 per cent of tenants would consider buying their holding. It also showed that 57 per cent of tenants support an absolute right to buy. Most people thought that that would be the result, as most tenants are keen to buy and most landlords are agin it.

Mr Rumbles: I will pursue that point with our next witness.

The Convener: Thank you for giving us your time and for answering our questions in the manner in which you did.

I will suspend the meeting for three minutes while we change witnesses.

15:28

Meeting suspended.

15:33

On resuming—

The Convener: The second panel of witnesses is from the National Farmers Union of Scotland,

which is represented by vice-president John Kinnaird and Ian Melrose. Thank you for coming. I am sorry that you have had to wait a bit longer than you were told you would have to, but we will give you a bit more time to make up for it. As with the previous panel, I invite you to make as brief an opening statement as possible and I will then open up the meeting for members' questions.

John Kinnaird (National Farmers Union of Scotland): Thank you for inviting us to give evidence today. Let me introduce Ian Melrose, who is our legal policy manager.

Right from the start, I make it clear that the NFUS represents a very broad church—tenants, landlords, owner-occupiers and, potentially, the new landlords under the letting system that is proposed in the bill. By way of background information, I am an owner-occupier and a secure tenant. My grandfather moved to the farm as a secure tenant in 1923.

Members will have our written submission, but I will highlight one or two other points. The bill is long overdue and will address the stagnation of the tenanted sector, which is vitally important to Scottish agriculture and which must be freed from the straitjacket that has stifled its development over the past 20 years or more.

The new-style limited duration tenancies and short limited duration tenancies that are proposed by the bill broadly follow the model that was proposed by the NFUS and the Scottish Landowners Federation, the clear aim of which is to stimulate the letting of land. The proposals offer a radical new approach to farm lets and are in keeping with the modern environment and needs of agriculture within which all farmers must operate. The new-style tenancies would also give tenants a reasonable length of time and security to farm while ensuring that landowners and landlords are confident that, at the end of the initial period, the tenancy could be extended or that they could get the land back with vacant possession.

The NFUS fully supports the proposal for the pre-emptive right to buy, which would give fully secure tenants the right of first refusal to buy the land or farm if the landlord decides to sell it. The bill, quite correctly, provides that such a sale is, first and foremost, entirely dependent on a willing seller and, ultimately, a willing buyer.

Maintaining the status quo is not acceptable. We must address the current situation in which a farm can be sold without the sitting tenant getting the opportunity to buy it, even though they might have been on the property for years or generations and might have invested a lot of time and money in it. Introducing an absolute right to buy that would allow tenants the right to buy their holding at any time is equally unacceptable. I firmly believe that that would destroy the tenanted sector and would be contrary to the bill's aims. After all, the bill is for tenants; its intention is not the creation of new owner-occupiers.

We fully appreciate that there are problems with the relationship between landlords and tenants. I am referring to the problems that were created by the Agricultural Holdings (Scotland) Act 1991, the vast majority of which, the NFUS believes, can be addressed by tackling issues relating to that act. The crucial issues that must be tackled include rental determination, compensation at the end of a lease, notices to quit and post-lease agreements. We welcome the fact that the minister has indicated his willingness to consider those issues, with a view to taking action at stage 2 of the bill. It is important that we consider the setting up of a forum to examine the 1991 act. That forum must be made up of only tenants and landlords, and it must have an independent chair.

Having made those few remarks, I am happy to take questions.

Mr Rumbles: I would like to start where I finished with the previous set of witnesses. Your written submission states that 82 per cent of your members—including 75 per cent of the landowners who responded to your consultation—were in favour of a pre-emptive right to buy that involves willing sellers and buyers. I ask the same question that I asked Robert Balfour of the SLF. Do you believe that that is a popular measure given that, since it was included in the bill, there has been some criticism of it? Do you believe that the measure is still supported by your membership, both tenants and landowners?

John Kinnaird: Yes, I believe that the proposal is a popular measure. All that it does is to highlight and tidy up what most responsible landlords do at the moment: when they are selling a farm with a sitting tenant, they offer it to the sitting tenant first. The proposals will ensure that no tenant will have the land sold from under them without first having the opportunity to bid for it. Many tenants cannot afford, or do not want, to become owner-occupiers. However, at least they will have the opportunity to do so, which is why the pre-emptive right to buy is so important.

Ian Melrose (National Farmers Union of Scotland): Just for the record, it is important to point out that the policy has not been developed since that consultation of our membership, which reaffirmed long-standing NFUS policy. Indeed, some years ago we talked about it in our legal and commercial committee, which preceded the present legal and technical committee. Prior to commencing negotiations with the SLF on a modified form of holding—we reached the position of limited duration tenancies—we made it clear that the pre-emptive right to buy was our existing

position, because some publicity was given to tenants' right to buy at that time. That position did not inhibit the freedom of discussion that we had with the SLF. We put the matter to one side and got on with the work of trying to create a new form of holding.

With respect, the committee, the Executive and the Parliament should be concentrating on developing new arrangements for letting land in Scotland. That is the burden of the bill, together with diversification and the new means of dispute resolution, which are tremendously important and innovative and for which there is general support. It is important to put everything in context, and we should not distort people's perception of what the bill proposes and its importance for Scottish agriculture.

Rhoda Grant: My question is about how to make land available. The bill as drafted provides for the creation of short tenancies, which will be good for encouraging young people into the farming sector. A problem arises when people get older, settle down and have families, because short tenancies may not provide the security that they need. People might want to use the short tenancy to start their business and prove that they have a track record. Then they might settle into a farm as owner-occupiers, invest in it and, when the time comes for them to retire, sell it on, capitalise on their investment and retire on the money.

At the moment, that option does not exist because there is no right to buy and people do not have the security to consider a lifetime's worth of work in farming. How can we tackle that problem? One suggestion was the proposal for tenants' absolute right to buy, which would give tenants a form of security by allowing them to feel able to invest in and buy their land. How can we prevent situations in which secure tenants stay on the land because they cannot afford to come off it? Such tenants are not compensated properly when they give up their tenancy in order to build a home elsewhere, because their home is wrapped up in the tenancy. That prevents the farming sector from moving forward and having a throughput of people who follow the natural progression of starting out, maturing and then leaving the industry.

John Kinnaird: I will answer the last part of your question first. Waygo compensation, which has been highlighted already, is one of the most important points that needs to be addressed. Compensation must be correct and adequate, but it is neither at the moment. That is why the anomalies in the 1991 act must be addressed.

I agree that the profile of the farming industry is getting older and that there is an opportunity in the new-style tenancies to allow newcomers to enter the industry. However, I do not believe that newcomers would get a start from any landowner if the landowner knew that at some point in the future they could turn round and buy the land. There would be no confidence to let. Although the right to buy does not apply to the new-style tenancies, such tenancies give us an opportunity to revitalise the tenanted sector by giving a degree of confidence to new starts for one to five years. The initial five-year period is not a dry run for a limited duration tenancy, and the short duration tenancies exist to address a separate issue, but they could be used as a testing ground sometimes. After the five-year period, as the new start has a family and wants to develop and become more secure, any agreement to continue the tenancy might have to run for a minimum of 15 years. If tenants have a good relationship with their landlord, I do not see any reason why the tenancy should not run for 18, 20 or 25 years, or even up to retirement. The new-style tenancies address Rhoda Grant's question of how to get new and young blood into our industry—they should allow that to happen.

The Convener: I have a brief question on the new-style tenancies. A member of the first panel of witnesses—I think that it was Mr Hamilton—told us that a tenancy of 10, 11 or 12 years seemed to be popular under the English system. Is there a reason for not providing a tenancy of between five and 15 years under the new arrangements? Does the NFUS have anything against that?

John Kinnaird: Yes. We are looking at security for tenants. The Agricultural Holdings (Scotland) Bill aims to provide security for tenants. We do not believe in freedom of contract, which is available under farm business tenancies south of the border and which instantly ratcheted up rents. Such tenancies are falling out of favour because they no longer deliver what is required; they are detrimental to the tenanted sector. We need a minimum term.

We could argue all day about what the length of tenancy should be. We agreed on 15 years with the SLF. That period gives a business time to get established. A shorter tenancy could be described as short term. Such a tenancy would not be in the best interests of the management of land.

15:45

Ian Melrose: The short limited duration tenancy was designed to address a kind of letting that posed a threat to landlords—the potato lets or cropping lets, or tattie lets as they are known, which, legally, could mature into fully secure tenancies. As well as those lets, we addressed the section 2 lets, which required ministerial approval. That is the legal animal that we set up to address that kind of holding.

In our initial overtures to the SLF on longer-term limited duration tenancies, we suggested a period of 21 years. At that time, the SLF was considering emulating the freedom of contract that was going on south of the border. We could not countenance that. After a lengthy period, we arrived at a period of 15 years, which allows reasonable rotation and a reasonable chance of a tenant coming back. I stress that that is the minimum period. There is scope for agreement that would last right up to retirement age, for example.

The Convener: That answers my question nicely.

Rhoda Grant: I want to clarify that I was not suggesting that all tenancies should include an absolute right to buy. I was referring to a particular part of the market—the secure tenancies. That would allow a progression through the market.

You mentioned compensation as an alternative to an absolute right to buy. How would such compensation work? A tenanted farm that is sold on to a third party is sold at roughly half the value of vacant possession. If there were an absolute right to buy, the full value would have to be paid and some compensation might have to be built in for investment that the tenant had made. I cannot see how the landowner could compensate the tenant to that extent. Would not it be easier for the landowner to allow the tenant to buy instead of having to compensate them?

John Kinnaird: If one did that, one would remove the farm or holding in question from the tenanted sector, which would mean that the tenanted sector would shrink. We are trying to increase, rather than to decrease, the tenanted sector. Many of the problems arise because the compensation at waygo is not adequate, which means that people cannot retire and move on. That explains why an absolute right to buy is being considered. Tenants are not adequately compensated for the investment that they might have made in buildings. If we address that problem, we will remove many potential difficulties.

Rhoda Grant: I do not see how that problem can be addressed, given the current balance of power.

John Kinnaird: I am sorry, but I do not understand your question.

Rhoda Grant: The present legal situation is that a landowner must compensate for their investment a tenant who hands back their tenancy. Much of the value of an investment is agreed in a write-down proposal, which means that the value of the investment falls over a number of years. Therefore, by the time that the tenant gives up their tenancy, their investment has no value and they receive no compensation. How can we tackle that situation?

John Kinnaird: There is still a value to the landlord. If a building has been put up, it has a value, even if that value is written down. On gaining vacant possession, the landlord obtains something that he can sell, even though he has not invested in it; or, if the landlord takes on another tenant, for example, he can charge the new tenant rent, even though he could not have charged the existing tenant rent.

It is important that any investment that is made by a sitting tenant should be adequately compensated at waygo. In some instances, even although it has been agreed that a tenant can put up a shed, after perhaps 15 years that will be compensated at the level of £1 at waygo. That must be wrong and it must be addressed. If the issue of compensation at waygo is addressed, I am sure that we would tackle many anomalies and improve the relationship between landlords and tenants. That would allow us to get on and to bolster the tenanted sector, which is what the bill is all about.

Rhoda Grant: As the law stands, tenants should be compensated properly. The problem is that agreements are reached to stop that happening. We can legislate until we are blue in the face, but if landlords can dictate to tenants, tenants will agree to whatever agreement the landlord wants to progress their business. How do we change the balance of power to allow tenants to receive full compensation when they give up the tenancy and to say that they are not willing to write off investments that have been made over several years? At present, if the landowner does not agree, that is the end of the story.

John Kinnaird: I agree. Tenants should have power over what can be done. We believe that using the Scottish Land Court in dispute resolution will make the system cheaper and will provide a satisfactory figure more quickly and more easily. It can take a long time to get anything back through the current arbitration system. That issue is addressed in the bill.

Ian Melrose: The Agricultural Holdings (Scotland) Act 1991 was a consolidating measure that brought together the various elements of Scottish agricultural holdings legislation since 1949. Section 5 of the 1991 act, which deals with the relative responsibilities for fixed equipment of landlord and tenant, has a strange element that allows contracting out, which was generally prohibited by that act. That is where the post-lease agreement, which has been used to the detriment of tenants for many years, comes from.

It is interesting to compare the style of modern post-lease agreements with the original agreements. The originals were a short paragraph, which stated something like, “Notwithstanding the terms of the foregoing lease, the tenant hereby

undertakes to perform all the landlord's obligations in relation to fixed equipment and its repair and insurance." Modern agreements are extensive schedules of obligations. One can understand that the profession must act in its clients' best interests, but I feel that that has gone too far.

Fergus Ewing: As a lawyer, I dare say that lawyers get paid rather more for longer agreements.

Ian Melrose: When one buys a house, one gets a book of conditions.

Fergus Ewing: There is much in the bill that makes us feel that we are moving in the right direction, such as the creation of LDTs and SLDTs and the provisions on the Scottish Land Court. I suspect that those provisions will not be the source of huge controversy, although the details might be discussed.

Should we ban the practice of post-lease agreements and the practice of writing down the value of tenants' investments? Those two measures would take us a long way to addressing the lack of equity and balance in the relationship between tenant and landlord.

Ian Melrose: Page 6 of our submission states:

"We have recommended that post-lease agreements be treated like writing down agreements, ie declared null and void. We want to ensure that the tenant can recover the investment he has made over the years."

Fergus Ewing: I am grateful for that. I thought that you were going to say that—I have read your submission. One problem with such a short evidence session is that we would like to ask many more questions on more topics. I hope that the previous witnesses will also give their views on those two points to help us in our deliberations.

Although I am a lawyer, I do not claim expertise in the area of sporting rights. Is not it possible to provide that the right to buy—whether it is pre-emptive or absolute—applies only to the farm, which would provide the capacity to reserve sporting rights from the scope of the right to buy?

John Kinnaird: I can pass the buck, as I am not a legal mind either. We must be clear that we are talking about a pre-emptive right. We support a pre-emptive right, but we do not support an absolute right. Even regarding sporting interests, we would be talking only about a pre-emptive right.

Ian Melrose: Technically, I suppose that someone could do that. However, the value of the farm would be reflected in whether they elected to take the sporting rights as well.

Fergus Ewing: Landlords would receive rather less. If they were not giving away the sporting rights, they would not be compensated for them. As a farmer, do you think that the majority of tenant farmers do not want to stop shooting rights but manage to co-exist with the carrying out of sporting rights—shooting, fishing and so on?

John Kinnaird: I believe that there should be little difficulty in allowing the two to co-exist.

Fergus Ewing: None of us on the committee would want gamekeepers to be impacted on by the bill. Therefore, we want to protect them and the ghillies in all scenarios in the bill.

One point that has not yet been raised is rent review. I understand—although I could be wrong, as I am no expert—that the 1991 act provides that rent review can be done no more frequently than every three years. In the farming sector, the possibility—in some estates, the probability—of having a rent review every three years perhaps skews things a bit too much in favour of the landowner. Do you agree with that? Do you feel that a period of five or seven years might be more balanced?

John Kinnaird: No, I disagree. Three years is the correct term, as it gives a degree of flexibility on either side. Farming is a cyclical industry. Much more important than rental determination is the viability of a holding according to the purpose of let of the holding. That is what needs to be addressed. Until that is taken into consideration, rental determinations will continue to be a thorn in the flesh. We must consider what is viable, what a farm does, and what the economic return to that farm should be. Those must be the criteria on which rents are based.

The Convener: Let us expand on that a little. I understand that you support the Scottish estates business group's proposal to establish a tenant farming forum. If such a forum were established, would it have a role to play in relation to the answer that you have just given?

John Kinnaird: The forum should exist to address the 1991 act and the anomalies within it, not simply to be a sounding board or advisory board for the minister. It must be constituted purely of landowners, landlords and tenants because they are the people who are directly involved. Such a board would help us to arrive at sensible rental determination criteria.

Ian Melrose: We would like those issues to be addressed in the bill, but we realise that they are complex. Bringing to bear the collective wisdom of a forum in time for the passage of the bill might be practically difficult. I do not know what other legislative opportunity there might be in the field of agricultural holdings in the near future, when the forum might have a longer time to deliberate.

Mr Rumbles: Can the committee get some legal advice on the exact position regarding shooting

rights on the farms if tenants purchase them? What can the tenant and other new landowner do or not do? I am a little confused about the legal position.

The Convener: That is a fair point. We have heard some disparate views on that subject. I was going to mention the fact that we need to seek some definitive advice on the issue. I am happy to take that request on board.

16:00

John Farquhar Munro: John Kinnaird said that the NFUS was a broad church that represented all walks of life within the agriculture and farming industry. Roughly, what is the breakdown of membership between landowners, owner-occupiers and tenants?

John Kinnaird: That is a good question. We represent approximately 10,500 members who make up 70 per cent of farmers, crofters and growers in Scotland. Somewhere in excess of 25 per cent of NFUS members are tenant farmers. The other 75 per cent will be made up of a mixture of landowners and owner-occupiers.

John Farquhar Munro: So the majority of your members own land.

John Kinnaird: Yes. Predominantly, they are owner-occupiers.

John Farquhar Munro: Who are you representing here today?

John Kinnaird: We are representing the National Farmers Union of Scotland, which has consulted widely on the issue of tenancies.

John Farquhar Munro: If landowners make up the majority of your members, how can you claim to represent fairly the interests of the lesser group, which is made up of tenant farmers?

John Kinnaird: Because we are specifically considering tenancy issues and the majority of tenancy issues are considered by tenants in the NFUS. We have to be careful and state that, although tenants are an important part of the make-up of the NFUS and Scottish agriculture, they are a minority.

Many of the owner-occupiers are the landlords of the future because they see the new-style tenancy as a way by which they can let land with a degree of security. That security is not there at present.

The issue cannot simply be looked at as concerning landowners and tenants; it concerns Scottish agriculture, which is a relationship between both those sectors. The tenanted sector is vital to Scottish agriculture and must be allowed to grow. It has stagnated because of legislation in the past. We have an opportunity to let it go forward.

John Farquhar Munro: You will be aware that the Scottish Tenant Farmers Action Group has come out strongly in support of the absolute right to buy and has made that case quite substantially. Why are you not representing that case today, given that you are representing the NFUS?

John Kinnaird: That view is not held by the NFUS membership. We will therefore not support an absolute right to buy.

As far as the new-style tenancies and problems in the Agricultural Holdings (Scotland) Act 1991 are concerned, I think that we broadly agree with the aims of the Scottish Tenant Farmers Action Group. The only matter that we disagree about is the absolute right to buy. We believe that it is inherently wrong that anyone at any time can walk in and buy someone else's property and it seems strange that people who support an absolute right to buy and represent tenants should ask for legislation to get out of the tenanted sector. We want the tenanted sector to survive and grow. An absolute right to buy will probably kill the tenanted sector overnight and that will be to the detriment of Scottish agriculture and the rural community.

The Convener: I hear Fergus Ewing asking how an absolute right to buy will be to the detriment of Scottish agriculture.

John Kinnaird: No one will let land in the fear that an absolute right to buy will be introduced. We must remember that many secure tenants do not want to or cannot afford to buy their holdings. Landlords invest in those holdings. They put up buildings and improve fences. Such tenants will be put at a severe disadvantage if an absolute right to buy is introduced. They will be socially excluded, as no landowner in their right mind would continue to invest in a holding that a tenant could say that they want to buy some day in the future. That is why we believe that the absolute right to buy could be detrimental to Scottish agriculture.

Richard Lochhead: No one can turn up on a doorstep and say that they want to exercise the absolute right to buy if that right applies only to secure tenancies. The scenario that you are painting would not happen.

John Kinnaird: I share the fear that the right might be extended beyond secure tenants.

Richard Lochhead: Opponents of a pre-emptive right to buy talk about the fear that there will be an absolute right to buy. Why do you not oppose a pre-emptive right to buy?

John Kinnaird: It has always been our policy that a pre-emptive right to buy is the way forward. A pre-emptive right to buy puts in statute what responsible landlords currently do. First and

foremost, there must be a willing seller. With an absolute right to buy, there will not be a willing seller. There must be a willing seller and a willing buyer.

Richard Lochhead: You said that you are an owner-occupier and that you have a tenancy. Which did you have first?

John Kinnaird: A tenancy. Both farms were tenanted farms.

Richard Lochhead: How did you get the owner-occupation?

John Kinnaird: It came through the landlord's offering to sell the farm to the current sitting tenant—that is, it was the equivalent of a pre-emptive right to buy.

Richard Lochhead: So you or your family were attracted to owner-occupation.

John Kinnaird: That is not the case. I am not considering my particular interest—I am simply saying what happened in our case. In many cases, land is sold and the sitting tenant does not get the right to buy. I cannot speak for my current landlord. We had two different landlords. Perhaps our current landlord on the estate on which I am a secure tenant will not give me such an opportunity, but my thoughts about an absolute right to buy will not change.

Richard Lochhead: People vote with their feet. You or your family were given the opportunity to buy and you bought. What if a tenant farmer wishes to own, but the landowner does not put the land up for sale?

John Kinnaird: I do not see why a tenant should have the right to buy that land. If they are desperate to own a particular piece of land, they should go to the open market to buy it. I am not here to make business decisions for such people, but I believe that it is wrong that they can demand to buy the land on which they have been tenanted at any time. As I have said, addressing the matter of waygo compensation would solve many of those issues and would allow tenants to move on and buy land elsewhere, if they wished to do so.

Richard Lochhead: I want to go to the heart of the matter, which is the future of the agricultural sector and the rural economy. The bill is about such matters—it is not just about tenancy options. The minister's preamble mentions land reform and the future of the rural economy. The wider debate must also be considered.

The bill aims to improve current tenancy conditions and most people support many of its proposals, but how should future demand be measured? When I speak to people in Aberdeen, where I live, people do not want to rent property—they want to buy it. When I speak to tenant farmers in rural Aberdeenshire, they do not want to rent—they want to own. Let us talk about future demand rather than improving existing arrangements. Your whole premise seems to be based on there being a demand for more tenancies in the future. How is such demand measured?

John Kinnaird: It can be measured only after the bill has been enacted—it would be impossible to measure it beforehand. We have heard from owners of large amounts of land and owner-occupiers that they can see the new style of tenancy as a major step forward, because it gives a degree of security to both tenants and landlords. That must improve relationships and allow them to grow.

Richard Lochhead: Some 57 per cent of tenant farmers who are members of the NFUS support an absolute right to buy. The majority of tenant farmers who are members of your organisation support such a right. How do you know that demand in the farming community in Scotland, and among tenant farmers in particular, is not for owner-occupation, but for more tenancies?

John Kinnaird: You must look beyond the figures. We did not just ask a question and leave no room for comments.

The vast majority, probably in excess of 90 per cent, of those sitting tenants who asked for an absolute right to buy did so because of the lack of adequate legal compensation, rental determination and dispute resolution. They were quite clear that if those issues were addressed, the need for an absolute right to buy would diminish. Although 57 per cent of the respondents who are sitting tenants supported an absolute right to buy, there was quite clearly a qualification to that request.

Richard Lochhead: Are you saying that you have evidence—and this is the justification of your position—that there is demand in rural Scotland for more new increased tenancies, not better existing tenancies, as opposed to more owner-occupation?

John Kinnaird: From what we have heard, there will be a demand and a willingness both to take land and to let land under the new-style tenancy. We have to forget about the old-style tenancy, because I do not think that anyone will let land under a secure tenancy again, although the option exists.

Fergus Ewing: I want to clarify a point about the consultation process. I refer to your submission, which states that 57 per cent of fully secure tenants were in favour of an absolute right to buy. Although 57 per cent of that category of tenant support the absolute right to buy, you have expressed total opposition to it. Does not that mean that you have a slight conflict of interest in speaking here on behalf of the NFUS?

John Kinnaird: I disagree with that point and refer you to what I just said in response to Richard Lochhead's question. I talked about the comments that followed that part of the submission. The reasons that were given for seeking an absolute right to buy were the lack of legal compensation and rental determination and so on. That is why it is important to address those issues head on and I believe that that is the committee's job.

Fergus Ewing: Indeed. I am grateful for the evidence that you gave earlier. I noted that you said that you had 10,500 members. Is that right?

John Kinnaird: Yes, approximately.

Fergus Ewing: But only 2,500 people responded to the consultation exercise. I know that the electorate can be apathetic—we know all about that—but what happened to the missing 8,000?

John Kinnaird: Some did not respond. More than 2,500 people responded, but we had a clear cut-off date. Other responses were not included in the breakdown. It is quite incredible for most postal questionnaires to get even a 1 or 2 per cent response. The level of response that we got shows the interest that our membership has in this issue.

Fergus Ewing: Perhaps the rest were filling in their integrated administration and control system forms.

John Kinnaird: Perhaps the rest were quite content with the status quo.

The Convener: Much has been made of your survey—indeed, individuals and organisations have used its findings in various ways. Are you satisfied that others have interpreted and used your findings correctly?

John Kinnaird: The findings were evaluated independently outwith the office, so I am clear that the figures and percentages that are given are quite correct.

The Convener: Are you satisfied that other agencies, organisations and individuals have interpreted them in the same way in which you have interpreted them?

John Kinnaird: People can often be selective about how they use figures. That is a fact of life. I believe that had we been sitting before the committee saying that we should have the pre-emptive right to buy, which has been NFUS policy for a considerable time, but that that view had been arrived at by 12 or 14 members of a committee, we would not have had great credence. We sent out questionnaires to our membership and 2,500 members took the time to respond. I would say that that gives our figures a lot of credence.

Mr Rumbles: The committee's consultation on the bill has received only 29 responses.

John Kinnaird: The bill is more important than concentrating on the NFUS's consultation. The bill is important, not our consultation.

The Convener: You mentioned a fear that the right to buy might be extended to the new tenancies. Does not an equal fear exist that an absolute right to buy might creep across the board, not only to secure tenancies, but even to the new tenancies, which would be in danger of not being implemented?

16:15

John Kinnaird: From talking to some of our members, I am sure that that fear is real, whether or not it is justified. That alone will probably prevent people from letting land. We must guard against that. We must make more tenanted land available. The new-style tenancies provide an opportunity to do that. The right to buy has diverted everyone's attention from the guts of the bill, which are what is important.

The Convener: On that note, we will draw that part of our evidence session to a close. I thank you, like the previous panel, for appearing and answering our questions so ably.

The final panellists are members of the Scottish Tenant Farmers Action Group. If you are reasonably settled, I welcome you into your seats. On my left is Angus McCall and in the centre is Stewart Jamieson. Is that pronounced "Jamieson" or "Jimieson"?

Stewart Jamieson (Scottish Tenant Farmers Action Group): My surname is pronounced "Jimieson", because I am Scottish.

The Convener: I apologise for mispronouncing your name.

The other panel member is Andrew Thin. I thank all the gentlemen for appearing before us. You have seen the form. I do not know whether you all wish to give an introduction, but I ask the chosen one to make his statement.

Stewart Jamieson: I am a secure tenant farmer from Dumfries. On my right is Angus McCall, who is a secure tenant farmer from Golspie, and on my left is Andrew Thin, who is a rural business consultant from Caithness and who helped to prepare our submission on the draft Agricultural Holdings (Scotland) Bill. Andrew Thin is also a member of the Crofters Commission board and of Scottish Natural Heritage's north area board.

The Scottish Tenant Farmers Action Group was formed this year to respond to the draft bill on behalf of tenant farmers in Scotland. This is the first time that tenant farmers have had their own

dedicated organisation to represent their views. We are pleased that the Parliament's democratic process allows us to present those views. Like the Parliament, we are a young organisation, which plans to represent its members with ever-increasing effectiveness.

Tenant farming in Scotland has a future, but not without considerable modification to existing arrangements. By international standards, the land tenure system in Scotland is archaic and our tenant farmers deserve its thorough modernisation, based on principles of equity.

The publicity about the bill has been dominated by the right to buy for secure tenants. That is a land reform of national significance and a great opportunity for the Parliament to progress Scottish rural life to a sustainable position for the 21st century.

We are not a single-issue group. Many of the more basic and technical issues that relate to compensation, post-lease agreements, rental determination and diversification will have an impact on all tenant farmers. We detailed our views on those subjects in our submission and we can develop details on many of the issues in the bill in answering the committee's questions.

Finally, the rural crisis is such that we believe that Parliament has a major role to play in providing legislation to encourage confidence and innovation in our industry. Indeed, a letter in *The Herald* today summarises the question that needs to be asked: who really needs the land and who just wants it?

The Convener: Thank you for your brevity, Mr Jamieson.

Mr Rumbles: In your written submission, you say that

"it became clear that the public interest case for an absolute right to buy had been largely accepted by policy makers in Edinburgh"

but that the bill

"is likely to deliver only a fraction of the potential public benefits that could be expected from an absolute right".

I apologise for focusing on this matter, but it has been raised very clearly. I come at the issue from a liberal perspective and fundamentally believe that one individual should not be forced under the law to transfer private property rights to another individual unless there is an overriding public interest—for example, we already have planning permission and compulsory purchase orders. However, I have yet to find in all the written evidence one example of the overriding public interest that makes the case for an absolute rather than a pre-emptive right to buy. Could you please draw my attention to it?

Andrew Thin (Scottish Tenant Farmers Action Group): The fundamental public interest argument relates to investment and people's willingness to invest. Time and again, in the consultation that we carried out with members and others when drawing up our submission and in responses to the Executive, tenants have pointed out that they feel that they are in a stalemate situation. For example, they cannot invest because of write-downs, about which we have heard a lot this afternoon. Moreover, they cannot invest because they are inhibited by counter-arrangements under which landowners still retain a lot of control.

The central argument is economic. The freedom to invest and the increase in investment that would arise from an absolute right, regardless of whether it is exercised, will deliver major economic benefit to the countryside. The issue is not really whether one becomes an owner-occupier.

We have already drawn the committee's attention to the fact that an absolute right to buy has significant social and environmental public interest benefits. For example, we have collected a great deal of evidence that demonstrates that the investment in environmental measures on tenancy farms is significantly lower than investment in such measures on owner-occupier farms. We also argue that strong social benefits will arise from what will amount to a rebalancing of power in the countryside.

Mr Rumbles: You seem to be arguing that owning is good and renting is bad. The bill is meant to stimulate the tenanted sector. Indeed, Richard Lochhead has already quoted figures that show that the percentage of farms in the tenanted sector has fallen from just under 50 per cent in the 1960s and 1970s to 40 per cent in the 1980s to under 33 per cent now. You seem to be saying that we will get the social, economic and environmental benefits that you have mentioned only if everyone owns their farms and the tenanted sector ceases to exist. Am I misinterpreting you?

Andrew Thin: Yes. We are in no sense saying that owning is good and renting is bad. However, we are saying that the current arrangements for secure tenancy are bad.

Mr Rumbles: That fundamental issue overrides the general liberal principle in a liberal democracy that private ownership should move from one set of private hands to another by choice.

Andrew Thin: Yes. We are well aware of the point of principle, which earlier speakers alluded to, but we believe that the public interest argument is overwhelming. The converse of not introducing the absolute right to buy is that there will be a significant loss to the rural economy. Our interpretation is not that the bill is all about the

tenancy sector per se; our interpretation is that the bill is about contributing to rural development.

Stewart Jamieson: We feel that, if the absolute right to buy is introduced, there will to some extent be a contraction in the tenanted sector. I do not think that we have a problem with that and I do not believe that there would be a major contraction, because I do not think that the absolute right to buy would be taken up by 100 per cent of tenants. To be fair, we do not know what the figures are—they should be established—but if the percentage of tenant farmers is 30 per cent, we believe that the absolute right to buy would be taken up by only a small percentage of them, so we may see a reduction in the sector from 30 per cent to 25 per cent. However, we would have a much more vibrant tenanted sector, because the 25 per cent who remained as tenants would be considerably more vibrant than the 30 per cent that we have at the moment. That goes back to what Rhoda Grant said about a change in the balance of power, which would be the significant factor in stimulating the tenanted sector.

Mr Rumbles: You seem to be saying that in your estimation—and I am not sure how you arrived at it—about 5 per cent of farms in Scotland would be affected.

Stewart Jamieson: Yes.

Mr Rumbles: Do you think that it is worth overriding the fundamental principle of private ownership to affect 5 per cent of farms in Scotland?

Stewart Jamieson: The change would not affect 5 per cent; it would affect 30 per cent of the farms in Scotland. I was trying to make it clear—perhaps I did not—that the absolute right to buy would be used by 5 per cent, but that the introduction of such a right would have implications beyond those who took it up. The introduction of the right to buy would have implications for all secure tenancies. The negotiating relationship between landowner and tenant would be affected by the introduction of the right.

My point is the same as that made by Robert Balfour: a good landowner has nothing to fear. We do not anticipate that 100 per cent of tenants will wish to take up the absolute right to buy. A good landowner has nothing to fear, because he will be in a partnership situation. We are concerned that many landowners are failing in their partnership situations. We feel that the right to buy will address the situation to the benefit of the whole tenanted sector.

Mr Rumbles: I will tell you what is behind my question. In the NFUS survey, 57 per cent of secure tenants said that they would like to have the right to buy. It is obviously in individuals' self-interest to have that option to buy, but if we are going to override a fundamental principle and have the state force an individual to transfer property to another individual, there must be a real, specific and measurable public interest. I can see why we have compulsory purchase for the building of new roads or public utilities. Andrew Thin talked about social and environmental issues, but I cannot put my finger on the public interest in introducing the right.

Andrew Thin: The public interest is difficult to quantify, for many of the reasons that were stated earlier with regard to whether one can quantify the effect on the letting market, but we can look at large areas where tenanted farms have been sold to the tenants. Orkney is a good example. Orkney was, more or less, one estate. The farms were sold to the tenants a good many decades ago and Orkney is now probably one of the most dynamic rural economies with which I deal. We can also consider international examples, such as what has happened to the Irish rural economy. It is well over a century since that changed. We can also look at Denmark. There are parallels.

Orkney is bounded by water but there are also isolated areas of Scotland, such as parts of Speyside, where a small number of farms have changed ownership—the tenants have become the owner-occupiers—and you can see the change. There are parts of Aberdeenshire where you can drive down the road and almost feel the change, although it is difficult to quantify.

Richard Lochhead: It is refreshing to see tenant farmers come before MSPs in a public forum, because I know that many tenant farmers are loth to speak out for fear of recrimination from their landlords. If I visit a tenant farmer in Aberdeenshire, they do not want me to tell the landlord that I have been there. If I visit the landlord, they do not give a damn whom I tell. That suggests an imbalance in the power relationship. Do you believe that, as it stands at the moment, the bill will eliminate that atmosphere?

16:30

Angus McCall (Scottish Tenant Farmers Action Group): I think that the bill will go a long way towards helping tenants to feel more relaxed about their relationship with their landlords. Part of the problem that the action group has faced is getting information from tenants. As you rightly say, tenants are loth to speak out. Many members of the NFUS did not respond to the survey because they had to put their names on the response. In effect, that prevented quite a few people from responding. We find that a lot of people will privately express their doubts and fears but will not do so publicly.

If the bill achieves anything, the changes to dispute resolution should give tenants the confidence to stand up for their rights far more than they do at present. We have worked under the 1991 act, which has stood us in great stead for a number of years, but it is time to move on and to address the ability of either party to contract out of statutory provisions under the 1991 act. People can find that the arbitration system does not provide a good forum in which to address problems. The bill will give tenants more confidence.

Stewart Jamieson: I am not sure that what Richard Lochhead suggests is true of the bill in its current form. There will need to be amendments of detail, such as on rental determination. We and the NFUS have suggested that rental determination should be based more on economic viability. That is vital because the economics of farming vary much more now than they ever did before. The ups and downs are much more irregular than they used to be. In general, the bill will give tenants more confidence, but amendments of detail require to be made.

Richard Lochhead: What is the sector's experience of rental determination?

Stewart Jamieson: Rental determination has been far too closely geared to open-market values. Farming profitability probably varies much more than it did 10, 20 or 30 years ago.

The legislation under which we operate at the moment is based on the Agricultural Holdings (Scotland) Act 1949. Everyone talks about the 1991 act, but that act was only an act of consolidation, not of reformation. We are dealing with principles that were put in place in 1949. The bill is a great opportunity to reform a lot of things that have been in place for 50 years and that are out of date.

On rental determination, there is a belief that rents in the tenanted farming sector are a major cost and do not vary to the same extent as incomes or profitability levels do. There was not the same variation in profitability 30 or 40 years ago. Rents have not come under the same scrutiny as profitability has and we must address that issue.

Richard Lochhead: My final question concerns some issues that we heard about earlier on the pre-emptive and absolute rights to buy. The possibility that tenancies could dry up if there were a right to buy has caused concern. It would be particularly worrying if the right to buy prevented new entrants to farming from getting a tenancy and young farmers from stepping on to the ladder. What is your response to those points?

Angus McCall: First, the proposal for any right to buy has always been for secure tenants only. By their nature, secure tenancies do not break unless tenants voluntarily decide to give them up, so such land is not currently available for let. We would argue that, if the plug is taken out of the tenanted bath and the sector is allowed to move on, there should be a two-way ticket. The landlord might want to buy the tenant out. There is room for negotiation on both sides. A right to buy would not necessarily stop land being let. In the long term, it might even create more land available for let.

Andrew Thin: We should turn that question on its head and ask what will happen to the land: if the owner is not going to let it, what will they do with it? The notion that estates will suddenly take all the farms in hand seems improbable. There are two reasons for that. First, a lot of working capital is invested in land and a lot of expertise is used—the tenant invests a lot of capital and expertise. If the estates are to fill the gap, where will the capital come from? Will they suddenly employ an army of farm managers? If so, there will be many opportunities for new entrants in farm management, which is the best way for new entrants. Secondly, one has to consider the change in direction of agricultural policy and support across Europe. The thrust of that change is towards targeting support at smaller units. The notion that estates will take the units in hand, amalgamate and become bigger while support policy is moving in the opposite direction seems improbable.

Stewart Jamieson: Although you specifically asked about the right to buy, other aspects of the bill will encourage new entrants. I am thinking particularly of proper compensation arrangements at the end of a tenancy. At the moment, much of the stagnation in the tenanted sector is due to senior tenants not moving out. They do not move out because they cannot afford to do so. Not only is the farm their business, it is also their home. Many have come through difficult times and are faced with the possibility of redeeming only their capital, which has been devastated by falling stock values, and then moving out and buying a new home. Often, they cannot afford that, so they sit in the farm, because even if the business is not going that well, at least they have somewhere to live.

That is a common situation in the tenanted sector. Proper compensation for farm improvements or other investments that tenants have made would be an additional source of revenue. Tenants would feel that they deserved it, having put in the work and investment in previous years, and it could encourage them to move out of the farm earlier than they can afford to do now. That would allow new tenancies.

Fergus Ewing: Let me put to you some of the arguments that we have heard against an absolute

right to buy. The first is the thin-end-of-the-wedge argument. Are you arguing that the absolute right to buy should apply only to fully secure tenants?

Stewart Jamieson: Yes.

Fergus Ewing: You are specifically not calling for the right to be extended to tenants under the new limited duration format.

Stewart Jamieson: That is right.

Angus McCall: It is important to remember that very few secure tenancies have been let over the past 20-odd years. Those tenancies represent a significant investment on the part of the tenant in most cases. I do not think that an extension of a right to buy to a short-term business arrangement made between two individuals could be considered.

Fergus Ewing: I know of nobody who is suggesting that the right to buy should be extended to short-lease tenants. Nobody is suggesting that it should be extended to tenants under the LDT format. Is that your position, as representatives of the action group? You may wish to reassure some of the earlier witnesses on that.

Let me turn to valuation. Are you arguing that the way in which prices would be calculated under an absolute right to buy should be the same as the formula for a pre-emptive right to buy that is set out in the bill? Are you proposing some other method or formula?

Andrew Thin: We propose that valuation methods should be the same. However, it has been suggested that, in order to comply with the European convention on human rights, it may be necessary to consider some other valuation point. There may be some sense in having minor differences between the two different rights—a pre-emptive right and an absolute right. Until we have clear legal advice on that, however, it is difficult for us to have a clear position on it.

Fergus Ewing: I understand some of the technical issues. I hope that the committee might examine those matters and obtain advice on them.

In the brief time that is available, I would like to raise a further issue: the loss of marriage value. If one or two units of a large estate are sold off, that would prejudice the exercise of existing sporting rights, for example. Do you have any problem with the notion that sporting rights could be exempted from what the tenant would be entitled to buy? In other words, do you acknowledge the concerns that the SLF expressed in its paper that jobs could be decimated and that landowners would be forced—the SLF surprised me by using that word—to make gamekeepers redundant. I see the Scottish estates business group witness nodding in the public gallery. Would you be happy with a legal vehicle whereby sporting rights could be exempted from what the tenant would be entitled lawfully to purchase?

Stewart Jamieson: We have no problem with that suggestion. There is a legal problem, however. As an earlier witness explained, sporting rights are currently tied up as heritable property.

Fergus Ewing: Some people argue for a pre-emptive right to buy, saying that an absolute right to buy would be anathema. Other people question why those who support a pre-emptive right to buy are against an absolute right to buy. If some tenants have the right to purchase, why should not all tenants—in most cases, fully secure tenants, who have put in a lifetime of investment—have the right to buy? Do you have a sense of how many tenants would benefit from a pre-emptive right to buy? We might pass a bill to create a pre-emptive right to buy, but find that very few tenants will ever enjoy that right, because it is unlikely that the land will be put on the market. Is that how you see the issue?

Angus McCall: I am not part of the profession and I do not have figures to hand, but my feeling is that very few tenanted farms are sold. Most of the large estates are tied up in trusts and would not come on the market anyway.

You asked whether an absolute right to buy should follow from a pre-emptive right. Scottish agriculture has to take note of the aspirations of many tenant farmers to buy their farms. Regardless of whether that is enshrined in an absolute right or in some other mechanism, tenant farmers should have some means of buying their properties at market price.

Fergus Ewing: You mentioned that it is important to clarify that landed estates whose ownership is held in the vehicle of a trust that can be passed on to various beneficiaries will probably not come on the market. Am I right to conclude that the bill is irrelevant for those particular landed estates, because they will not come on the market?

Angus McCall: My understanding is that the triggers for a pre-emptive right to buy will follow closely the triggers for community rights and will exclude trusts and companies.

Andrew Thin: Andy Wightman could give much more detail, but I will quote quickly a figure that we give in our statistics. Twenty-five per cent of estates of more than 1,000 acres have been owned by the same families for more than 400 years, which cuts out a lot of people from the right to buy.

16:45

Stewart Jamieson: There has been a gradual diminution of the tenanted sector during the past

century. At the beginning of the 20th century, around 70 per cent of farms were tenanted; now the figure is 30 per cent. That situation of decline stopped about 20 years ago. There have been small movements since then, but no gradual decline. My impression is that that is partly, but not solely, because of the evolution of trusts, whereby large or valuable estates are no longer liable to substantial inheritance tax. The issue goes back to aspirations for ownership. Throughout the 20th century, there was a continual aspiration for ownership, but it dried up. If we went back to the 1940s, 1950s and 1960s, we would probably find that a good number of estates were in the habit of moving farms into ownership or away from tenancies to settle inheritance tax bills.

Mr Rumbles: Members have information from the Scottish Parliament information centre, which contains startling figures. Despite what Stewart Jamieson has just said, the tenanted land sector has shown a dramatic drop over the past 20 years, from 41.9 per cent to 31.5 per cent.

I will follow up Fergus Ewing's point on the issue of estates and, specifically, gamekeepers. I do not know whether members know this but, in its written submission, the Scottish Gamekeepers Association says that it is concerned that the

"fragmentation of estates"—

because of the right to buy—

"will not be good for conservation and may well lead to gamekeepers' redundancies."

The submission goes on to say:

"Tenant farmers exercising their right to buy will become owner/occupiers and therefore able to shoot deer on their land at any time even without the sporting rights. There is no incentive for farmers to manage deer sustainably, unlike wildlife managers who perform a professionally selective cull."

Therefore, according to the SGA, the compulsory right to buy has implications for estates, which could have a dramatic effect. I think that that is a major issue. Can the committee call the SGA to give us verbal evidence? I wonder whether Stewart Jamieson has any comments on the SGA evidence.

The Convener: First, I will respond to Mr Rumbles's points, then we will come to Stewart Jamieson.

The committee will discuss the evidence that we have received. We have a day spare at the end to cover any points that have not been made and we will discuss the SGA evidence then. I say well played to the representative of the SGA in the audience.

Stewart Jamieson: It would be worth while to hear from the SGA. I have severe difficulty in believing that the figures that Mr Rumbles quoted are correct. I have read the document. The figure of around 40 per cent is 12,000 and the figure of around 30 per cent is 9,000; 100 per cent of those figures works out at around 26,000. I have severe difficulty in believing that if there were 26,000 farmers in Scotland 20 years ago, there are still 26,000 farmers today. I wonder whether someone could check the figures.

Mr Rumbles: They were produced independently by the Scottish Parliament for the benefit of members of the committee.

Stewart Jamieson: Unfortunately, they were obtained by personal communication. The figures are vital and I do not consider a personal communication to be an appropriate vehicle for handling figures of such importance.

Mr Rumbles: I am sorry, but I do not quite understand what you mean.

Stewart Jamieson: The document gives the source of the figures as being a personal communication.

Mr Rumbles: The information that we have is that the source was the Scottish Executive.

Rhoda Grant: We have been told that having proper compensation available would mean that we would not need to have an absolute right to buy, as the balance of power between landlords and tenants would be changed sufficiently to allow tenants to move on and to ensure that land was in circulation. Do the witnesses agree with that? If not, what would there have to be in addition to compensation to ensure that the balance of power was changed?

Angus McCall: As we have heard, statutory compensation is limited, mainly because of write-downs and the fact that a value cannot be put on the stewardship of a holding over a period of years. If the issues of proper compensation at waygo and the value of the heritable tenancy were tackled, that would enable market forces to have an impact on the right to buy. Over and over again, we have heard the assertion that a tenanted farm is worth half of an owner-occupied farm, which I do not believe. We believe that the value of a tenanted farm has to reflect a balance between the input of the landlord and of the tenant.

It is possible that, if proper compensation were made available to tenants, some of the calls for a right to buy would be assuaged. However, we still have to take account of the fact that a lot of tenants want to own their farms and there is a strong public view in favour of that.

Stewart Jamieson: There is a strong public interest aspect to encouraging investment. Rural regeneration and repopulation demand investment. That investment is not happening

partly because of problems in the tenanted sector. Ownership produces confidence to invest, which is the issue on which I totally agree with Mr Balfour. A good landlord has nothing to fear and has the confidence to invest in the land. That is what the general population should demand of our landlords. However, far too many landlords are not fulfilling that obligation, which has been there since 1949, when the legislation came into effect. Since then, the economic situation has changed and, because of that, we cannot attribute blame solely to the landlord. Investing in a landlord's capital would give a poor rate of return. The situation cannot continue. If there is no investment, dilapidation will continue. How will we ensure that there is investment in the rural infrastructure? Giving people ownership would give them the confidence that they need to invest in the land.

Andrew Thin: Proper compensation arrangements would make a difference and would remove a significant part of the problem, which is that people will not invest as they are not investing on the same basis as everybody else.

We have heard about landlords having the confidence to let their land but the issue is more to do with tenants having the confidence to invest not just their money but their effort, imagination and aspirations. It is about self-confidence and freedom. Whether or not the right to buy is exercised, the knowledge that the place could belong to the tenant if he or she so wished has an important psychological effect on confidence and on what people do, which goes beyond the financial. Financial confidence makes a big difference, but it is not the whole picture.

Rhoda Grant: You talked about landlords not investing and tenants needing the confidence to make that investment themselves. If the tenant does not have ownership of the farm, what collateral does he use to raise money to invest in the farm?

Andrew McCall: At present, the only collateral that a tenant has is his livestock. No bank manager would invest in a depreciating asset such as a building, which might not be able to be realised at any time. Finding the collateral to substantiate an investment is a big problem.

The Convener: I would like to ask Stewart Jamieson about something that he said earlier, which has been quoted a lot today: that a good landlord has nothing to fear. If you were a good landlord, how would you feel about an absolute right to buy?

Stewart Jamieson: If an absolute right to buy were introduced, it would be there as part of the legislation. You can never be 100 per cent sure of anybody's feelings in a business relationship; you can only go on what you think are reasonable roles. If you know your tenants well enough and get a feel for them, you will know which ones aspire to be owners and which have no such aspirations. If you are willing to invest and show confidence in your farm, that sort of business partnership could persist.

The Convener: Mike Rumbles's original point was about the evidence that exists on the public interest in a right to buy. I return to that point because, like him, I am not persuaded by what I have read. I am worried about the evidence for a couple of your statements, one of which is in paragraph 6.5 of your submission. It states:

> "To exclude the right as now proposed risks continuing social and economic damage to our rural communities, and further environmental degradation of our countryside."

That is quite a strong phrase. I entirely accept that it is meant to be a strong phrase, but what is your evidence for that? Mr Thin said that, in his view, there was more environmental input from an owner-occupied unit than there was from a tenanted estate.

From my personal experience—I declared an interest at the start of the meeting—that is not my view. I accept that I come from a different part of the country and that the situation may vary from place to place, but where is the hard evidence to back up that strong statement?

Andrew Thin: One of the big problems with the whole debate is that there is no hard evidence for an awful lot of the views that are held. That is a grave difficulty. We have to look in a qualitative way at what has happened in different parts of the country and of the world where such changes have occurred, and examine the consequences. It is extremely qualitative, not quantitative. In so far as qualitative evidence is hard evidence, there is good evidence from a number of parts of Scotland, where farms have shifted from tenancy to owner-occupation. You can see what has happened on those farms. There is significant evidence that many of the new owner-occupiers have proceeded to invest quite heavily in environmental improvements, partly because they have greater freedom to do so because they are not constrained, and partly because of the psychological relationship that they now have with the place.

The Convener: The bill will allow tenants to diversify considerably in terms of environmental input. I trust that we would all welcome that addition. I presume that you are not against that.

Andrew Thin: I do not disagree with that. That is why I said that the cause was partly the constraints and partly the psychological change.

Mr Rumbles: You said in response to the convener's question that there is no hard

evidence. I wrote that down. You are saying that subjective opinion is being given. You also say that we should consider the ownership transfers that have taken place. Will you provide the committee with the evidence? I am searching for it and have not seen it. We are after evidence.

Andrew Thin: I use the expression "hard evidence" to mean quantitative evidence. I distinguish qualitative evidence from subjective opinion. Rather more than subjective opinion exists—there is much qualitative evidence. We can provide the committee with several examples of such evidence and of individuals who have moved from tenancy to owner-occupation. However, that is not a matter for me.

17:00

Stewart Jamieson: I will comment on what may be a parallel. This is not a direct comment on farming but it is about environmental degradation, which has happened in my part of the world—Dumfries—and on the estate that I tenant on. On our estate, many private properties that have been left empty and untenanted have become dilapidated over years, which has produced environmental degradation, according to my definition of it. I am not sure why the properties could not be let. I guess that some have been unoccupied for between five and 20 years.

The properties were recently put up for sale, which is excellent. The results have been excellent for the local community, because the properties sold well and we have new owners, who are improving the buildings and keeping local tradesmen occupied with those improvements. In our area, a move—albeit a small one—has occurred. That is not a direct basis for talking about farms, but it is what happened in a rural area. That has been great.

The power of ownership has brought about a resurgence, although it is not dramatic and may add only 10 people to the local school. Some of the properties have become holiday homes, but people will live permanently in others. The same effect would occur with tenanted farming. Independents such as people from the Scottish Agricultural College and advisers who assess farms say that tenanted farms and owner-occupied farms have different levels of intensity and repair and may have different scales and numbers of employees.

Mr Rumbles: That is exactly the evidence that I would like to be produced formally.

Stewart Jamieson: I only talk to agricultural advisers who make such comments. I could not say that there are five farms in Dumfries-shire to which I could take you at this moment, although I would be happy to do that.

Mr Rumbles: I am trying to get away from opinion. What are the facts?

The Convener: I was going to say this in my winding-up, but I will say it now. I do not want to enter into a debate by letter, but if, having heard other people, any witness wishes to present factual evidence that we have not drawn out, they should feel free to write to the clerks to the committee, who will circulate the evidence to members.

That brings us to the end of the agenda item. I am grateful to the witnesses for giving evidence. As they know, we have two more full days of evidence taking. I hope that if any of them wishes to come along and listen, they will feel free to do so. I have no doubt that they will talk to us about the evidence in letters or in person, if they have the chance. I appreciate the time that all the witnesses have taken.

The figures from SPICe—our information service—that came under question were from the "Abstract of Scottish Agricultural Statistics". Earlier editions of that are available only in the National Archives of Scotland, so the 1961 figures that are mentioned in the table were provided by personal letter, although they were previously published. I hope that that takes care of the personal communication point and I hope that SPICe will now be trusted. We trust our information service implicitly.

I thank our witnesses for giving evidence this afternoon. That concludes day 1 of evidence taking on the Agricultural Holdings (Scotland) Bill. I apologise for not taking questions from one or two members, but I felt that all the evidence had been heard. I hope that members are happy to proceed to the next item of business.

Amnesic Shellfish Poisoning

The Convener: We move to item 3 on our agenda, which concerns amnesic shellfish poisoning, 35 minutes later than was scheduled. I trust that members agree that the evidence that we have just heard was too important for us to move on swiftly. It is probably just as well that a few members were missing. I suspect that item 4 on our agenda will have to be consigned to the bin. I will make suggestions later about how we should proceed on that issue.

At our meeting of 8 October, we agreed to write to the Minister for Environment and Rural Development and the Minister for Health and Community Care to give our views on amnesic shellfish poisoning and the proposed technical conservation measures for the scallop fishery. We have now received responses from the ministers, which have been circulated to members. I am almost frightened to ask the question, but would members like to comment on the letters?

Stewart Stevenson (Banff and Buchan) (SNP): I am far from satisfied with the answers that we have received. The convener will recall that at a previous meeting I was dissatisfied with the Food Standards Agency Scotland's expenditure on amnesic shellfish poisoning, which I regarded as far too high and as disproportionate to the risk that exists.

Because we are short of time, I will highlight just one aspect of the letter from the Minister for Environment and Rural Development. The claim is made that scallop fishing and dredging are concentrated in the areas of greatest risk. In fact, the evidence to which the letter refers appears to suggest otherwise. In the north-east of Scotland—the Moray firth area—there are difficulties with stock, but the fishing is taking place on the west coast. It would be useful for the committee to ask the minister and his advisers to account for themselves on this subject. We should invite the minister to give evidence to the committee.

The Convener: I may be able to save some discussion of this matter. I have similar concerns about the quality of the replies that we have received. At the meeting at which we agreed to write to the Minister for Environment and Rural Development, we said that if we were dissatisfied with his reply, we would ask him to appear before us. In my view, we should do that. However, I am open to suggestions from members. If members feel differently, they should indicate that now. Do members agree that we should ask the Minister for Environment and Rural Development, or the Minister for Environment and Rural Development and the Minister for Health and Community Care, to appear before the committee? In my view, we should invite both ministers.

Fergus Ewing: I agree with the suggestion that Stewart Stevenson has made and I am pleased that we all support it.

Can we make clear to the Minister for Environment and Rural Development that all members of the committee believe that no decision should be taken by ministers, following advice from the FSA, either on a tiered testing regime or on the introduction of technical conservation measures until the minister has had an opportunity to give evidence and all the fishing bodies have had an opportunity to comment on the letters that we have received?

I have been able to speak to representatives of some of those bodies, who have pointed out that there are factual errors in Mr Finnie's response. For example, in his reply, Mr Finnie states:

"continued increase of effort could lead to unsustainable pressure".

However, it has been pointed out that there has been a reduction in the number of vessels. To suggest that there has been an increase in effort is wrong.

The letter also states:

"The most recently published scientific report has indicated that the most obvious signs of decline are to be found in the area which had experienced the highest level of effort."

Again, that information is disputed by the representative bodies. I do not think that we have time to go over all the points today, but the representative bodies have vital information.

I gather that the £1 million research document known as Ecodredge will propose measures to promote conservation. That document will be available shortly. The industry is also seeking to obtain research into portion size and biochemistry. That research should be available as early as March. I hope that the committee agrees that, until all that research and information is available and a further consultation has been carried out, we should ask the minister to refrain either from introducing the regime that was described in the previous evidence-taking session as "a disaster" and "catastrophic" or from going ahead with the conservation measures in the meantime.

The Convener: I do not disagree with what you say; however, the time for us to do that will be when the minister appears before us.

Fergus Ewing: As you know, we have not received any assurances from the minister, despite the fact that we made it clear, on a united basis, that we were asking for another consultation on the proposals. The minister says simply that he is reflecting on the matter. I hope that the committee will retain the unity that it achieved at the previous meeting and say that, although we

welcome the minister's reflection, we believe that it would help him to reflect if he had the benefit of the research. We should also say that the industry should have a proper opportunity for input, which it has been denied, as we heard at the previous evidence-taking session. The minister should assure us that there will be no introduction of limited conservation measures until all the bodies have had a full opportunity to be heard. The alternative is introduction of the ASP tiered testing system or limited conservation measures. However, we have heard evidence to suggest that that would be disastrous. I hope that the committee can proceed with my suggestion on a unified basis.

The Convener: I am perfectly happy for us, when we invite the minister to come before us, to repeat what we asked in our original letter—that he should delay the implementation of any measures for the foreseeable future—and for the committee to put those points to him when he appears before us.

Fergus Ewing: I am happy with that. The foreseeable future should mean until next spring at least, as there are people who are extremely worried about their livelihoods. Can we go a wee bit further? The minister will not have all the necessary research information for some time, as he admits. He certainly will not have it before next spring. If the committee could say that we feel that there should be a moratorium until next spring at the earliest—we are talking about March or April—that would provide fishermen who are worried about their future livelihoods with some assurance.

Mr Alasdair Morrison (Western Isles) (Lab): Have we received—even informally—an indication of the timetable for the ministers to come before us?

The Convener: We hope to have them at the meeting on 19 November—that is three weeks away—but we have not yet heard whether they can come. [*Interruption.*] Sorry. I am advised that Ross Finnie's diary is clear for that day, but we do not yet know about Malcolm Chisholm.

Rhoda Grant: We have two separate issues to deal with. The first is the conservation measures; the second is the ASP testing scheme. I agree with what Fergus Ewing said about the conservation measures. However, I am keen that, before the ministers come before the committee, they should be encouraged to consider a tracing regime. We should not stop any on-going work on that. At our previous meeting, we received good evidence to suggest that we could have an unbureaucratic regime for tracing scallops. It is important that the Executive does work on that and that our deliberations do not hold up that work. We could write to the ministers, saying that we want to see them but that we also want to encourage them to order further research into a regime for tracing scallops.

The Convener: I do not disagree with you, but my recollection from the previous meeting is that we heard that the testing scheme would be implemented before the end of the calendar year.

Rhoda Grant: The Executive is working towards the testing scheme. To make it workable, we need an unbureaucratic way of tracing scallops. The processors already have a scheme that would work and which would not put the onus on the scallop fishermen to give notice, for instance of where they are going to fish, which would cause them huge problems. We should say that we want to meet the minister but that, in the interim, he should do further work on a testing scheme and perhaps even draw up one that we could consider.

Mr Morrison: In a similar vein, I wonder whether it would be possible for Ross Finnie or Malcolm Chisholm to inform us between now and their appearance before the committee what their counterparts in another member state, the Republic of Ireland, are doing. That would be interesting.

The Convener: I suggest that we still pursue 19 November as a possible date, but that we put all those points to the ministers in our invitation to them and hope that they can come up with the information in time. Is that acceptable?

Richard Lochhead: May I double-check whether the letters that we have received from the ministers have been copied to the industry? I spoke to some members of the industry who had not received them.

The Convener: The letters are available on the website, but they have not been copied out.

Richard Lochhead: Should we not have sent them out as a matter of courtesy to those who gave evidence?

Mr Morrison: I appreciate what Richard Lochhead says, but the committee requested the letters and they are available on the website. Perhaps the courtesy would be to steer the previous witnesses towards the website.

The Convener: I do not consider it a discourtesy not to send the letters to previous witnesses. We have not said that we would send them, so we have not acted discourteously. The letters are available. There is nothing to stop individual members of the committee copying them and sending them out if they wish to do so, but the committee has not undertaken to do that.

17:15

Richard Lochhead: It is the same as when we issue a report on any inquiry: we always send it to those who gave evidence.

The Convener: Our report is not complete.

Richard Lochhead: I know that it is not complete, but what is the difference between sending a completed report and sending correspondence from ministers?

Mr Morrison: The letters are posted electronically, and anyone can access them.

The Convener: Apart from anything else, we only got the replies on Thursday.

Richard Lochhead: It is not a big issue; it is just helpful for the Scottish Parliament to do such things.

The Convener: I suggest that we discuss that at some time under procedure.

Fergus Ewing: I return to what Rhoda Grant said. She is correct that there are two separate issues: amnesic shellfish poisoning and conservation measures. Obviously, they are related, but they are separate issues.

Rhoda Grant asked what we should do about ASP. I welcome the fact that we are urging the minister not to do anything until he has given evidence. Rhoda also said that the FSAS should consider the suggestions that the industry made when we last took evidence. We all agreed that that should be the case. In our letter to the ministers we said:

"The Committee welcomes the undertaking by the FSAS to examine quality assurance and education schemes, and urges the FSAS to consider adapting and utilising existing industry systems."

Point g) of the letter from Malcolm Chisholm says that the FSAS has looked into the proposals that Mallaig and North-West Fishermen's Association made on a tiered testing system and has ruled it out. That worries me. It worries me that there seems to be no continuing, structured consultation process between the FSAS and the industry. Does the committee agree with my concern that, if we do not make a further, robust recommendation today, the FSAS might just bring in a tiered testing system?

Loth as I am to disagree with the convener, I do not recall any evidence that there is a legal obligation on the FSAS to introduce a specific tiered testing regime this year. It said that it wanted to, but surely if no legal obligation exists, we should be united and say that it is important to get the testing regime right, rather than rush it through, and to ensure that the FSAS and the industry proceed through structured consultation, which will involve preparation and meetings. If that does not happen, we will be sleepwalking into disaster and will possibly see the decimation of an industry.

I hope that the committee will agree that we can strengthen our recommendation and say that no action should be taken on ASP without a full and proper opportunity for structured consultation between the FSAS and the industry.

The Convener: We are not disagreeing. I have already said that we would put that point in our letters of invitation to the ministers. We will put your, Alasdair Morrison's and Rhoda Grant's points to the ministers.

Fergus Ewing: That is a welcome assurance.

The Convener: I had already stated it, so I hope that it is doubly welcome. Is the committee content with that?

Members *indicated agreement*.

17:20

Meeting continued in private until 17:27.

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