RURAL DEVELOPMENT COMMITTEE

Tuesday 5 November 2002
(*Afternoon*)

Session 1

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RURAL DEVELOPMENT COMMITTEE
26th 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)

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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

Sir Crispin Agnew
Stuart Black
Alistair MacLennan
Alistair Mann (Scottish Tenant Farmers Action Group)
John Renwick
Charlie Stewart
Andy Wightman
Jamie Williamson (Alvie Estate)

CLERK TO THE COMMITTEE

Tracey Hawe

SENIOR ASSISTANT CLERK

Mark Brough

ASSISTANT CLERK

Jake Thomas

LOCATION

Committee Room 2

Scottish Parliament

Rural Development Committee

Tuesday 5 November 2002

(*Afternoon*)

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

The Convener (Alex Fergusson): Good afternoon and welcome to this meeting of the Rural Development Committee. I remind everybody to switch off their mobile phones.

We have received apologies from Irene Oldfather, Elaine Smith, who is unwell, Alasdair Morrison, Stewart Stevenson and Jamie McGrigor, all of whom are members of the committee. The latter three members are involved in stage 2 of the Land Reform (Scotland) Bill in the Justice 2 Committee, but I hope that they will join us later.

Items in Private

The Convener: Under agenda item 1, I ask members to consider whether to take items 4, 5 and 6 in private. Item 4 is consideration of a draft stage 2 report on the budget process 2003-04, item 5 is consideration of arrangements for handling the Organic Farming Targets (Scotland) Bill, including a discussion about potential witnesses—the committee has always held such discussions in private in the past, so I hope that members will agree to take that item in private—and item 6 is consideration of two claims under the witness expenses scheme. Do members agree to take items 4, 5 and 6 in private?

Members *indicated agreement*.

Agricultural Holdings (Scotland) Bill: Stage 1

The Convener: Agenda item 2 is the committee's continuing consideration of the Agricultural Holdings (Scotland) Bill. Today is the second day of evidence-gathering at stage 1. We will hold a further meeting to consider more oral evidence next week and we will hear from the minister and any other witnesses from whom the committee wishes to hear on 19 November.

Today we will hear from three panels of witnesses. After short opening statements from each witness, members will ask questions. Before we commence taking evidence, I declare an interest: I have a registered landholding in South Ayrshire that is subject to two tenancy agreements under limited partnerships, which will be unaffected by the bill as drafted. My colleague, Jamie McGrigor, is not here and I do not think that other members have an interest to declare.

I welcome the first panel of witnesses. Jamie Williamson is an estate owner, manager and tenant from Alvie Estate, which is near Kingussie. John Renwick is a tenant farmer from Buccleuch Estates near Sanquhar. Charlie Stewart is a tenant, owner-occupier and factor—that might be a unique combination—in the Borders. I hope that our proceedings will be less daunting than they might appear. I ask each witness to make a short opening statement of around two minutes. The shorter the statements are, the more time we will have for members' questions. The purpose of the session is for the witnesses to answer members' questions. I ask Jamie Williamson to begin.

Jamie Williamson (Alvie Estate): I am an owner-occupier, but also a tenant farmer, in that I am a general partner of a limited partnership that tenants farmland on Alvie Estate, and a factor. My main objective is to get business moving on our Highland estate and to make it pay. One way of achieving that is to introduce new tenancies and leases. We are delighted with most of the bill, but we have a difficulty with the pre-emptive right to buy.

It is difficult enough to persuade landowners to lease land under the Agricultural Holdings (Scotland) Act 1991 and to find tenants who are willing to invest in agriculture on Highland estates, where margins are fairly slim. Many landowners have a problem with the retrospective nature of the legislation. Landowners who have done a deal with tenants are concerned that the future introduction of a pre-emptive right to buy might change their existing agreements.

We also have a difficulty that arises in our particular situation. In the marginal lands in the Highlands, farming is not always the prime

employer or investor in the land—there is often a sporting tenancy on top of a farming tenancy. In our case, there are also mineral and fish-hatchery leases. Some people want a right of pre-emption as part of their lease to secure their investment. We are concerned that the picture will be distorted if certain classes of lease have a pre-emptive right to buy while others do not. Such a situation would create a disincentive for the landowner to invest in the land or to lease tenancies. If the system disadvantages either landowners or tenants, we will end up without any tenancies, which has happened in the past. I repeat that my main concern is with the pre-emptive right to buy.

John Renwick: I am a tenant on Buccleuch Estates. The bill seems reasonable and I hope that it will retain the existing good will between landlords and tenants. I am also an owner-occupier on a farm in England, which is outwith the Scottish Parliament's jurisdiction, but, to give members an idea of my interest in the issue, the legislation south of the border might also change.

The pre-emptive right to buy seems reasonable, but I am against any absolute right to buy. I know that the absolute right to buy is not covered in the bill as introduced, but I would not like it to raise its head in future. The introduction of an absolute right to buy would do away with the existing good will between landlords and tenants and might mean that all the good intentions of the bill to clarify matters would come to a sticky end.

Charlie Stewart: I manage a small, traditional mixed estate in the Scottish Borders. We have eight tenant farmers, six of whom are on full tenancies and two of whom are on limited partnership tenancies. I have also built up a large farming enterprise, which is based on a mixture of in-hand land and traditionally tenanted land, with share-farming and contract-farming agreements. I feel that I have wide experience of the many types of land tenure that operate in Scotland.

I have a few concerns about some aspects of the bill. Although many of the proposed changes in the bill correspond with the good practice that many estates have adopted, some of the proposals will do nothing to help the tenanted sector, which the bill seeks to protect and enhance. A pre-emptive right to buy might not turn off investors in land, if sufficient safeguards are implemented. However, an absolute right to buy would immediately dry up any possibility of the creation of new tenancies of any type.

Many vehicles for farming the land avoid the need to get involved in the protracted and risky business of tenancy law, which could halve the value of one's investment. I do not think that there will be any opportunities for new entrants, although the estate that I look after has set up two new entrants in recent years.

The National Farmers Union of Scotland and the Scottish Landowners Federation have come to a consensus on most aspects of the bill. I believe that those bodies represent the full industry rather than just interested pressure groups. I would hate to see a useful bill destroyed by some of the add-ons that are being considered.

A number of horror stories appear in some of the submissions by tenant farmers. The bill deals with bad landlords, who are in a minority. They deserve to be pulled up; the industry does not take issue with that. However, there are bad tenants as well as bad landowners. I have seen the consequences of bad husbandry, for which the landlords had little chance of recourse.

An absolute right to buy would do little for tenant farming in Scotland, apart from providing a cash bonanza for those tenants who choose to buy and asset strip their farms. Such a situation has already developed in relation to the selling of farms by owner-occupiers. The property pages are full of farms that have been split up into houses, buildings and land, with everything sold off in separate lots. The result will be a fragmentation of traditional estates, which, in many cases, provide much direct and indirect employment in rural areas. Breaking up an estate into its component parts will not benefit the community or current or future tenant farmers, which the bill is all about.

Mr Mike Rumbles (West Aberdeenshire and Kincardine) (LD): I have a question for Jamie Williamson. As far as I can see, the purpose of the pre-emptive right to buy is to ensure that we do not get a situation in which a tenant farmer wakes up one morning to a knock on the door from a new landlord, who is waiting to introduce himself. The bill will produce a win-win situation. There will be a willing seller and a willing buyer. The bill will ensure that the tenant farmer has a right to have first refusal. As the committee heard last week, selling a farm to a sitting tenant—the effect of which is similar to vacant possession—increases the value of the land to the landlord. That must be a win-win situation. I am still mystified by your assertion that the pre-emptive right to buy creates a disincentive for landowners to invest. Will you enlighten me?

Jamie Williamson: There are two aspects to consider. First, landowners are concerned that, because the bill is retrospective, it will change existing agreements and a pre-emptive right to buy will become an absolute right to buy. The second concern applies particularly in areas such as the Highlands, where farming is more marginal. When other leases are in operation, the factor often needs to provide some security to attract people on to the ground and to get them to invest their money on his land. The factor often gives such people a pre-emptive right to buy as part of

the deal. The difficulty occurs in cases in which the farming tenant is not necessarily the main investor. If he has a pre-emptive right to buy over, let us say, the sporting tenant or the mineral tenant, that could become a disincentive for the other tenants or leaseholders to take up tenancies or leases and invest. If they perceive that the farming tenant could buy the land, they might feel that the pre-emptive right to buy that is granted as part of their lease would be usurped by the bill, which would give the farming tenant the right to buy.

The difficulty arises as a result of tenancies becoming unbalanced. Rather than the landowner sitting down and saying that he will give someone the right to buy because they are the main tenant, and that the lesser tenants could have an agreement with the main tenant, the bill would dictate who would be the recipient if the land were sold.

14:15

Mr Rumbles: I am still confused; I do not think that you have answered my question. In your first response you said that you were against a pre-emptive right to buy in case it led to an absolute right to buy. I understand that. I do not understand the second point that you raised.

Surely the whole point of the bill is that there would have to be a willing seller and a willing buyer. That would keep the option to sell with the landlord; if he did not want to sell, he would not have to do so. In the event that the landlord wanted to sell, he could ensure a higher price by having vacant possession. I do not understand your argument. It sounds as if there is something behind it that we have not yet got at.

Jamie Williamson: Imagine a situation in which a series of tenancies or leases are let for the same land. One of those tenancies is let under the provisions of the bill but the others are not. In order for me to get a sporting tenant to invest the money that he wants to invest—sporting tenants tend to have more money to invest than some farming people do—and in order for him to persuade other investors and secure his investment, I would put a clause into his lease that said that, in the event that the landowner sells, the sporting tenant would have a right of pre-emption.

I am dealing with such a case this week. The tenant in question is happy with the situation. He says that, if the land is sold, his investment is protected. However, if the farming tenant is able to say to me that the bill would overrule the sporting tenant's right of pre-emption, the sporting tenant, who is investing money, might say that I am not in a position to give him the right of pre-emption. If the farming tenant has a right to buy, the security that I am trying to give the sporting tenant does not stand up because the bill would overrule it.

Mr Rumbles: I remain a little confused. The point that I am trying to get at is that the power would remain in the hands of the landlord. The bill would not force the landlord to do anything.

Jamie Williamson: No. A right of pre-emption comes into force only when the landowner sells. If he sells land on which a lot of tenancies are let, every tenant will have a new landlord. In order to persuade people to invest in his land for whatever reason, the landowner has to give security, whether that be a 25 or 50-year lease or whatever, to a tenant who might want to run a quarry or invest in a sporting. That person will need security in order to be sure that they will get a return on their investment.

In the example to which I referred, we would have to give any tenancy that is let under the bill a right of pre-emption over, for example, a sporting tenant. We would normally say that if the land were sold, whoever had invested the most money for the longest period should have a right of pre-emption. The bill would give a disincentive to any tenant who does not come under its provisions.

Rhoda Grant (Highlands and Islands) (Lab): You are saying that it would be normal for a landowner to give someone who, for instance, had a lease on the shooting rights a right of pre-emption. Would that be over the whole estate or just the shooting rights?

Jamie Williamson: In the case that I have talked about, if we were giving the tenants a right of pre-emption, they would like the estate. Our concern would be that we are trying to run farming, forestry, tourism, fish hatcheries and a strawberry farm on the same estate. Although there is no intention to sell, we never know what is round the corner. If someone wanted to invest in the longer term and were ready not to get back their return within five or 10 years, they would have to consider what would happen if, for example, I got run over by a bus and the estate had to be sold. Therefore, they would want some security, and one security that I could give would be to include in the lease a clause that if the estate were sold, the tenant could buy it. If it were sold, I would be happy for that sporting tenant to buy it, but if there were a sitting farming tenant or one who came under the provisions of the bill, that would be overruled.

Rhoda Grant: For instance, if the right of pre-emption did not include sporting rights, you would not have a problem.

Jamie Williamson: If every tenant came under the bill, or if every tenant did not come under the bill, each would have the same rights under legislation. However, with a diversified estate, we

have blacksmiths, commercial tenants and fish hatcheries among others. Some would come under the bill, some would not, and some might. If one tenant came under the Agricultural Holdings (Scotland) Bill, he or she would have superior rights, if the land were ever sold, over other tenants who did not.

Rhoda Grant: So it is really the imbalance among different forms of tenants that you are talking about.

Jamie Williamson: Yes, it is the imbalance.

Rhoda Grant: John Renwick talked about the absolute right to buy and how it would have implications for good will. Would it not be the case that anyone exercising an absolute right to buy would have little or no good will in the first place and that that could be his or her motivation for exercising that right to buy?

John Renwick: That could be the case, but a tenant might also want to buy the farm for his own reasons, not out of a lack of good will. However, that would raise difficulties with other tenants on the same estate. The estate might stop investing in the land in a particular part of the estate if one or two farms had been sold from it. That would isolate other farms. The legislation allows short limited duration tenancies and longer limited duration tenancies. If there were ill will, the tenant and landlord would presumably part ways at the end of those leases.

Rhoda Grant: However, as I understand it, we are being asked to consider an absolute right to buy only for those on secure tenancies. Their leases do not come to an end—tenants can pass the leases on to family members—so those leases are different from those being set up under the bill.

John Renwick: Yes. I do not know how the lack of good will between landlord and tenant could be addressed, but I do not think that an absolute right to buy is the answer. It would raise difficulties with people who had a lot of good will.

Rhoda Grant: In what way would it raise difficulties? If there is a lot of good will between the landowner and a secure tenant, who has heritable rights to the tenancy, which means that the tenancy will remain within their family, the necessary investment and diversification will take place. It is difficult to see why someone would exercise the right to buy if they had that relationship, given that they would have to compensate the landowner for any investment. I do not see how or why the right to buy would be exercised if there was good will.

John Renwick: It might lead to a strain in the relationship between the landlord and tenants on an estate if some tenants took up the absolute right to buy and removed their farm from the estate. It might mean that the estate is not as workable as it was in the past. The landlord might then have to consider selling some of the properties and tenants might not want to buy them; they might be happy as tenants and might not want to buy their properties.

Rhoda Grant: Could you give me an example of what you mean?

John Renwick: If an estate was in a circle and some of the tenants near the middle of the estate exercised their absolute right to buy and bought their properties, there would be a Polo mint effect. The outlying farms would be left on an estate that would not be as valuable to the landlord as it was. The investment that the landlord would be willing to make in the outlying farms would not be as great. That might lead to those tenants wanting to exercise their absolute right to buy, when perhaps they were happy enough being tenants.

Rhoda Grant: If the compensation that was paid took into account the overall effect on the value of the estate as well as on the value of the farm and any investment by the landowner, would that not offset that issue?

John Renwick: It might do, but a landlord would still be forced to sell land that belongs to him that he does not want to sell.

Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP): One of the witnesses who will give evidence later in the meeting has given us an example of what we might all agree is bad or unacceptable practice by a large estate. An estate in the Cairngorm straths area held up the uptake by secure tenant farmers of environmentally sensitive area measures by sending a letter to tenants warning them that the estate could resume land entered in the scheme because that would be non-agricultural use. Would you, as landowners, agree that that is the unacceptable face of landlordism?

Jamie Williamson: Yes. We must realise in this day and age that farming does not mean only cows, sheep, pigs and so on. We must consider a certain amount of biodiversity. I hope that the bill will free up the ability of tenants to do more than what was traditionally regarded as farming. I have had to diversify into tourism and will soon have more visitor beds than sheep. That has allowed us to survive. I do not see why any tenant farmer should not have the same opportunity.

Charlie Stewart: I agree—so much so that all the tenants whom I look after have, with my encouragement, become members of the ESA scheme. The money is there for them to take and it helps to improve the viability of their businesses.

John Renwick: I agree with Jamie Williamson and Charlie Stewart. The bill allows for

diversification. A stipulation is in the bill that it should not cause the landlord to suffer undue hardship.

Fergus Ewing: Yes. As everyone has said, there is much in this bill that we broadly support but, because we are politicians, we are focusing on the areas of controversy out of necessity. In that regard, let me say how nice it is to see Jamie Williamson here—I remember when we brought up the rear in the Corrieyairick challenge. When I visited his estate, I discovered that it is run as a business and that there is more going on there than there is on some of his neighbours' estates.

However, I am not clear that you gentleman appreciate the fact that the right to buy will apply only to secure tenancies, not to the new tenancies that will be created, namely the limited duration tenancy and the short limited duration tenancies, which last for five and 15 years, respectively. Do you all appreciate that?

Jamie Williamson: Yes.

14:30

Fergus Ewing: If it is right for some tenants with secure tenancies to have a pre-emptive right to buy, is it not fair for all secure tenants to have the same right? Whatever your views about the rights and wrongs of the right to buy, pre-emptive or absolute, do you agree that it is extremely unlikely that estates throughout Scotland—not only in the Highlands but in Perthshire and the south of Scotland—where ownership is held not by individuals but by trusts or limited companies, are extremely unlikely to be put on the market for generations to come? If that is the case, do you agree that that means that the pre-emptive right to buy will be exercisable by only a few tenants and that the rest of the secure tenants will be denied the opportunity more or less in perpetuity? Do you agree that there is an arbitrariness about the pre-emptive right to buy that is not in its favour?

Jamie Williamson: It would not be true to say that estates do not change hands. Since 1900, only 19 of the 150 largest estates in the Highlands have not changed hands. Tenants will have the opportunity to exercise their right to buy. However, tenants should not find that, when they try to buy the land, bureaucracy, in the form of requirements to pre-register and so on, makes it difficult for them to do so. Politicians should not offer tenants a carrot that they can never obtain.

It is important to remember that, on big estates, different pieces of land need to be used differently if they are to be economically viable. On my estate, we have one man farming 13,000 acres. We cannot cut that area up into smaller areas as the land is marginal. In other areas, we have four or five tenant farmers, but the estate is best run as a single unit because, for example, the large area is needed to entice a sporting tenant in. If the estate is sold and broken up, that would be fine if each tenant could operate economically in the same area. However, on my estate, there is a fish hatchery that can operate economically on three acres, a farming tenant who needs 13,000 acres and a sporting tenant who probably needs 10,000 acres. If certain tenants buy out their agricultural holding, that might be fine for them, but it might make it difficult for someone else to use that land without a tremendous amount of co-ordination.

Charlie Stewart: You have seen the examples that will be presented later, but I would suggest that they are from badly run and poorly managed estates that have changed hands. Are those not the tenants who are having problems? Generally, the estates that do not change hands so often and which receive more investment from the landowners have tenants who are more satisfied. An example of an estate in such longer-term ownership is Buccleuch Estates.

John Renwick: I have no problem with the pre-emptive right to buy as drafted in the bill. If they were selling a couple of farms on an estate, the majority of landlords would probably give the tenant the first chance to buy the farm. As far as I can see, the bill's pre-emptive provision just wants the tenant in every case to be given the first chance to buy.

Fergus Ewing: I have a question for Mr Stewart about an issue that arises from his opening remarks. He said that some heritable tenants who might exercise a right to buy would do so to capitalise the assets. I think that he used the phrase "asset stripping". However, property owners have rights of ownership, so there is nothing to prevent current landowners from asset stripping, is there?

Charlie Stewart: Absolutely not.

Fergus Ewing: So why should the charge of asset stripping apply exceptionally to tenants who become owners, particularly tenants whose family has farmed the same land for generations? Why would you think that that category of people, who have spent their lives looking after a piece of land, would suddenly want to become asset strippers, more so than the average landlord might?

Charlie Stewart: Possibly because agriculture in Scotland is in dire economic circumstances. I think that it would probably be an excellent gift for a tenant to be able to buy their farm at a discount of perhaps 50 per cent, sell off the farm in its component parts and perhaps walk away with a profit.

Fergus Ewing: That is hypothesis.

Charlie Stewart: It is, but something like that

happened on an estate up in Angus last year. In that instance, a lot of farmers were rather forced into buying the estate from an insurance company. Some of them are no longer farming. They have had to sell off houses and cottages and realise all sorts of assets and property speculators have walked away with several million pounds in their back pockets. That money has come out of the tenant farmers' resources.

Fergus Ewing: Just to follow on from that, we heard from the final evidence session of last week's meeting that many secure tenants under the Agricultural Holdings (Scotland) Act 1991 would perhaps like to retire. However, they are soldiering on for various reasons, but partly because the exclusion of compensation provisions from the 1991 act means that they do not get compensation for improvements that they have carried out. Written agreements might also exclude such compensation. Would not the right to buy give those farmers a chance to buy and then perhaps lease to new tenants, thereby providing a means for new entrants to farming? That would break the logjam created by the particular effects of the 1991 act.

Charlie Stewart: I would argue that that is happening already in the countryside. All sorts of arrangements are going on that the figures do not show, such as share farming and contract farming. There are all sorts of agreements whereby farmers are retiring, taking a back seat and somebody else is farming the land for them. That is going on without the bill. I do not necessarily see why a tenant farmer should be excluded from going down one of those routes. If such an agreement were structured properly, it might not break the terms of a tenancy.

Fergus Ewing: I addressed my question to Mr Stewart, but perhaps Mr Renwick would also like to answer it.

John Renwick: On the question of tenants who are near retiring age and possibly want to retire, if there were fair compensation for improvements that they had made, they would probably be happy to take such compensation and leave the farm. That would leave the farm free for new entrants.

Jamie Williamson: If a tenant is winding down, it would be in the interests of both landlord and tenant to find another tenant before the land winds down as well. If the agreement between landlord and tenant states that there will be no compensation for the tenant's improvements and that tenant wants out, then the landowner and tenant could agree to find a new tenant who would be willing to pay the outgoing tenant for any improvements.

John Renwick: The problem with that is that, if the landlord is not willing to give compensation, the tenant may be happy enough to sit where he is, and his landlord will get the rent. Legislation for fair compensation would give the tenant the chance to get the compensation and get out.

Fergus Ewing: That point was made last week. Since then, we have had the benefit of various other contributions. The Scottish Landowners Federation—one or more of you may have an interest in that body—has suggested that compensation should perhaps be considered, but not for existing contracts. The SLF argues that to make any change to existing contracts would be wrong. If that were the prevailing view, existing tenants would by and large not be entitled to compensation. As Mr Renwick says, they may therefore be inclined to sit out the tenancy, thus depriving Scotland of the possibility of new entrants. Would that be the case unless we say that compensation should be applicable to all tenants under the 1991 act and that it should be wrong to exclude the compensation provisions in the 1991 act from taking effect?

John Renwick: I agree with that.

Fergus Ewing: I will stop on that note.

Charlie Stewart: I presume that such tenants have entered willingly into agreements to write off assets. I do not know. In our experience, a mixture of agreements—a whole raft—has been reached with tenants, under which an asset is theirs until the tenancy is terminated. It might be that the landlord will fund half the investment, the tenant will fund the other half and it is written off over 20 years. Ten years seems a terribly short time for a tenant to agree to. If I were a tenant, I would have serious doubts about going down that route and investing money. I would far rather invest it off-farm than tie it up in a landlord's hands.

Jamie Williamson: We let a tenancy in which we wrote down buildings to nothing over 25 years. Because the tenant could not pay the open-market rent, we put a lesser rent on his tenancy but wrote down the buildings and improvements so that, if he walked out, the landlord had something in return. That was all part of a package.

I have a difficulty with amending the 1991 act and imposing in retrospect provisions that overrule what has been agreed freely between two interested parties. We gave the tenant a lower rent in return for writing off assets faster and a condition that he would not get compensation. My concern is that, if the 1991 act was so amended, that would overrule our agreement and we would not enter into such an agreement again.

The Convener: Last week, witnesses from the Scottish Estates Business Group gave evidence. They suggested that, alongside the bill, in whatever form it is eventually passed, a forum comprising tenants and landlords, possibly with an

independent chairman, could usefully be set up to act as an arbiter on some of the issues on which you have been questioned so far. Would you favour such a forum? Would it be useful?

Jamie Williamson: I would favour it.

John Renwick: I would too.

The Convener: Does anybody disagree with that suggestion?

Charlie Stewart: It is an excellent suggestion. It is what the industry needs.

The Convener: The committee's job is to draw up a report on the general principles of the bill at the end of our evidence gathering. One of the general principles is that the bill should revitalise the tenanted sector. So far, no witness has suggested that the sector is not in need of revitalisation. Last week, some witnesses mentioned the fear that the pre-emptive right to buy might eventually be extended to cover the new tenancies in the bill. In your experience, is that a genuine fear and, if so, is that fear likely to limit the amount of land that will be let under the new tenancies? If that happens, the new tenancies will not meet the principle of revitalising the sector.

14:45

John Renwick: Nearly all land legislation in the past 50 or 60 years has been retrospective and the fear of that has always existed. My lease was signed in 1978, but the 1991 act now covers it. When the bill is approved, some of its provisions will affect my lease. In the past, leases have become secure as a result of legislation. Perhaps landlords would not have entered into those leases if they had known that they would become secure.

Jamie Williamson: When I suggested to a solicitor that limited duration tenancies would be great, he pointed out immediately the possibility that the pre-emptive right to buy might be shifted to them. People are considering that matter. The aim is to persuade landowners to lease and tenants to invest, but problems arise when there is a perception that doing so might not be in their interests. One difficulty with the pre-emptive right to buy is that solicitors say that it might be extended. There is also a concern that the pre-emptive right to buy might be extended to an absolute right to buy. As Mr Renwick pointed out, the perception is that much legislation is retrospective and that that could easily happen again.

Charlie Stewart: I feel the same. Estate owners in the Borders are concerned about retrospective legislation. If people have such concerns, there are enough alternative vehicles based on contract farming to allow them to farm land. That is not the right way forward. There must be reassurances that any future retrospective legislation will not cover the new limited duration tenancies.

John Farquhar Munro (Ross, Skye and Inverness West) (LD): I have a simple point. I note the witnesses' concern about the pre-emptive right to buy. However, to my mind, that right does not give the tenant an advantage or concession because, under the bill, an individual who exercises the right is required to exceed the highest offer for the property. It is not correct to suggest that the pre-emptive right to buy will give tenants a concession.

Jamie Williamson: The issue is about perception. We are trying to persuade landowners to allow more tenancies and to persuade people who come into farming to invest. The only way in which having new agreements will revitalise the sector is if those agreements are to the mutual advantage of landlords and tenants and are seen to be so.

Any legislation that dictates how a tenancy agreement will be drawn up in the future is fine, but retrospective legislation, of which everyone is so suspicious, produces a situation such as the present one, in which concern about the retrospective changing of tenancy agreements is causing a problem. In particular, it is stopping landowners from having more tenancies. The result is that we have ended up with complicated things such as limited partnerships and share farming. Although some of those arrangements might be simple, many of them just put more money into solicitors' pockets.

John Farquhar Munro: The landowning community has made a big issue of the pre-emptive right to buy, which it has claimed is the bill's bogey issue. I have tried to point out that the pre-emptive right to buy gives no benefit to tenants, because there is no guarantee that they will be able to acquire the property, even if they exercise the pre-emptive right to buy. In the final analysis, the tenant must accede to the best offer on the property at the time. Such an offer might come from a third party, over whom the tenant has no control. Therefore, it is not right to suggest that the landowners are giving a marvellous concession to the farming community.

Jamie Williamson: We are not suggesting that the landowner is giving a concession. If, for example, in order to attract another tenant the landowner wanted to concede the right to buy to a sporting tenant, that could, as a result of the bill, be precluded by an agricultural tenant's having a pre-emptive right to buy. John Farquhar Munro is correct to say that tenants might not feel that the bill gives them a big advantage, but it would be a great pity if, at the same time as not giving tenants a big advantage, the bill were to stop other non-

agricultural tenancies or persuade landowners not to give tenancies because of concerns about future retrospective legislation. Therefore, the bill should be passed without such provision. The rest of the bill is a fantastic attempt to revitalise the sector and the flaw that I have highlighted is the only part of the bill that will not help to revitalise the sector or to create more tenancies.

The Convener: Although I always hesitate to question my elders and betters, I think that I am right in saying that section 29 of the bill, which deals with buying and valuation, lays down a procedure by which the buyer and the seller must come to an agreement on valuation under the pre-emptive right to buy.

John Farquhar Munro: Some of our learned witnesses might express a different view.

The Convener: I take it that you are expressing a different view. The detail will come out.

Richard Lochhead (North-East Scotland) (SNP): We have heard from people who represent estates and who are factors on estates that one of the intended objectives of the bill is to increase the number of tenancies in Scotland. They have said that they welcome the bill because they think that it will achieve that objective, but is there any proof that an increase in the number of tenancies will benefit the estates? We have been provided with background information that indicates that, between 1971 and 2001, the amount of tenanted land in Scotland fell from 43 per cent to 31 per cent.

Jamie Williamson: Are you referring solely to agricultural tenancies or to all types of tenancies?

Richard Lochhead: The information comes from the Scottish Parliament information centre's briefing on the bill. That briefing contains a table that

"shows the proportion of land in sole ownership which is rented",

and includes the figures that I quoted.

Jamie Williamson: We must be careful. If a landowner wants to make a living from his land, he must generate money. If he cannot make a living from farming or forestry, he must get in other tenants who can run their businesses on the land.

Farming has contracted considerably over the past 30 or 40 years and because of some legislation there has been a disincentive to issue tenancies. I am sitting on a family estate from which I cannot get a straight tenancy because the estate is worried that I will get security of tenure. Therefore, I had to agree a limited partnership deal. There are various ways of agreeing tenancies, but agricultural holding tenancies have contracted because there has not been an expanding and profitable farming sector, nor has there been any legislation to encourage tenancies.

Estates such as Alvie Estate have asked what they should do and have put in everything from caravan parks to fish hatcheries in order to generate businesses that are tenancies that do not have the constraints and problems of agricultural holdings. Therefore, it is correct that agricultural tenancies have almost certainly declined fairly rapidly over the past 30 years, but I suggest that tenancies as a whole might have expanded. We previously farmed nothing but cows, sheep and trees, but now we farm caravans, tourists, wind and a host of other things that would not have been considered 40 years ago.

Richard Lochhead: Perhaps that takes me on to my next question for John Renwick and Charlie Stewart. There is now a more diverse range of activity on estates and although the bill is called the Agricultural Holdings (Scotland) Bill, of course it has implications for the wider rural economy. In recent months I have visited several tenant farmers in north-east Scotland, which I represent. That area has many examples of landlords spending much time persuading tenant farmers to give up tenancies on particular fields because the landlords want to sell the land for private housing. In Aberdeenshire, houses worth £250,000 are built on such land. A tenant farmer and, more important, his son can look out of their windows at housing that they cannot afford. People cannot afford to live in their own areas because the housing that is built on such land is too expensive for the local community. That takes me on to my question. Where are agricultural holdings on estates' pecking order of priorities for the future?

Charlie Stewart: Agricultural holdings are number 1 on our list of priorities. Our area does not have the south-east's opportunities for housing development and tourism. We have opportunities, but not to nearly the same extent as other parts of Scotland. Therefore, agriculture in the Borders is still of prime importance in the estates' pecking orders. There might be isolated instances of land development such as Richard Lochhead mentioned in certain areas up north, but I cannot think that such development is general in many rural areas.

I think that the south-west's situation is similar to ours in that it has some tourism but no development land. We certainly have not had the surge in property values that would let us sell off fields for millions of pounds.

John Renwick: I agree. Our priority in the south-west is agriculture. A question was asked about whether landlords would be willing to increase the number of tenancies; the proposed new tenancies will certainly make them more willing to let land.

Charlie Stewart: The fall from 43 per cent to 31 per cent that Richard Lochhead quoted would be in formal agricultural tenancies. As I stated earlier, there is much activity apart from formal tenancies. I guess that the figure for tenancies is perhaps closer to 43 per cent nowadays. In England, the farm business tenancy—FBT—is not ideal, but its advent has certainly opened up greater opportunity for tenants and other farmers to expand their enterprises.

Richard Lochhead: I have a straightforward question on the right to buy. What would lead to more investment in the rural economy and the rural infrastructure? Would it be more owner-occupiers or more tenanted land?

15:00

Jamie Williamson: People who live on a piece of land and live off its proceeds often do not have the money to invest in everything that can be done on the land. As a result, they must bring in tenants. If I were one of the rich foreigners who come in and buy a Highland estate, I would be able to invest money without having to make an income. However, as an owner-occupier, I will have that money only if I win the lottery or if I bring in other people to work alongside me and make that investment. From that point of view, more investment would result from a mixture of both of the aspects that Richard Lochhead mentioned, although tenancies are important if we are to keep economic activity going.

John Renwick: I agree. Tenanted farms on fairly large estates bring more income into the economy and smaller businesses can run more economically. However, tenancies are getting larger nowadays, and very small businesses are struggling because of the income that the farming sector is getting from sales.

Charlie Stewart: The answer to Richard Lochhead's question is that increased business activity is needed. In the current agricultural climate, an estate with a diverse range of enterprises will probably create more business activity than would owner-occupied farms.

Mr Rumbles: I have been puzzling over the statistics that we heard in last week's evidence. The National Farmers Union of Scotland told us that a poll of its landowners showed that 75 per cent of them favoured a pre-emptive right to buy. When I put that to Robert Balfour of the Scottish Landowners Federation, all he would say was that

"It would not be an unpopular measure." —[*Official Report, Rural Development Committee*, 29 October 2002; c 3660.]

However, we were also presented with evidence from Andrew Hamilton of the Royal Institution of Chartered Surveyors in Scotland, who said that 88 per cent of landowners now appear to be against the pre-emptive right to buy. I have been trying to square that circle over the past week. How can the NFU say that 75 per cent of its landowners are in favour of the pre-emptive right to buy, while the University of Aberdeen's study says that 88 per cent of landowners are against it? The only possibility that has crossed my mind is that the 75 per cent of NFU members were consulted before the bill was introduced and the compulsory right to buy was mentioned, but the figure of 88 per cent came from a survey that was carried out in July after all the talk about the absolute right to buy. Is that assessment of the huge change-around in landowners' opinion in Scotland correct?

Charlie Stewart: Landowners are definitely worried about the pre-emptive right to buy's becoming an absolute right to buy. We took part in the NFU survey, which also showed that 58 per cent of tenants favoured the absolute right to buy. However, if I can make a comparison, we all voted for the demutualisation of building societies as well. As I say, everyone is concerned that the pre-emptive right to buy will become an absolute right to buy, which is why we have those two figures.

Mr Rumbles: Do you still say that some form of right to buy would be a popular measure if the threat of an absolute right to buy did not exist.

Charlie Stewart: Yes.

Jamie Williamson: Land reform has much to do with the issue, because it has raised the possibility that there will be an absolute right to buy. A large proportion of owner-occupiers are rather like sitting tenants and do not see the right of pre-emption as a problem, because if they sell they will do so to the highest bidder anyway, except where they are trying to tie up someone else who wants to invest in their land for a longer period. Although people are more concerned about the possibility of an absolute right to buy than they are about the pre-emptive right to buy, I argue that even the possibility of a pre-emptive right is causing a problem. The bill would be so much better if it did not include such a provision, because I am sure that everyone would jump into tenancies.

Fergus Ewing: I am aware that the witnesses are both tenants and landowners and I want to raise an issue that has not really been raised—at least not today—about rent levels of farm tenancies. As Mr Stewart said, average farm incomes have plummeted in recent years because of BSE, foot-and-mouth disease, rising costs and various other problems. In your experience, has the reduction in net farm incomes been matched by a reduction in farm rent levels?

Charlie Stewart: If Fergus Ewing is looking for open market information, I would say that there has been such a reduction, particularly when it

comes to renewing agreements. If the question is about secure tenants, I would say that there has been a matched reduction in rental levels, where tenants have been paying high rents. Where they have paid lowish rents, the level has probably been static for the past nine or 10 years. We must examine farm rental in terms of its being somewhere between 10 and 15 per cent of gross output, or about 3 to 5 per cent of the capital value of the farm.

I guess that, on average, the rental levels for secure tenancies are probably trading at a discount of about 50 per cent of open market value for a contract farming or shared-farming agreement that includes a house. Arable farmers are guaranteed £85 an acre from Europe, and if everything went totally wrong, 50 per cent of the land could be set aside and they could still pull in that payment. That has quite a lot to do with the base level of rentals on arable ground.

We must look at the whole picture. I know of farms in my area where rental levels are little more than the value of the housing stock on the farm. I know that we are not allowed to consider that, but everybody has to live somewhere and the rest of us have to pay mortgages or rents. How low can rents get? Many people are running fairly substantial businesses from tenanted farms, although they have expanded into land ownership elsewhere or have other contracting agreements. It is not a straightforward case of rental levels' going up and down in line with agricultural output, as might appear to be the case at first sight. The two are not always directly related.

Jamie Williamson: My rent has not changed since 1983, but I have had to give up one or two houses because we have contracted the labour force on the farm. Some of the houses are bringing in on short assured tenancies rent that is almost as much as my farm rent. In an area that is as marginal as mine, and particularly in a tourist area, some of those houses are almost as valuable as a whole farm in terms of rent. We could see a shift in the way in which farm rents are considered. Tying up an awful lot of houses ties up an awful lot of potential income in a farm. If you have only one house and a lot of acres, those acres might not be very valuable.

John Renwick: Income values—rather than rental values or even the new legislation—are of concern to farmers. We would all like to be able to pay more rent through increased income.

Charlie Stewart: You could have farmers sitting on no rent at all who still have businesses that fail. On the other hand, you could have farmers sitting on a high rent who succeed. There are many variables in the equation.

The Convener: On that note, we must draw the questioning to an end. We are grateful to all the witnesses for coming along and giving us of your time this afternoon and answering the questions in the way that you have done. Please feel free to stay with us for the rest of the afternoon.

I am happy to welcome the next panel of witnesses. They are: Stuart Black, who is a tenant farmer; Alistair MacLennan, a former tenant who is now an owner-occupier; and Alistair Mann, who is also a tenant farmer. You have seen the format when we questioned the previous panel. We will follow exactly the same format, so I invite the witnesses to give their opening statements.

Alistair Mann (Scottish Tenant Farmers Action Group): I am a dairy farmer from the Black Isle near Inverness. My wife, my two sons and I farm under a farming partnership in a secure tenancy.

In the first two paragraphs of my written submission, I have tried to demonstrate how, with some security, one can build up a business that employs several people and contributes greatly to the local economy. As no secure tenancies are now being given, one could not possibly invest what we have invested in our farm. We recently had a Scottish Land Court arbitration—which, incidentally, cost us £80,000—to settle with our property developer landlord. In that deliberation, the Land Court stated that the tenant had an equal amount invested in the farm in tenant's improvements as the landlord had in ownership of the farm.

We have built up our family business under a secure tenancy under the Agricultural Holdings (Scotland) Act 1949. We employ six full-time people, plus casual labour. We also employ local contractors on the farm; they are local farmers who supplement their farm incomes by helping us out at peak work times. As well as helping us, it helps them to keep their farms viable.

I was struck when one of the previous witnesses this afternoon spoke of attracting people on the ground; if members examine my evidence, they will find that exactly the opposite has happened. We employ six full-time people on our farm, plus casual labour and the contractors. Since our landlord took over the neighbouring farms 12 years ago, farms that were all previously let on secure tenancies are now let as one to three-year partnership businesses and there is not one permanent farm worker on those five farms. The houses are let to people who come into the area until they have secured housing for themselves. The cottages and houses are let at very high rents, which mean that people could not possibly remain there permanently. With no secure tenancies now being given, ownership is the only way that a farming family could invest as much in

a farm and create as much employment as we have.

In my written submission, I state that our turnover is about £450,000. We produce 1.8 million litres of milk, which all goes to a local creamery in Nairn. We also produce fat cattle, which are sold through the local Dingwall and Highland auction marts. All of the inputs into the farm—we buy considerable amounts of feed for our 600 or so cattle—are bought locally. The concentrates come from a mill in Inverness and from Invergordon Distillery and we buy about 900 tonnes of by-product from other local distilleries. Our farm, which covers approximately 600 acres, has a huge production, employs a lot of people and churns profits back into the local economy. However, our landlord has not been prepared to let the farms that have come up for let on anything more than a three-year term. Even with a tenancy of 15 years, how could anybody invest the amount of money that I am talking about, especially as it would have to be written off over 10 years?

15:15

The Convener: I ask you to wind up now, Mr Mann.

Alistair Mann: We have been able to establish long-term working relationships with other businesses in the Highlands. For the past 54 years—three generations of our families—we have been wintering sheep belonging to the Renwicks of Inverbroom. The Renwicks were originally tenant farmers, but they have been able to buy their farm. Since doing so, they have invested in holiday chalets and other improvements. If they were still tenants and had to give up that farm, to whom would the chalets belong? They would be written off over 10 years and become the property of the landlord.

The Convener: I hope that you will come to an end now, because we need to make progress.

Alistair Mann: Another point that I would like to make—

The Convener: I am terribly sorry, but we try to limit statements to two or three minutes. I have no desire to cut you off, but we should let someone else speak now. Members will ask you questions, in answer to which you will be able to make more points.

Alistair MacLennan: I thank the committee for the opportunity to give evidence. I am a beef and sheep farmer from Grantown-on-Spey. As you know from my statement, I am now an owner-occupier, so I stand to get no direct benefit if tenants are given the right to buy.

The benefit of tenants' having the right to buy is that tenancies would be happier arrangements if tenants knew that they would be able to purchase if they were unhappy with their tenancy. That would secure more businesses in the rural setting and the businesses would be more dynamic. Diversity of ownership would mean more capital, more ideas and more talent becoming available, which would all benefit the rural economy. It would help to secure the heritage of an area, much of which is tied up in the place names, the farming families and the folklore of the farms. The younger members of the farming community would have more reason to stay around if they knew that they had a future with better options and prospects if they work for it. The rural assets—the buildings, land and environment—would be better looked after because each owner would have more pride in what was fully their own property.

The money that would be generated in the area would more likely stay in the area instead of going to Dubai, Frankfurt, London or wherever. The greater diversity of economic activity would have a beneficial impact on the economy and the introduction of new and more flexible leasing arrangements, such as limited duration tenancies and partnership leases for new entrants to agriculture, would also help.

The Convener: Thank you. I now invite Stuart Black to contribute. I apologise, Mr Black, for not giving you your official title of Councillor Black when I introduced you.

Stuart Black: I sometimes try to keep that as quiet as possible. Thank you, convener, and good afternoon, ladies and gentlemen. As the convener said, I am Stuart Black. I am a tenant farmer on the Dorback estate in Strathspey. I am also the Highland councillor for Strathspey North East. I am a member of the National Farmers Union of Scotland and the Scottish Tenant Farmers Action Group.

I am grateful for this opportunity to give the committee evidence. All my adult life, I have supported the return of our Scottish Parliament and I think that land reform is exactly the sort of issue that requires the involvement of the Scottish people through you, our democratic representatives. I hope that the Rural Development Committee will take the chance to break what is an unhealthy stalemate in the heritable tenanted sector. Our Parliament has the opportunity to allow tenant farmers to play their full part in the economic, social and environmental regeneration of rural areas.

Crofters have been able to support and benefit their communities by hard work and enterprise. As a Highland councillor, I have often been struck by how comfortable and confident crofters are with their important role in wider and diversified rural development, not just in agriculture.

I believe that the way ahead for all Scottish farmers is to achieve and maintain at least three streams of income: traditional agriculture, conservation schemes and appropriate diversification. We need more centres of enterprise throughout Scotland's fragile rural areas. In many cases, tenanted farms offer potentially huge, yet sadly underused, resources. Tenanted farms have suffered disproportionately from failed policies of rationalisation and amalgamation, which has been to the great loss of our culture, social structure and economy.

Landowners have, perhaps understandably, offered almost no heritable tenancies over the past quarter century. They have, where possible, ended them. They, too, do not think that the present system is working well. Let us replace it, therefore, with a new arrangement of which modern Scotland can be proud.

The Convener: Thank you all very much. I invite questions.

Fergus Ewing: I want to ask Alistair MacLennan about his comment that an absolute right to buy would create a sort of economic release and that it would be of economic advantage to communities. That is a public interest argument for the absolute right to buy. Could Alistair MacLennan and his colleagues expand on that justification for the absolute right to buy?

Alistair MacLennan: I made it clear in my statement how I have altered my practices since I became an owner-occupier. I now look completely differently at my farm and at my business, as well as at how secure I am. Despite the fact that I have borrowed heavily, I have invested fairly heavily. We do not have the money—it all comes from the bank. We concluded that the only way of surviving was by investing more heavily in the farm, by diversifying and by getting into environmental schemes, to which Stuart Black alluded.

Fergus Ewing: I believe that you have won the NFUS biodiversity award and that you were runner-up in the competition for the silver lapwing award. Presumably, therefore, you have diversified into environmental areas. Have you undertaken any investment or diversification that would not have been possible when you were a tenant?

Alistair MacLennan: I put money into the farm to install en suite bathrooms in order to provide bed-and-breakfast facilities; we renovated one end of the farmhouse to provide a self-catering flat for two; we had to install a new electricity supply at the house; the house roof needed repairs; and the steading needed repairs. I would not have done all those things before I purchased the property. They have generated quite a lot of work for the builders in the area.

Fergus Ewing: Would you not have made those investments in the past because you would not have derived the long-term financial benefit from them?

Alistair MacLennan: It would have been foolish for me to have invested that amount of money in my landlord's asset, especially as I was not on a particularly secure footing.

Fergus Ewing: The argument is that having an absolute right to buy would provide an economic release and would be in the public interest, through that greater economic activity. Could the other two witnesses give examples from their experiences or knowledge?

Stuart Black: When the Badenoch and Strathspey area was covered by the rural enterprise programme some years ago, our estate sold us a site on which we could operate a self-catering unit. At the time, I thought that the estate sold it to us for a rather large sum, but to be fair it did not have to sell it to us at all. The unit has been extremely successful. The state of the sheep industry over the past few years has been alluded to. A couple of years ago, the self-catering unit made more money than the sheep did. The sale of the site was a great support; the landlord did not have to sell it to me.

Although we are talking about diversification and economic benefit, committee members will know that the common agricultural policy is undergoing reform. We do not know how that will pan out. It looks as though there will be modulation of farmer support; tenant farmers will certainly be subject to that same modulation.

The bill will no doubt help diversification. However, people might feel that the most appropriate way in which to diversify is to build something like a self-catering unit. If they want to do that within a national park or in a tourist area, they will still be building on someone else's land. That difficulty should be addressed.

Alistair Mann: I am probably the only one here who is old enough to have experienced what I call tenants' fear factor. I was a child in a household before security of tenure came in under the 1949 act. As children, we were never allowed out of the house in the morning without the warning, "Don't climb on the buildings. Don't chase the pheasants. Don't light any fires. They will see you from the big house." At that time, my forebears had been on the estate for 250 years. My parents feared that, if we children displeased our landlord, they could lose their tenancy. That feeling still exists between tenants and their landlords.

Fergus Ewing: We are conscious that some tenant farmers are too reticent in coming forward to tell their stories, perhaps for similar reasons.

Last week, we heard that shooting and sporting rights would somehow come to an end if there were a right to buy, regardless of whether that right was pre-emptive or absolute. I find that hard to grasp, because there seems to be no reason why the right to buy should not include shooting rights. More important, shooting rights and agriculture can co-exist, and have co-existed, quite peacefully.

Do you agree with the Scottish Tenant Farmers Action Group that the right to buy should not include sporting rights? Do you also agree that you and your colleagues want to co-exist and co-operate with those landowners who have carried out and want to continue to exercise their sporting rights?

Stuart Black: Sporting rights should not be included in any right to buy. I know that different farmers will have different views. The Dorback moors are excellent grouse moors and sporting rights would come at a high price. Tenant farmers are concerned with agricultural business and that is what they want the right to buy.

Dr Williamson is quite right. His is a good example of a diversified estate and there are other tenants on the land. No one would say that we should interfere with that. The tenant farmers operate the agricultural side of the business and that is the side that should be for sale. The committee should consider whether a pre-emptive right to buy should include sporting rights because that could cause difficulties.

The estate would notice little difference if I exercised a right to buy, because it gets its income from sporting rights. For example, if I bought my land, the estate would still have the sporting rights, which it could sell in the future or operate as it pleased.

We must realise that sporting activity generates a lot of employment in the countryside and that gamekeepers, for example, rely on it. It would be wrong to fragment Dorback moor. There is no reason why there cannot be two owners of the same piece of land—a sporting owner and an agricultural owner. Joint use has worked well on grouse moors and lowland shooting sites. Sporting rights should not be involved in the right to buy.

15:30

The Convener: If one exercised a right to buy and purchased a grouse moor, for instance, but the sporting rights over that grouse moor remained in somebody else's hands, could there not be an enormous conflict of interest? Could not management practices affect the perceived best management of the grouse moor to the detriment of both parties? How would that conflict be overcome?

Stuart Black: Currently, there is joint use and there are no problems. We know where we are. The lease is our legal agreement. It lays down what we can do or cannot do.

The Convener: Yes, but that would not apply to the owner.

Stuart Black: A similar agreement would have to be put in place on the rights and responsibilities of both owners of that piece of land.

Alistair MacLennan: I agree with much of what Stuart Black says. I understand that sporting rights on a grouse moor, for instance, can inhibit a tenant from purchasing a place. I have purchased shooting rights on a farm, but there was virtually no shooting on it anyway. I manage to farm it in an environmentally friendly way and I lease shooting rights on it. I make a little money out of shooting rights, so that is an advantage for me.

Alistair Mann: My situation is very different from Stuart Black's. My farm is more an arable stock farm in which shooting is not as important. Pheasants are put down, but no professional gamekeepers are employed and the estate shoots four or six times a year. I do not disagree with what Stuart Black says, but my situation is different and I do not see a great problem.

Fergus Ewing: I am grateful for the evidence that has been given. As a survivor of Lord Watson's Protection of Wild Mammals (Scotland) Act 2002, I give an assurance that there is nothing that I want to do that would further jeopardise gamekeeping activities. We hope to hear from gamekeepers at a later stage. However, I have not heard any practical argument as to why the right to buy would necessarily interfere with such activities and I sometimes wonder what is driving that argument.

Richard Lochhead: It is great to have tenant farmers giving evidence. In recent weeks, I have spoken to many tenant farmers who would not come to the committee to give evidence for fear of a backlash. To take up what Mr Mann said, that culture is alive and well in the 21st century, not just in the 1940s.

We have heard the argument that, if tenant farmers are given the right to buy, they would simply sell up, move on and hope to make a profit. Mr MacLennan did not do that. Do the witnesses believe that most farmers would try to make a go of things and continue to live and work on farms that they had purchased?

Alistair MacLennan: Most farmers have been on the farms that their families have lived on for generations. They were born and bred in the area and do not want to move out of it. My farm is my home—I have been there for 40-odd years and do not want to move away.

Alistair Mann: My family has been on the same estate for 300 years and on the same farm for 107 years. We feel that we have invested so much in it that we want to stay there. We would love to own it.

Stuart Black: My family has been in Strathspey for generations. If we had wanted to make a quick buck, members would not have seen me before the committee today—it is as simple as that.

All land is covered by local authority development plans. That issue has not been developed. The development potential of any unit would be well known through the local plan or the local authority's structural plan and would be taken into consideration by the district valuer.

Richard Lochhead: Another point that has been made to the committee is that tenancies will dry up if the pre-emptive right to buy is enshrined in legislation, never mind the absolute right to buy. Is that the case?

Alistair Mann: We hear a lot about tenancies drying up, but I do not know of one stand-alone young farmer who has been given a secure tenancy in the past 15 to 20 years. It is interesting that all the tenants who spoke earlier own farms as well.

Alistair MacLennan: I got a wee bit muddled up in my introductory remarks. My point was that the introduction of a new and more flexible tenancy will free up the tenancy market. At the moment, secure tenancies do not work properly, because neither party, especially not the landlord, lives up to their duties and because limited partnerships are a way of getting around secure tenures. Neither of those systems works properly or looks after rural assets. A new, more flexible tenancy that is good for both parties would create more tenancies and both parties would be happier with the results.

Stuart Black: I am sure that members realise that heritable tenancies dried up 20 or more years ago. Landlords simply do not offer them now, so there is no question of the situation getting worse. I think that it was Michael Foxley who first called the situation an unhealthy stalemate. The absolute right to buy would not dry up the future supply of heritable tenancies, because landlords do not offer such tenancies. Perhaps that is their right—if I were a landlord, I would not offer full heritable tenancies—but laws and the Parliament exist to protect the public good from individual's wishes.

Alistair MacLennan: An estate in my area claims to give secure tenure to young people. However, when a neighbour of mine—who was almost directly across the river from me—left his farm, the details were circulated only to existing tenants and the farm was then let on a limited partnership basis. There is no policy of encouraging new entrants into the farming industry when tenancies come up for let. Amalgamation is the wrong way in which to proceed for the good of rural areas and the environment. People on the ground should manage the land.

Richard Lochhead: Why are tenancies not offered in such circumstances? Is it because landowners want to amalgamate?

Alistair MacLennan: As the details were circulated only to existing tenants, it is obvious that amalgamation was thought to be the way forward.

The Convener: Is not the reason for amalgamation partly that agricultural returns—as we have heard from all the witnesses—have been declining for 15 or 20 years?

Alistair MacLennan: That is part of the reason, but amalgamation is not the way in which to become more economic. When someone employs a man, they must work harder to try to pay his wages, which will be more than their own. The figures do not stack up. The Co-op, which is the biggest farmer in Britain, said recently in the newspapers that economies of scale do not work in agriculture.

Stuart Black: In the 1960s, there was vicious rationalisation in some farming areas, which was encouraged by payments. Unfortunately, those areas are no better off now and the farms are subject to the same economic pressure. Where do we stop? Will we end up with one farm in Scotland? We cannot continue with a defeatist attitude. We must find a solution other than amalgamation, because amalgamation does not do any good to rural communities and is the wrong approach.

Mr Rumbles: Legislation already exists for compulsory purchase of private land by the state when such a purchase is in the public interest, such as for a road. If I understand things properly, these three gentlemen are before the committee today to put the case that Parliament should enable the state to force the sale of land and property from one private owner to another. I see that Alistair MacLennan is shaking his head, but that is what the compulsory right to buy would be. Is that not correct?

Alistair MacLennan: The absolute right to buy would not force anyone to do anything.

Mr Rumbles: The compulsory right to buy is quite clearly a requirement on the landlord to sell his property to the tenant.

Alistair MacLennan: Only if the tenant wants to buy it.

Mr Rumbles: Absolutely. We are talking about the compulsory sale of an individual private person's property to another private person. We

live in a liberal democracy and Parliament is being asked to take a huge step to enable the state to transfer private property from one private person to another. In my view, there must be an overriding public interest issue before we do that. Apart from the obvious interest that anyone would have in increasing their holdings and their capital, what do the three witnesses see as the overriding national interest that would demand a liberal democracy such as ours to change what we have done before and take such a major step?

Alistair Mann: My written evidence asks the question whether, given modern-day food prices, one parcel of land can support a landlord, a factor who is a chartered surveyor and a tenant. If three people must share the output from a farm, the cost of food production will obviously be much higher than if the farm were one privately owned business that could go direct to the market.

Alistair MacLennan: I do not see the issue in the same way as Mr Rumbles does. The landlord would not be forced to sell. As one of the witnesses in the earlier panel said, a tenant would want the fallback position of being able to buy when the landlord was not living up to his duties. The better the landlord and the more he lives up to his duties, the less chance there is that a tenant would want to buy or even—given the amount of money that would be involved—to be able to buy.

I gave my answer to Mr Rumbles's question in my opening statement. I am here only because I feel that it would be much better for my area if the tenancies that are not working were in owner-occupier hands. The entire area would be in a better state if that were the case.

Stuart Black: Dr Williamson outlined in his evidence the excellent estate that is run at Alvie. There is no doubt about the fact that the Alvie Estate is a centre of enterprise that provides jobs—there are one or two other such estates—but it would be wonderful if tenant farmers throughout Scotland could engage in the same sort of activity as Jamie Williamson is engaged in so well at Alvie. Whether or not the tenant exercised the right to buy, simply putting the tenant on a more equal basis with the landowner would help the tenant in any negotiations over whether diversifying activities could be carried out on the holding. In itself, that would be of great benefit, so there is a public benefit.

Throughout the fragile areas of Scotland, there are lots of tenant farmers who are used to running a business. They know how to deal with bookkeeping and VAT, for example. If we were to build on the little centre that exists, that could be much more efficient than trying to parachute in initiatives and businesses that might not be so rooted in the culture and history of that land.

We would also enable and empower tenants to take responsibility and engage with the local community. I have been at community council meetings where a tenant farmer community councillor has been asked, "How about allowing a path through your land here?" The tenant farmer has said, "Oh well, I would not mind, but I cannot say. It is the landowner who says whether I can put a path there." "How about some trees here?" "Oh, it will be difficult." Whether or not tenant farmers exercised their absolute right to buy, the right would empower them to engage fully in their communities and in the economic life around their homes. That is why I think that such a right would be in the public interest.

15:45

Mr Rumbles: I am interested to hear your responses, because what is coming across from Alistair MacLennan and Stuart Black is the idea that the—you do not like the word "compulsory", but I am not sure what word we should use—absolute right to buy is important when, to quote Alistair MacLennan, tenancies are not working.

Stuart Black talked about the potential for public benefit in cases where estates are not running themselves very well. What you are asking for is, as far as I understand it, more than that. You are asking for the absolute right to buy for tenant farmers in secure tenancies wherever they are—whether the estates are good estates or bad ones. My fundamental question to you is not whether bad landowners should be forced to sell; it is whether good landowners should be forced to sell. Why, in our liberal democracy, in which we talk about defending individuals' liberties and freedoms, are we saying that the state should tell a good landowner that he must under certain circumstances sell his private property to another private individual? I still cannot put my finger on what justifies that.

Alistair Mann: I ask why the crofter has a right to buy his land. Why did the department of agriculture smallholders have the right to buy their land? Why does a council house owner have the right to buy?

Mr Rumbles: I could be funny and say that I am asking the questions.

The Convener: I will answer that question, if I may. There is a difference between purchasing from the state and purchasing from a private individual.

Alistair Mann: We tend to forget that agricultural land is our greatest national asset. It is human nature that someone will look after something that they own better than something that they rent or borrow from somebody else. We tend to forget, when the currency is high and we

can buy food from abroad cheaply, that we will one day again have to rely more on our agricultural land to feed our population. We must look after it in the best possible way.

Mr Rumbles: I am interested in that response. There are two great differences. People obviously look after land that they own better than land that they do not own, but the question remains: why should you ask Parliament to allow the state to force the sale from a good landlord to a bad landlord? Is there a middle way? What about the idea that in any application an adjudicator—perhaps a Scottish minister—must make a judgment about whether the application is good for sustainable development in Scotland. Would that not override the issue of whether a tenant has a good or bad landlord?

Alistair Mann: I would come back and say that a lot of agricultural land is currently being abused. It is not being used for agricultural purposes. It is being used for death-duty avoidance purposes or by property companies for speculative purposes. We do not place a truly agricultural value on agricultural land. The system is being abused by people who are buying the land and letting it, not investing in it and not giving secure tenancies so that it can be farmed. Farming is a lifetime experience.

Mr Rumbles: I ask the other two members of the panel to answer my question. I would like them to focus on my question and forget about bad landlords for the moment. I am talking about progressive, modern, effective and efficient landlords. I am talking about the people who manage land in Scotland for the public benefit as well as for their own benefit. Is the right-to-buy provision not using a hammer to crack a nut?

Alistair MacLennan: My answer is to a certain extent the same as before in that it concerns the practicalities of the right to buy. The right to buy may or may not force the landlord to sell, but the practicalities of the matter are that, if someone has a good landlord, they will not want to buy their tenancy. There are plenty examples of that on the Crown Estate in Glenlivet. The farmers there do not want a right to buy. They are perfectly happy.

Mr Rumbles: So you are saying that good landlords will have nothing to fear, because tenants will not exercise the right that they will have.

Alistair MacLennan: Yes.

Mr Rumbles: That is an interesting response.

Stuart Black: We cannot say never, but I think that Alistair MacLennan is overwhelmingly right. I will perhaps try using a bit of emotion here; I hope that this does not sound over the top to people who have not been tenant farmers. There are families who have put a huge amount of time into working the land—in some cases over hundreds of years—and have shown huge commitment and have suffered stress. They begin to think of themselves as owners of the land as much as does someone who has bought the land because they struck it lucky on the stock exchange or struck oil. That answers Mr Rumbles's question in part.

Mr Rumbles: My final question is on another topic altogether. I refer to Stuart Black's written evidence, which states:

"Under the proposed Bill sales within a family or trust would not qualify for the right to buy."

I refer to the pre-emptive right to buy. Do you think that that is a loophole in the legislation that should be closed?

Stuart Black: That is a leading question. I favour the absolute right to buy, but the point that you raised is an obvious loophole, which the committee could consider improving.

Alistair MacLennan: You are right, without a shadow of a doubt. If there is only a pre-emptive right to buy, there will be a sudden flourishing of trusts to use that loophole. The bill will mean nothing if it provides for only a pre-emptive right to buy.

Alistair Mann: I want to raise another point. I want to say how pleased we are to give our views as tenants today. To put it bluntly, we were absolutely gutted by the NFUS's statement to the committee. We would like to point out that the NFUS represents 75 per cent of landowners and landlords and only 25 per cent of tenant farmers. That must be taken into consideration with the evidence that was given.

The Convener: With respect, the committee will decide how it treats the evidence that it receives, because it receives all sorts of evidence from right across the board. We shall treat it as it is given to us, in good faith.

Rhoda Grant: I want to ask about an issue that the first panel raised about how to address the devaluation of an estate. Certain farms, perhaps the best farms on an estate, might be bought. Without those farms the estate would not have the same value. How would you address that issue?

Stuart Black: That is a difficult question. That is part of the reason why I was not allowed to make an offer for my farm when the Dorback estate came up for sale. It was obvious that the estate would be worth more if the grouse moors were not fragmented by the fact that one farmer had bought their farm and others had not. As I have said, that is a potential problem where sporting rights are concerned. That is almost certainly why I did not get the chance to buy at that stage. The

committee needs to consider that, because it is not an easy issue. We wish to be fair and if we are to be fair to the landowners, some form of compensation should be put in place if the rest of the estate is devalued. It all depends on the value of the estate in question, but it could mean that the tenant could not exercise the pre-emptive right to buy.

Alistair Mann: Our estate was bought some 12 years ago by a property development company. Those companies buy estates, sell off what they can to get money back into the kitty and keep anything that might be developable. With only one exception, every tenant outwith the farms that the company wanted to keep bought their farms.

Alistair MacLennan: The situation exists largely with grouse moors. Generally, when an estate is for sale, the owners split it up themselves or sell to a property company, as our estate did. In our case, the owner should have sold to her tenants, as she would have made a lot more money; instead the property company made the money. Most estates that are sold are split up into what seem to be desirable units, as they make more money, rather than sold as a whole. The exception is perhaps grouse moors.

John Farquhar Munro: This is a simple question. The bogey seems to be the difference between the absolute right to buy and the pre-emptive right to buy. Do you see any advantage in the pre-emptive right to buy as currently defined in the bill?

Alistair Mann: The pre-emptive right to buy, as has been stated, merely gives an opportunity at the time of sale. At the moment, we know that farming is extremely depressed, and it would be a great problem for many tenant farmers to buy in the present economic situation. If we had an absolute right to buy, we could register our interest to buy at a date to suit our financial means, when farming is in better health.

Alistair MacLennan: I see a small advantage in the pre-emptive right to buy, but I would imagine that most times when it could be exercised would be got round by using some trust or another. I do not think that it will make a big difference.

Stuart Black: I tend to agree with that, although, at least in my case, it would have meant that the owners would have had to tell me that the estate was for sale, and I would not have had to find out from a friend who read it in the *Sunday Mail*. That sort of humiliation would be over.

There is a potential danger with the pre-emptive right, as tenants would have to think very carefully about exercising it. At that point, they would not know the sort of landlord that they were about to get, and if at all possible, they would exercise the right, even though it might not be financially the right time. However, if they knew that they had the absolute right in their back pockets, they could wait and see whether their new landlord was willing to engage with them in an enlightened manner. If the landlord did that, there would be no need to exercise the right to buy. With simply the pre-emptive right, the tenants will not know what the new landlord will be like, so the right could be exercised unnecessarily.

Mr Rumbles: According to your written evidence, you would have been a great beneficiary of the pre-emptive right to buy. You told us that, when

"Dorback was finally sold some months later, the only notification we received, and only goodbye, was a legal notice to pay future rents to Salingor Holdings, incorporated in the Bahamas, the new owners are a French/Belgian family".

Under the proposed legislation, you would have had a great opportunity to purchase your farm.

Stuart Black: Yes, it was a once-in-700-year chance.

Mr Rumbles: You should have had it, and you are before us today as someone who would have been a beneficiary of the bill.

Stuart Black: I agree that in one particular set of circumstances it would be of help.

The Convener: The other side of that is Mr Mann, who in his evidence states that there have been six owners of the estate in his lifetime. I assume that he would welcome the fact that under the bill he would have had six opportunities to purchase his farm.

Time does not allow me to ask the questions that I want, but I shall put one point to you all. You have all described eloquently and properly the opportunities that you felt had been denied to you because of the way that you farm under a secure tenancy. Do you agree that had you been farming under the terms of the bill as published, many of the difficulties would have been overcome, particularly regarding diversification and environmental input? Do you agree that the bill as published is a genuine attempt to overcome some of the difficulties that we all acknowledge exist?

16:00

Stuart Black: Without prejudicing my wish for the absolute right to buy, I agree that some of the bill's provisions will be of great help. I respectfully add that we should have no write-downs: full compensation should be made at waygo. The other issue that would stop us losing the heritable tenancy sector altogether is to have the same situation that applies to crofting land when it goes out to crofting tenure.

I suggest that the committee gives consideration to the provision that, to keep secure tenancies secure in the future, landowners must find a secure tenant for such units. It would help us enormously if that provision could be added to the bill. The no write down of values is also extremely important and it must be addressed.

The Convener: That is something that Mr Mann will be interested in. The NFU was particularly vocal on that subject last week.

Alistair Mann: The bill contains some very helpful provisions. I had a hugely costly arbitration over my rent. It went to the Land Court, which cost £80,000. I am quite sure that my landlord put me through the mill. He did not agree to go straight to the Land Court to settle the rent, which meant that we had to go to arbitration. As he employed so many professional people, we had to do the same. The arbitration system has been hijacked by the professional chartered surveyors and law firms.

The Convener: I do not disagree with you, but do you agree that the bill addresses that issue at some length and that it simplifies the process enormously?

Alistair Mann: It would be a great advantage if tenants could go straight to the Land Court.

The Convener: Do you have anything to add, Mr MacLennan?

Alistair MacLennan: No. I agree with both the other witnesses.

The Convener: Thank you. I am afraid that we have run out of time. I thank you once again for taking the time to answer our questions in a very able way.

16:01

Meeting suspended.

16:08

On resuming—

The Convener: Welcome back, ladies and gentlemen. I thank you for your indulgence of that short break. I welcome our final panel this afternoon, which comprises Andy Wightman, who is a well-known commentator on land reform, and Sir Crispin Agnew, who is a recognised expert on agricultural holdings. Gentlemen, you have seen the format of the panel sessions. I ask each of you to give an introduction of two minutes or thereabouts.

Andy Wightman: I welcome the opportunity to give evidence and I support the thrust of the bill. The bill has the potential to expand opportunities in the rented sector and in agriculture. However, those opportunities would be greatly enhanced by an absolute right to buy. Much of my basis for that claim is experience elsewhere in Europe, where rented land markets are active but a landlord-and-tenant system does not operate.

It would be useful for the committee to reflect on the fact that the high levels of owner-occupation that were achieved in the past century in areas such as Kincardineshire, Orkney, Wigtown and Fife have been responsible for a more dynamic and sustainable rural economy in those areas. Therefore, substantial public interest issues are involved in ensuring that tenant farmers not only have the opportunities that the bill affords them to diversify and to resolve disputes more simply, but to alter their tenurial status.

I will leave my introduction at that, because it is more valuable for the committee to ask questions than for me to ramble. I have provided a written submission.

Sir Crispin Agnew: The committee was kind to ask me to give evidence and I am pleased to be here. We will have a crofting bill and we have a bill on agriculture, but nobody seems to think about small landholders who operate under the Small Landholders (Scotland) Act 1911, for whom I plea.

The Crofters (Scotland) Act 1886 was extended to the whole of Scotland in 1911, when similar smallholdings throughout Scotland were made into small landholdings. The crofters flew off in 1955 and left the small landholders in the rest of Scotland. A large number of the landholdings were secretary of state holdings, which were sold in the 1970s, but quite a number of small landholders remain. Many are on the isle of Arran and pockets of them are in Ayrshire, Wigtownshire, Aberdeenshire and Banffshire. Those people are being left behind. Crofters are obtaining rights to buy and to diversify. Although we have the Agricultural Holdings (Scotland) Bill, nobody seems to be thinking about the small number of small landholders.

In the past 15 years, the Scottish Land Court has dealt with six cases under the 1911 act. The act comes up in my practice about once every two or three years, when someone says, "We have this agricultural holding," and I write back to say, "Sorry, it is actually a smallholding under the 1911 act." Somebody needs to think about the small number of people who still hold land under the 1911 act, which is similar to the 1886 act, but has not been amended or revised since the 1950s. I suggest that that group of people needs to be thought about as part of the examination of land reform. They are a small number of people in little pockets here and there.

Another issue that needs to be thought about is diversification, which is premised on a tenant who intends to use land for a non-agricultural purpose.

I was involved in a crofting case in which a crofting family established a limited company for some diversification into fish farming for which they wanted to use the croft. The crofter had the right to use the croft for an auxiliary or subsidiary occupation, but he had no right to allow a limited company in which he was fully involved to use it. That case raised all sorts of legal issues.

If diversification takes place, the tenant farmer will farm his farm, but he and his wife in partnership, who are a separate legal persona, might want to run a bed-and-breakfast business. A farmer who wanted to sell second-hand farm machinery and employ a mechanic to repair it might want to do that through a limited company, but under present legislation, he would not be allowed to do that.

If diversification is to be allowed, perhaps it should be allowed through another medium. People might want to protect their business by establishing a limited company for the diversified business, so that if that goes down the tubes, it will not endanger their farming enterprise. The bill must consider such issues. Obviously, we do not want to involve any old limited company—the farmer should participate actively in it.

Lastly, I will talk about Land Court arbitrations and the Land Court's involvement in valuations. I will do that not so much in relation to this particular bill, but the Land Court and the Lands Tribunal for Scotland are being used in different ways under the Land Reform (Scotland) Bill for the community right to buy, under the Land Reform (Scotland) Bill for the crofting community right to buy, and under this legislation. Somebody needs to pull the whole lot together and make a coherent scheme that operates throughout the three different situations.

Section 72 of the Agricultural Holdings (Scotland) Bill gives a right of appeal to the Court of Session on any decision of the Land Court under the Agricultural Holdings (Scotland) Act 1991. For every other jurisdiction of the Land Court, one applies by a special case to the Court of Session for its opinion. We will end up with different sorts of appeal, depending upon which act one is operating under. Somebody needs to pull the whole lot together.

We also find that the Lands Tribunal is to value land sales under the community right to buy. The Land Court is the appeal court for evaluation of the tenant right to buy. The Land Court has no valuers; it has agricultural members and it has a president. It has the power to co-opt, and it sometimes co-opts people from the Lands Tribunal, but you want to provide that it can co-opt. I suggest also that there should be a power to remit between the Land Court and the Lands Tribunal as appropriate, because if there is a community right to buy, where the valuation is to be done by the Lands Tribunal, but a tenant farmer wants to buy his farm out of that community right to buy, you will have the Lands Tribunal valuing the community interest and the Land Court valuing the tenant farmer's interest, and the two might not marry up. A lot of co-ordination is needed across the bills.

16:15

The Convener: Thank you. Those are substantive points.

Fergus Ewing: I am sure that that evidence will be studied carefully by the Executive. I wish to raise three points, the first of which is about the exercise of shooting and sporting rights in relation to the right to buy. Is there any reason why we in the Scottish Parliament should not provide for a right to buy, whether pre-emptive or absolute—for the purposes of this question it makes no difference—whereby shooting rights are excluded from the ambit of what the tenant is by law entitled to purchase?

Sir Crispin Agnew: The problem is that shooting rights are not separate legal tenements. Minerals can be separated from the land and salmon fishings can be separated from the land, but sporting rights cannot be separated from the land under the current law. Sporting rights can be leased, but there is much dubiety as to whether such leases are good against the next purchaser of the land. If you are going to separate the shooting sporting rights and the deer stalking rights and so on from the land, Parliament will have to provide that they can be sold as separate units or owned separately from the land, because the law at the moment does not allow for separate ownership.

Under the crofting acts and under the proposals, when the crofter buys there is provision for the crofter to let the sporting rights back to the landlord at a nominal rent. Under the current crofting acts, that is for a minimum of 20 years. I suppose that you could have a 999 year lease, but those sorts of leases are going to be made incompetent under various pieces of land reform legislation. Therefore, there would have to be statutory provision for sporting rights to be separately owned. Management rules would then have to be provided to regulate the use of the rights. A body of law has built up on the respective rights of salmon fishers and the owners of land on either side of a river. Such law developed through a series of cases during the last century. However, if sporting rights are to be separated from the farming side of land, there will have to be a mechanism for controlling the respective interests.

Currently, for example, if a grouse moor tenancy is let to a grazier, the lease will contain strict

conditions about sporting rights—for example, when sheep must be ingathered to allow shooting to go ahead and being allowed to muirburn only with the landlord's agreement. Therefore, the landlord imposes the management regime. However, if there is to be equal bargaining power, someone will need to regulate that, otherwise there will be loss of value to one party.

Andy Wightman: It would not be desirable to create an exception, solely for a particular group of people, to the Scots law tradition that shooting sporting rights are not a separate heritable tenement. Parliament should not make such an exception.

Fergus Ewing: I turn to the issues of compensation on waygo and written agreements. We heard evidence at last week's meeting that the 1991 act provides for compensation to secure tenants at waygo. However, the effect of those provisions has been somewhat muted by contractual arrangements between landlords and tenants. The NFUS's position is that there should be a ban on contracting out of compensation provisions. Is that possible? If so, can such a ban be applied to existing secure tenants? Such a ban could be called retrospective.

Sir Crispin Agnew: The Agricultural Holdings (Scotland) Act 1991 provides that a landlord and tenant can agree on the write-down of buildings over a particular period. The 1991 act changed the Agricultural Holdings (Scotland) Act 1949 by saying that it is not competent to agree on a nil value. Therefore, a write-down over 10 years can be agreed that provides for a £1 payment at the waygo. However, the 1991 act allows farmers to agree a write-down of an improvement over a particular period.

It is obviously a policy matter as to whether such agreements are permitted to continue. However, if a tenant puts up a big general purpose shed that will last for 30, 40 or 50 years and the shed is written down over 10 or 20 years, the landlord gets the residual value at the end of such a period. That raises a problem for the Agricultural Holdings (Scotland) Bill, which also provides for compensation at waygo. Section 40(1) uses the traditional phrasing by stating that the compensation value is

"the value of the improvement to an incoming tenant."

We know what "incoming tenant" in the 1991 act means. However, under the proposed act, if a farmer has a limited duration tenancy of 15 years, the improvement value to the incoming tenant will differ depending on the length of the new tenancy. For example, the improvement value for a five-year tenancy will be different from that for a 15 or 20–year one.

I understand that under the farm business tenancies scheme in England there is a similar provision, which states that the improvement value is the value to the incoming tenant. However, I understand that the valuers are having awful problems deciding on who the incoming tenant is.

Fergus Ewing: The problem of measuring the compensation amount by reference to an incoming tenant when it is not known whether they will be a five-year or a 15-year tenant is a point of detail. I assume that we can sort that out, in theory at least, at stage 2. At stage 1, we are more concerned with the bill's principles and in particular whether there is any legal impediment to removing the exclusions from and eliding the 1991 act's provisions on compensation. Is there any reason why those changes should not apply retrospectively to all existing secure tenants covered by the 1991 act?

Sir Crispin Agnew: That is purely a matter of policy; there is no legal reason why the bill should not do so. However, I know of what one might describe as poorer landlords who cannot afford to pay waygo compensation to a tenant because of the value that is outstanding to that tenant. Under the existing regime, certain improvements—including the construction of buildings—can be made only with the landlord's permission, while others can be made if the tenant gives notice to the landlord.

However, if a tenant makes an improvement for which he is to be compensated under valuation at waygo, he is potentially imposing a debt on his landlord that the landlord might not be able to afford. A balance must be struck in that respect. Although there is certainly no legal impediment to changing the situation, it is difficult to know whether it is appropriate to change agreements retrospectively in cases where people have entered into them in good faith.

Fergus Ewing: But there is no legal impediment to such change.

Sir Crispin Agnew: Certainly not, beyond the general policy that acts of Parliament should not be retrospective.

Fergus Ewing: Yes, but that policy would not be imperilled by, for example, the application of article 1 of the first protocol of the European convention on human rights.

Sir Crispin Agnew: The ECHR says that, on the whole, acts of Parliament should not act retrospectively unless there is a good public policy reason for doing so.

Fergus Ewing: Indeed.

Last week, we heard again that the creation of an absolute right to buy might well be prohibited because of ECHR provisions. It was also argued

that such provisions would not apply to a pre-emptive right to buy. Indeed, the Scottish Executive's consultation paper contains the rather bald and—I think—unexplained assertion that the creation of an absolute right to buy could result in the state having to compensate landowners to the tune of £100 million. As far as I know, the Executive has not yet provided any computations or an explanation of how it reached that figure. Is the ECHR an impediment to the creation of an absolute right to buy? Am I right in thinking that, if a public interest argument could be made, there would be no problem with the Parliament creating an absolute right to buy?

Sir Crispin Agnew: I should point out first that the Scottish Executive's approach is inconsistent. In relation to the community right to buy and the right to buy under the Agricultural Holdings (Scotland) Bill, the Executive has said that it is contrary to the ECHR to have an absolute right to buy. However, in the part of the Land Reform (Scotland) Bill that deals with crofters' right to buy, the Executive is quite happy to stipulate that crofters should have an absolute right to buy salmon fishings, which are very valuable separate tenements. Giving an absolute right to buy either is or is not contrary to the ECHR.

Personally, I do not think that an absolute right to buy is contrary to the ECHR. Indeed, in the Duke of Westminster's case, in which long-term tenants in London were given an absolute right to buy their freehold, the European Court of Human Rights held that that was compatible, provided that the amount of payment was reasonable recompense for what was being bought and that there was a public policy issue. The Executive is probably concerned that an absolute right to buy will depress the value of estates. One is not entitled to reduce the value of an estate by a significant amount without paying compensation. A concern probably exists that there might be claims for compensation, if giving the absolute right to buy depresses the value of property.

Fergus Ewing: Would landowners have a good prima facie case for establishing a right to compensation?

Sir Crispin Agnew: Yes, if there was a substantial reduction in the value of their property because of the right to buy.

Fergus Ewing: Would not they have to establish that any diminution in value was a direct consequence of the legislation? If so, how could they do that, given that land values presumably go up and down in the same way as stocks and shares—in other words, not always for any apparent reason?

16:30

Sir Crispin Agnew: It would be for a land valuer to say whether that was the effect. I have had discussions with valuers who consider that particular aspects of legislation have a depressing effect on the value of certain landholdings.

Fergus Ewing: Following the Duke of Westminster's case, did landowners make a successful claim by arguing that, in spite of the fact that they had lost the case in the European Court of Human Rights, the state would have to pay them compensation nonetheless?

Sir Crispin Agnew: No, because the provisions that gave the right to buy in the Duke of Westminster's case required the tenant to pay adequately for what they bought. As I understand it, that did not depress the overall value of the estate. If tenants were given an absolute right to buy farms, they would be able to excise portions of the estate. If someone could demonstrate that that had a significantly depressing effect on the overall value, that might give rise to a claim.

Fergus Ewing: It would not give rise to a claim if the tenant had to pay the market value, including what has been described as the marriage value.

Sir Crispin Agnew: That is right. However, the difficulty comes in when the market value has been depressed by the legislation.

The Convener: For the sake of balance, I offer Mr Wightman the chance to comment.

Andy Wightman: Crispin Agnew mentioned the Duke of Westminster's important case. The Duke of Westminster went all the way and lost. As I understand it, the ECHR contains no provisions for compensating people when their assets drop in value as a consequence of legislation. Similarly, if a landlord's assets increase in value, there are no provisions requiring them to pay compensation to the state as a consequence of measures that have promoted that value. The value of property is not protected by the ECHR—what is protected is people's right to property. The ECHR kicks in when possession is lost. As long as possession is transferred in the public interest, with adequate compensation, none of the acts of Parliament that have been passed, including the Abolition of Feudal Tenure etc (Scotland) Act 2000, which removes heritable assets from private landowners, falls foul of the ECHR.

Mr Rumbles: I want to ask the witnesses about something that I have difficulty with. I can understand that the absolute right to buy might be in the public interest in situations that involve bad landlords and the worst excesses of the landlord-tenant relationship. One could argue that giving the tenant farmer an absolute right to buy would help to improve the farm in such situations.

Human nature is such that there are bound to be bad landlords and good landlords. I fail to see how the public interest can be used to justify a measure that will give a private individual the right to purchase the property of another private individual. How would the public interest be served by giving an absolute right to buy in the case of a good landlord?

Andy Wightman: The Executive has said that part of the overall goal of the land reform programme, within which the bill falls, is the promotion of greater diversity in the pattern of land ownership. The fact that that has been accepted as a policy objective means that it is in the overwhelming public interest. Promoting a greater diversity of land ownership is in the public interest because it enhances levels of investment and makes rural economies more sustainable.

Mr Rumbles: My question was not about that. There are some very progressive landlords in many parts of Scotland who allow their tenants to diversify and who have good relationships with them. The policy objective of sustainable development is being achieved in parts of rural Scotland. My question is whether a sledgehammer is being used to crack a nut. In other words, legislation should be introduced to tackle bad landlordism, but would the proposals in the bill tackle the good landlords as well?

Andy Wightman: I do not think that any legislation should be introduced to tackle so-called bad landlords. I do not think that it is the role of the state to interfere in judgments that private landowners make about how they run their estates—just as I do not think it competent for there to be legislation against bad anybody. That is a dangerous road to go down.

Any legislation must, to an extent, be applied across the board. It is a question of balancing the public interest and the promotion of a greater diversity of private property ownership with the fact that, in a small number of specific cases, the exercising of that ownership may not be wholly within the spirit of the public interest that triggered the bill in the first place.

I know of no farmer in Wigtownshire, Kirkcudbrightshire, Kincardine, Orkney or wherever who wants to go back to being the tenant of a landlord. To me, that is an empirical case for the promotion of greater owner-occupation of farms.

As I made clear in my written evidence, a high proportion of land—about 50, 60 or 70 per cent—is rented in other European countries, where there is no landlord-tenant system. It is possible to promote greater owner-occupation of farm land and greater availability of land to rent at the same time. In fact, that can be achieved as a direct consequence of promoting a more diverse pattern of ownership.

The Convener: I am sorry to interrupt, but I ask this purely for information. How can 60 per cent of land be tenanted if there is no landlord? There must be a landlord of some sort.

Andy Wightman: There is indeed a landlord of some sort, but in countries such as Belgium, France, Germany and Luxembourg, more than 60 per cent of farm land is rented. The land is rented from other farmers, of course, but I stress the point that the landlords are themselves farmers, who own some property and have chosen to rent out their land to another farmer.

The critical difference with the landlord-tenant system in Scotland is that the vast majority of tenants here own absolutely nothing. The land reforms that swept over Europe 200 years ago ensured that now, everybody—by and large—owns something. If they choose not to farm their land themselves, they rent it out. In other words, there is a very active rental market elsewhere in Europe, but as a consequence of a diverse pattern of owner-occupation of farms.

The Convener: Would you not agree that that trend is already increasing in this country?

Andy Wightman: No.

The Convener: I think that it is.

Andy Wightman: The evidence from Europe and North America is that if the leased land market is promoted on its own, that will lead to larger farms. There is a finite amount of agricultural land in Scotland. If farm sizes grow, there will be fewer farmers, or rather fewer prospects for new entrants. That is a fact. The evidence shows that high levels of land leasing give rise to a trend towards larger farm sizes.

The Convener: I apologise for interrupting, Mr Rumbles.

Mr Rumbles: Thank you for hijacking my line of questioning, convener.

The Convener: Sorry. Please carry on.

Mr Rumbles: Does Andy Wightman think that the Scottish Executive's view is that it is public policy to ensure a greater diversity of land ownership in Scotland, and that a proposal for the compulsory purchase of private property in order to transfer it to another private individual is a worthwhile public benefit per se?

Andy Wightman: Yes, I think that that is the Executive's view. Under the Crofting Reform (Scotland) Act 1976, there are many instances where it is not—I would say—in the local public interest for the crofter to buy a croft, because of the things that they get up to. That is in a minority of cases, however.

Mr Rumbles: Are you saying that the individual case can be subsumed for the greater good?

Andy Wightman: Absolutely. The land reforms that took place in Ireland involved a transition from a landlord-tenant system to an owner-occupation system. By and large, it was in the public interest for that transition to take place, although there must have been some cases in which it might not have been.

Mr Rumbles: Your line of argument is that, basically, it does not matter if there are a few injustices to individuals, and that the greater good should prevail.

Andy Wightman: That is the basis on which legislation is passed all the time.

Mr Rumbles: But is that what you are saying?

Andy Wightman: Yes.

Mr Rumbles: That is interesting. Thank you.

Alistair MacLennan said that, if a compulsory right to buy were introduced, good landlords would have nothing to fear, because that right would not be exercised. That is not your view, is it? You think that, because of the greater good issue, the right would be exercised.

Andy Wightman: It would be a matter for the individual decision of secured tenants whether they exercised the right. Their motives at any time in the future will be many and varied.

Mr Rumbles: Have a guess. Use your judgment. Do you think that they would use the right?

Andy Wightman: It is difficult to speculate and come to an informed view on how the right would operate. The bill gives greater opportunities for tenants to diversify and many people will regard that as perfectly satisfactory. That is what they want to do and they will continue to be secure tenants. However, those who feel that their interests would be best served if they were owner-occupiers will exercise the right to buy if there is an absolute right to buy.

Mr Rumbles: I would like Sir Crispin Agnew to comment on Andy Wightman's view that, in certain circumstances, the individual's rights can be subsumed for the greater good. Do you subscribe to that view?

Sir Crispin Agnew: In any policy decisions, there are hard cases and good cases. Whatever policy is applied to any bill, the majority good will always be served. There will always be some hard cases.

Mr Rumbles: Let us have a look at those hard cases. Would there be a case for setting up some sort of compromise on the issue, with an adjudicator? For instance, under the Executive's legislation on the community right to buy, a clear case must be submitted to ministers that the sustainable development of that community will be safeguarded. Could not a similar process be set up under the bill, whereby an argument for sustainable development would have to be made to a minister before the compulsory purchase of a property could be endorsed? Is there a parallel?

Sir Crispin Agnew: Yes. It is a matter of policy to decide where to strike the balance. If there were an absolute right to buy, how many landlords would want to invest in farms that might be bought off them at any time at a valuation that might not fully reflect their input? Landlords often do not invest in their farms as they should; equally, some estates invest in their farms and provide improvements and repairs.

When the Agricultural Holdings (Scotland) Act 1949 was introduced, a lot of estates operated on the basis that they had a lot of tenant farmers and land was let to tenants because that was the source of income for the estate. There was a good business and working relationship. However, following the agricultural depressions after the war, with the various tax regimes and farms being sold off, estates ended up with a big house and two or three farms—which is not an estate. Nonetheless, there was still a landlord-tenant relationship despite the fact that the landlord did not have a big enough enterprise to be able to invest in the system. In a way, we are continuing to run a landlord-tenant regime that is not appropriate to the modern day and age. The Crofters (Scotland) Act 1886 was appropriate in 1886, but it does not work in the same way today. That is where the difficulty lies.

The committee has been talking about the tenant's right to buy, but it is the secured tenant's right to buy, not that of a tenant who does not have a secured right of tenancy. As I understand it, the 1886 act, which gave the crofters a right to buy, was based on the fact that crofters have a perpetual tenancy. The land is always subject to crofting; therefore, whether a tenant is paying the landlord £10 a year or giving the landlord £150 to invest in the bank to get £10 a year, the landlord has no interest in the land. Secured tenants have more limited protection than crofters have under the crofting acts, although some of the families will have lived on the land for generations.

In exceptional cases, the tenants' right to buy will be available to tenants who have acquired their tenancies by accident. If granny had let the field next door to the farmer for grazing, but failed to put him off on the 365th day, she would suddenly find that he had an agricultural tenancy and the right to buy. A lot of my work concerns tenancies that have been created by accident. The

question whether tenants who have acquired their tenancy by accident should have the same right to buy as somebody who has a formal lease that has run for years is perhaps a policy matter.

The regime could be set up if it was decided that it would be in the best interests of particular purchasers. However, lots of people would then claim that they should come under the regime and we would have lots of litigation and judicial reviews of whether the right decision had been made.

16:45

Mr Rumbles: But that happens with the community right to buy, where a case has to be made to the minister.

Sir Crispin Agnew: Yes.

Andy Wightman: In principle I see no objection, because conditions apply in other forms of legislation. Were the process to be adopted, the question whether the right should be subject to conditions or whether there should be minimal interference would depend on which side of the fence one falls. One might apply other conditions to the absolute right to buy, such as that it would apply only to secure tenants who had been secure tenants at some retrospective date, such as 1980 or 1990, or that it would not apply to tenants who had recently taken out a tenancy. One might apply conditions whereby the secure tenancy would have to have existed for a certain period of time, such as 25 or 50 years, or it would have to have been granted under the 1949 act. There are many ways in which we could qualify an absolute right to buy. The existing rights to buy, such as those for council or housing association tenants and those around freeholds, feudal tenure and crofts are all qualified to some extent.

Rhoda Grant: We have discussed some of the benefits that the absolute right to buy would give. There would be an economic boost, because there would be something against which to borrow money to improve land. There would be a change in the balance of power, which we discussed at our most recent meeting, because the right to buy would give tenants more leverage with their landlords. Is there any way that those benefits could be obtained without the absolute right to buy?

Andy Wightman: Benefits arise through the steady move towards greater diversity in the pattern of land ownership. Those benefits relate directly to the speed at which the move takes place. Many other measures could be put in place that would increase the speed. It all depends on the urgency with which the Parliament believes we should be moving towards a more diverse pattern of land ownership.

Rhoda Grant: I was really talking about the benefits that flow from the changes to the pattern of land ownership. Other than changing the pattern of land ownership, is there a way of getting people to stay in communities and giving powers to tenant farmers, such as borrowing to improve their farms? I see the benefits, but I cannot see a different way of achieving them.

Andy Wightman: The bill goes some way to achieving the benefits, in that it gives tenants greater opportunities to engage in economic activities in which they have not engaged thus far. The bill is a small step towards that. If we want economic regeneration and growth, we require large numbers of people to have a stake in the economy, usually by owning property. Most people in the city of Edinburgh own their property, rather than letting it from the Fettes Trust, or whoever owned the land when the property was built. There is an incentive to invest. Whatever one might think of the policy of council house sales, if one goes into a local authority housing scheme, one knows the people who have bought from the appearance of their property.

There are few ways of achieving what could be achieved by giving an absolute right to buy. There are no other ways of doing it. Ultimately, we need to promote property ownership. That is the way to secure investment. It is the way that investment is secured in the emergent democracies in central and eastern Europe.

Sir Crispin Agnew: The difficulty is that, at the moment, the tenant has the right to force the landlord to carry out his responsibilities under the 1991 act. The tenant can take the landlord to arbitration and require that the landlord do certain things, such as replace the fixed equipment.

Under the Agriculture (Scotland) Act 1948, the Scottish ministers have a number of powers—which, as far as I am aware, have not been exercised for many years—to require land to be farmed properly, require landlords to provide fixed equipment and require rabbit control measures and deer control measures, for example. If a tenant tries to enforce something against the landlord, the landlord can always start notice-to-quit proceedings—and, as far as legal expenses are concerned, the landlord's pocket is usually deeper.

Remitting everything to the Land Court will not necessarily make anything any cheaper. The real problem is that the 1991 act is extremely complicated. The bill is even more complicated. The draft response from the Faculty of Advocates, in which I was partly involved, commented on the complexities of the bill, which will add to the complexities of the 1991 act. Because the statutory provisions have tried to balance the rights of the landlord and the tenant, rent

arbitrations are now so complicated and the law is so difficult—it involves much consideration of European directives on various support regimes—that we inevitably end up with lawyers and experts on both sides.

I have just done an extremely complicated rent arbitration that involved 10 days of evidence. I received the arbiter's award a week ago, and it runs to 280 pages. The case raised all sorts of difficult and complex legal issues. On the milk quota rental arbitrations—Mr Mann's was unfortunately the first—the Land Court ended up giving fairly detailed guidance on how the complicated milk quota rental provisions had to be construed.

The difficulty is that the 1949 act said that the arbiter would fix the rent on the basis of open-market rent. One arbiter would say that it was £100 an acre, and the next one down the road would say that it was £50 an acre. Parliament decided that it had to try to bring them together, so it made all the rules to try to bring the arbiter's discretion under control. However, the moment that we try to do that, we make the system complicated and end up with lawyers arguing about the finer legal points.

The difficulty with the acts is that they are not well drafted, there are lots of legal complexities and there is mixed law and fact, which is bound to make rent arbitrations and similar proceedings expensive.

Andy Wightman: I will add briefly to my previous response. One could move forward in one other way: by giving an absolute right for secure agricultural tenants to buy their houses. That is being discussed in the north of England. It would be good to give such tenants security so that they would know that they and their children could live in their houses forever without any complications over what the landlord might do.

It would also be good to remove the residence obligations on tenant farmers, so that they could buy a plot of land somewhere else, build a house and stay in the community, and so that their kids could go to the local school. If landlords have no obligation to be resident under law, I do not see why tenant farmers need to be.

Rhoda Grant: You made a comment about not separating sporting rights from the land. If sporting rights were included with the land and an absolute right to buy were introduced, surely that would make the cost of the land—the cost of compensation—so great that it would be out of the reach of a lot of tenant farmers.

Andy Wightman: That might be the case in a very small number of instances, but I do not think that one can generalise across the board. There will be cases in which the sporting rights are of significant value, and others in which their value will be modest. I made the comment because I cannot see that the absolute right to buy, if that were to be considered, is sufficient justification to unpick centuries of tradition in Scots property law in which sporting rights cannot be made a separate heritable tenement.

As I said in a reply to Mr Rumbles, if that causes problems in a few cases, that is the balance that one always seeks to arrive at.

The Convener: As there are no further questions, I will draw the session to a close. I thank both of you for coming to give evidence. In view of Mr Wightman's time constraints, I am grateful to him for putting up with the slight overrun on the previous sessions. The committee has further deliberations to make on the bill. I assure the witnesses that all the points that were made today and last week, as well as those that are still to come, will be taken into account fully by the committee as it draws up its report.

Members will remember that the committee decided to keep aside some time on 12 November in case we felt that, in the light of evidence taken, it was necessary to take evidence from further witnesses. Two panels have been arranged for 12 November, in which we will take evidence from the Scottish Agricultural Arbiters Association, the Scottish Law Commission and the Scottish Land Court. Do members have suggestions about further panels?

Fergus Ewing: I hope that we will be able to hear evidence from a representative of the Scottish Gamekeepers Association. I notice that one such representative has just made a sharp exit from the room. Mr Rumbles has made a similar plea and I know that that association wants to give evidence. Given that much of the evidence concerns gamekeepers' livelihoods, I hope that there may be an opportunity for the association to put its case.

Mr Rumbles: I second that.

The Convener: I entirely support that recommendation. As no member dissents from that view, I ask the clerks to take a note to invite the Scottish Gamekeepers Association to send a representative on 12 November.

As soon as we have finished taking evidence, we will move to consideration of our conclusions. We will then consider our draft report over the following weeks. Can I take it as read that, when the time comes, we will conduct our consideration of the draft report in private?

Members *indicated agreement*.

Richard Lochhead: We discussed briefly the possibility of a site visit to a tenant farm. Is that visit still on the agenda?

The Convener: We discussed it briefly, but I think that I am right in saying that we dismissed it. We decided against the visit because we know the issues involved.

Mr Rumbles: Are we taking evidence from the minister on 19 November?

The Convener: Yes.

To assist with preparation of the draft report, at the end of the meeting of 19 November we should take a brief synopsis of members' views of the options and issues, although we will not go as far as taking votes or moving motions.

Subordinate Legislation

Products of Animal Origin (Third Country Imports) (Scotland) Regulations 2002 (SSI 2002/445)

Bovines and Bovine Products (Trade) Amendment (Scotland) Regulations 2002 (SSI 2002/449)

The Convener: Item 3 is consideration of two items of subordinate legislation under the negative procedure. I will mention briefly that both statutory instruments are in breach of the 21-day rule. However, it is also fair to point out that, as members are aware, I wrote recently to the minister to draw to his attention our discomfort about the number of times that that rule is being breached. Unless members disagree, I propose that we do not comment too heavily on the breaches, as the two instruments crossed with our letter to the minister.

Mr Rumbles: Are you saying that the minister did not receive our strong letter to him before he produced the instruments?

The Convener: Yes.

Mr Rumbles: Okay. On this occasion I will accept that explanation, although I feel very strongly about the issue.

The Convener: I think that the whole committee does. We made that clear in our letter. The Executive can be forgiven this time because our letter and the instruments crossed in the mail.

The Subordinate Legislation Committee considered the instruments and raised a number of points for consideration. The relevant extract from that committee's report was e-mailed to members yesterday and hard copies have been circulated today. As I said, members will note that both instruments raise issues regarding the 21-day rule, which is a subject that we have discussed on previous occasions. Are members content to make no recommendation on the instruments?

Members *indicated agreement*.

The Convener: Just before we come to the end of our formal meeting, it is worth drawing members' attention to the fact that this is Jake Thomas's last meeting as a member of the Rural Development Committee's clerking team. Jake is moving to an infinitely less enjoyable position in the legislation team; I do not know what he has done to deserve that. He has been a faithful servant to the committee and it is right that we record our appreciation of all his work, including the choice of venues around the country.

17:00

Meeting continued in private until 17:22.

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