RURAL DEVELOPMENT COMMITTEE

Tuesday 19 November 2002
(*Afternoon*)

Session 1

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RURAL DEVELOPMENT COMMITTEE

† 29th Meeting 2002, Session 1

CONVENER

*Alex Fergusson (South of Scotland) (Con)

DEPUTY CONVENER

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

COMMITTEE MEMBERS

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

COMMITTEE SUBSTITUTES

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

*attended

WITNESSES

Dr Paul Brady (Scottish Executive Environment and Rural Affairs Department)
Ross Finnie (Minister for Environment and Rural Development)
Douglas Greig (Scottish Executive Environment and Rural Affairs Department)
Alex Hogg (Scottish Gamekeepers Association)
Mrs Mary Mulligan (Deputy Minister for Health and Community Care)
Martin Reid (Food Standards Agency Scotland)
James Shaw (Office of the Solicitor to the Scottish Executive)
Davey Thomson (Scottish Gamekeepers Association)
Lydia Wilkie (Food Standards Agency Scotland)

CLERK TO THE COMMITTEE

Tracey Hawe

SENIOR ASSISTANT CLERK

Mark Brough

ASSISTANT CLERK

Catherine Johnstone

LOCATION

Committee Room 2

† 28th Meeting 2002, Session 1—held in private.

Scottish Parliament

Rural Development Committee

Tuesday 19 November 2002

(*Afternoon*)

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

Agricultural Holdings (Scotland) Bill: Stage 1

The Convener (Alex Fergusson): Good afternoon, ladies and gentlemen. I am keen to kick off punctually, because we have an enormous agenda. I welcome everyone who is here; I am sure that more people will arrive. I have received apologies from Irene Oldfather, Elaine Smith and Alasdair Morrison. I issue my usual reminder about switching off mobile phones.

Agenda item 1 is further consideration of the Agricultural Holdings (Scotland) Bill. Fans will know that this is the fourth day of evidence taking on the bill. We will hear soon from the Scottish Gamekeepers Association, and later from the Minister for Environment and Rural Development. After the witnesses have given their opening statements, members will have the opportunity to ask questions.

Before we begin, I will declare an interest. I have a registered landholding that is subject to a partnership agreement, which I understand will not be affected by the bill. I must ask Jamie McGrigor to declare an interest, because he has not previously attended a meeting of the committee at which we have considered the bill.

Mr Jamie McGrigor (Highlands and Islands) (Con): I am the owner of a farm with no tenants. Therefore, I have no tenancies.

Stewart Stevenson (Banff and Buchan) (SNP): Within the next 10 days, I will acquire a field that is let for sheep. I expect to derive no income from doing so.

The Convener: I am sure that that comes as a great disappointment to you.

Mr McGrigor: Perhaps I should add that I am a grazing tenant of some fields.

The Convener: Thank you. I think that I am right in saying that no other members have interests to declare, unless there has been more field acquisition in the past week.

I am delighted to welcome Alex Hogg and Davey Thomson, who have come to give evidence. They have appeared before the committee on a previous occasion, so they know our procedures. I invite them to make a brief opening statement, which will be followed by members' questions. I intend to close the session at 2.30 prompt.

Alex Hogg (Scottish Gamekeepers Association): Thank you for inviting us to give evidence today. Traditionally, farmers and gamekeepers have worked on the same ground, lived in the same communities and shared life's ups and downs. Our families and lives are interlinked.

The sporting sector, which makes an enormous financial contribution to the rural economy, particularly in the most fragile and remote areas, has not been considered in the drafting of the bill, even though a holistic and informed approach is vital if the bill is to succeed in its aims.

Although we can understand that some people are frustrated by the pattern of land ownership in Scotland, we have much to be grateful to it for. The integrated approach to farming and sporting management by estates allows different land uses to co-exist. Game management brings millions of pounds directly and indirectly into the rural economy through tourism. It also nurtures and protects the habitats and wildlife for which Scotland is famous. In a recent magazine article, Mike Watson, the Minister for Tourism, Culture and Sport, said:

> "According to VisitScotland estimates, some 100,000 trips to Scotland are generated through this sport with these visitors generating some £23 million for the rural economy."

Lord Watson went on to reflect on a visit that he had made, at the SGA's invitation, to an Aberdeenshire estate and on the importance of field sports to an integrated rural environment.

We have heard over the past three weeks that some people are seeking to extend the pre-emptive right to buy to an absolute right. We believe that, in a democratic society, it is totally wrong to force people to sell something against their will. The breaking up of single-ownership properties could do great harm to our members, to local economies and to the environment. The committee may choose to ignore our concern; it may decide to go down the route of allowing an absolute right to buy and resolve to separate the sporting rights from the land ownership. I ask members please to be aware that you are committed to protecting Scotland's biodiversity. Rural communities support not only farmers but the SGA's members' jobs as well, and a decision to allow an absolute right to buy would be difficult to reconcile with that commitment.

In evidence on the bill, much has been said about separating the sporting right from the

ownership of the land. Councillor Stuart Black of the Scottish Tenant Farmers Action Group said:

"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 pointed out that, with a farmer becoming an owner, no such agreement would exist, and Councillor Black responded:

"A similar agreement would have to be put in place on the rights and responsibilities of both owners of that piece of land."—[*Official Report, Rural Development Committee*, 5 November 2002; c 3720.]

Agreements exist between the people who enter into them, but not their successors, and can therefore come to an end.

Fergus Ewing said:

"None of us on the committee would want gamekeepers to be impacted on by the bill. Therefore, we want to protect them".—[*Official Report, Rural Development Committee*, 29 October 2002; c 3668.]

We are heartened by that statement. Members will no doubt understand that there would have to be permanent rights that are ancillary to the right of shooting in order to protect our members' interests; that might well be cumbersome. Legislation concerning owner-occupier rights to shoot deer will also have to be changed if the people whose livelihoods depend on sustainable management of Scotland's red deer are to be protected. We have a list of conditions that we consider would be necessary, which we would be happy to discuss with the committee.

The SGA represents professional wildlife managers and we are committed to defending our members' jobs and protecting Scotland's unique and varied countryside. Because of the points that we have highlighted, we urge the committee in the strongest possible terms not to introduce an absolute right to buy.

The Convener: Thank you very much, Mr Hogg. Do you have anything to add, Mr Thomson?

Davey Thomson (Scottish Gamekeepers Association): No.

The Convener: In that case, we shall move straight to members' questions.

Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP): Welcome, gentlemen. It is a pleasure to be asking for your evidence on a topic other than Lord Watson's Protection of Wild Mammals (Scotland) Bill.

All the evidence that we have heard so far, in particular from people who advocate a right to buy, whether absolute or pre-emptive, has acknowledged the importance of gamekeeping and gamekeepers. We have heard no evidence that I can recall from anyone who does not support your being able to continue to do in the future what you have done in the past. Do you agree?

Alex Hogg: Yes.

Fergus Ewing: So we all want to move in the same direction. Two weeks ago, we heard evidence from Sir Crispin Agnew, who is a legal expert. He made two comments that are relevant to your evidence. First, he said that if Parliament so wishes, it can separate the sporting rights from the land, just as mineral rights and salmon fishing rights can be separated from it. He also said:

"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."—[*Official Report*, *Rural Development Committee*, 5 November 2002; c 3732.]

I think that management rights should exist. You have set out a list of practical points that would need to be taken into account, but do you accept in principle that if Parliament could produce a comprehensive management agreement that would be imported into the contract, that would deal substantially with your objections to a right to buy?

Alex Hogg: I agree, but would that agreement carry on to the next seller?

Fergus Ewing: Such an agreement would have to be binding on singular successors—future owners of the farms—because all the tenant farmers from whom we have heard have said that they want to continue to work with gamekeepers, as you said in your opening statement. No conflict exists; rather, the opposite—co-operation—exists. If such a management agreement could encapsulate provisions on shooting deer, access, stalking ratios and road and bridge maintenance—matters that title deeds would be expected to cover, but which Parliament could require them to cover—would that go quite a long way towards meeting the concerns that you have expressed in your written submission and today?

Alex Hogg: Yes. Working that out could be difficult in some cases, but I see where you are heading.

Fergus Ewing: I appreciate that such matters are not easy to deal with when drafting legislation, but perhaps we could work together with the SGA on that when we consider the bill at stage 2—if it reaches stage 2, which one imagines it will.

Davey Thomson: Provided that there were no detrimental effects on our membership—gamekeepers—or on the wildlife that we protect and look after, we would basically agree with that proposal.

Mr Mike Rumbles (West Aberdeenshire and Kincardine) (LD): I do not share my colleague Fergus Ewing's benign view of some of the

evidence that we have received. I will quote some evidence and ask for your response to it. At our meeting on 5 November, I asked:

"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's reply was "Yes." I followed that question with an important statement to him. I said:

"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."—[*Official Report*, *Rural Development Committee*, 5 November 2002; c 3738-39.]

His reply was "Yes"—it was as simple as that.

The Scottish Gamekeepers Association has provided us with useful written evidence that says that a compulsory right to buy would have a major impact on gamekeepers' jobs and livelihoods throughout Scotland. I am interested in putting a question to you because I am following the logic of what Fergus Ewing said. He implied that if we stay with the bill and support the compulsory right to purchase, everything will be okay, because we can change the law. I do not take that view. If committee members went down the route of compulsory purchase, gamekeepers' jobs would be on the line. Do you still believe that?

Alex Hogg: Definitely.

Mr Rumbles: I wanted to make that clear, because what Fergus Ewing said led us down a different path. Do you confirm what is said in your written evidence to the effect that the compulsory right to purchase would be a direct threat to your members' jobs and livelihoods?

Alex Hogg: Yes.

Richard Lochhead (North-East Scotland) (SNP): I will follow Mike Rumbles's comments about the threat to livelihoods should tenant farmers be given the right to buy. Am I correct to say that owner-occupiers are on estates at the moment?

Davey Thomson: Yes.

Richard Lochhead: Do the current owner-occupiers present any obstacle to your earning your livelihoods?

Davey Thomson: Not really. If they do, the obstacle is limited.

Richard Lochhead: So, to counter Mike Rumbles's point, is it a fair assumption that, if the number of owner-occupiers on any estate were to increase through exercise of the absolute right to buy, that would not really impact on your livelihoods?

Davey Thomson: That is perhaps a dangerous assertion. The number of owner-occupiers on an estate could easily affect us, depending on their views on sport and sporting interests.

Alex Hogg: Each case is different. If a farmer in the centre of an estate had the absolute right to buy, that would devalue the land when it came up for sale. Any prospective buyer would see that he would have no control over the middle of the estate. That could also create difficulties in management of the land. It would all depend on whether good relations existed with the farmer.

14:15

Richard Lochhead: At the moment, a way is found in which the gamekeepers and those who organise field sports can work alongside owner-occupiers. Could a way be found that would ensure that, even if the number of owner-occupiers on an estate were increased, satisfactory arrangements could exist?

Alex Hogg: Do you think that it is right that an owner-occupier has sporting rights at the minute? He is not part of the estate if he is an owner-occupier: he owns a farm that is adjacent to the estate.

Richard Lochhead: Mike Rumbles is putting it to the committee that increasing the number of owner-occupiers on estates will destroy the livelihoods of gamekeepers. I am asking you whether there is a way round that, so that that would not be the case.

Davey Thomson: If such a way is going to be found, the committee has a major task ahead of it. Provided that our livelihoods were not affected, we could not disagree that a solution could be found, but I foresee problems in getting all the farmers to agree to our sporting activities.

Richard Lochhead: I am trying to draw a distinction between owner-occupiers in the future and existing owner-occupiers. If existing owner-occupiers do not present a problem, why should increasing the number of owner-occupiers present a problem in the future?

Alex Hogg: At the moment, an owner-occupier is outside the circle, adjacent to the estate.

Richard Lochhead: There must be estates with owner-occupiers on whose land field sports are carried out because an arrangement has been reached.

Alex Hogg: Such farms do not tend to be in the centre of the estates. If someone owned an estate and wanted to extend their shoot, they would approach a farmer—an owner-occupier—and ask him whether they could have the shooting rights to shoot on his grounds. The farms are not in the

main framework of the estates; they are on the outside, at the minute. Our fear is that, if owner-occupiers farm the land at the centre of the land that we are trying to manage, there could be difficulties unless it becomes law that an agreement—such as Fergus Ewing was on about—is drawn up, stating that A, B, C and D have to be done before the sale can go ahead.

Richard Lochhead: So, there is a way in which the change could be managed.

Alex Hogg: It would be difficult to manage.

Richard Lochhead: Do you agree with Mike Rumbles's assertion that increasing the number of owner-occupiers on an estate will automatically destroy gamekeepers' livelihoods?

Davey Thomson: There is definitely a danger that that could happen.

Mr Rumbles: It is not my assertion that Richard Lochhead is citing. I received today—as, I hope, did other members—a copy of "The Scottish Gamekeeper". On page 21, under the heading "Wake up Time", it states:

"It is time for everyone who shoots, stalks, fishes or has a business interest in rural Scotland to wake up to the threats surrounding them".

It continues:

"The Agricultural Holdings Bill could fragment rural Scotland – (if the Absolute Right to Buy is incorporated into the Bill as it threatens to be), gamekeepers will lose their jobs and their homes!"

Is that your belief? Do you stand by that statement?

Davey Thomson: Yes.

Rhoda Grant (Highlands and Islands) (Lab): What would be the effect on farmers if there were no gamekeepers around to manage pest control, deer numbers, and so on?

Alex Hogg: There would be a host of effects. In the north, where Davey Thomson works, red deer maraud on to turnip or barley fields and need to be controlled. If a farm has sheep and lambs, but there is no gamekeeper, the farmer is likely to lose a lot of lambs. When farmers try to establish barley or other crops, crows can do a horrendous amount of damage. Those are the main effects.

Rhoda Grant: So, given that most farmers are not experts in pest control, a reduction in the number of gamekeepers who manage pest control would not be in farmers' interests.

Alex Hogg: That is correct. In my area, we supply a free service to the farmer whose land marches with ours because we kill foxes as a matter of course to create a bigger buffer zone.

Rhoda Grant: So it would be in farmers' interests to come to an agreement with estates on the use of gamekeepers to ensure that pests are controlled or that shooting continues, if that is a lucrative part of the tourism industry in the area.

Davey Thomson: Yes—provided that the farmer agrees that pests should be controlled. If the farmer is a hunting person he might not want the foxes to be controlled, which could lead to confrontation. The gamekeeper might require foxes to be controlled, but if the hunting fraternity wants to hunt, it might prefer to leave the foxes. Of course, that is illegal now.

John Farquhar Munro (Ross, Skye and Inverness West) (LD): We have heard from various witnesses—we were advised last week by a legal expert—that the sporting rights on land do not always fall to the farm. I am inclined to accept that statement, which was put forcefully. As the witnesses will know, many estates up and down the country contain several farms. If the right to buy is included in the bill and if the farms on an estate exercise that right, the sporting right over the territory would not change and would be retained by the estate proprietor. I do not understand your argument that if a farmer buys part of an estate, your job would be diminished and you might lose your home on the estate. I cannot see how you justify that statement.

Alex Hogg: I can think of a scenario in which a tenant farmer who rents half a grouse moor buys the farm. In that situation, his objectives might change. For example, he might increase the numbers of sheep or do other things to the grouse moor that would cause the grouse to leave or to die. Therefore, the gamekeeper's job would be in jeopardy.

John Farquhar Munro: I do not anticipate that farmers who buy their farm will, all of a sudden, increase greatly their stock or their activities. As a consequence, the activities of the estate or the proprietor would remain as they were before the farm was bought. There might be an existing arrangement between the farmer and the proprietor about culling deer when there is a complaint about deer, or pest control might be carried out jointly between the estate and the farmers. I do not understand why you are afraid that farmers buying their farms will affect your situation adversely.

Alex Hogg: I know of cases in which two land uses conflict because the farmer wants sheep or cows and the gamekeeper wants grouse. If the farmer buys half of the estate, he might burn great stretches of heather in a oner and he will not manage the land in the interests of wildlife.

The Convener: Several witnesses have said that good landlords have nothing to fear either

from the bill as introduced or from the absolute right to buy. Where the relationship between landlord and tenant is good and productive—as it is in many instances—it is unlikely that the right to buy, be it pre-emptive or absolute, will be used. Where an absolute right to buy is taken up, it can then be assumed that the existing relationship between tenant and landlord is not very good, or certainly could be much better.

For example, a tenant who buys his farm must sign up to full right of access at all times, presumably to the ex-landlord. The tenant must also agree to stocking ratios for hill-grazings and to maintain roads, tracks and bridges, even if they are not required for the farming operation. Tree planting is another issue. Shelter belts might be very productive for farming, but they could affect the make-up and balance of the shoot. Where the relationship between landlord and tenant is not very good in the first place, is that arrangement likely to work?

Alex Hogg: No.

The Convener: That answer was much shorter than the question.

Mr Rumbles: Far be it from me to disagree with my friend and colleague John Farquhar Munro, but Sir Crispin Agnew said in evidence:

"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."—[*Official Report*, *Rural Development Committee*, 5 November 2002; c 3732.]

The issue, according to Sir Crispin Agnew, is that sporting rights cannot be separated from the land. If we recommend a change to the compulsory right to buy under current law, would your association and members be seriously disadvantaged?

Davey Thomson: Yes.

Fergus Ewing: In the interests of accuracy, Mike Rumbles is quite right to say that the current law does not provide for separate sporting rights. He also said that there would have to be statutory provision for sporting rights to be separately owned, which would require management agreement. Currently, there is no absolute or pre-emptive right to buy; that is the law. We are making statutory provision for a right to buy, and we have the power to make statutory provision that sporting rights should not apply to that right to buy.

Is it correct that the bill makes no mention of any compulsory right to buy? Mr Rumbles used that phrase on three or four occasions. The right to buy is not compulsory, nor is anyone suggesting that it be made compulsory. That would be a total nonsense. Can that be clarified?

The Convener: We will discuss future legislation and whether the wording needs to be altered when the committee goes into private session shortly to agree the terms of the report.

Mr McGrigor: I am obviously extremely worried about the loss of gamekeepers' jobs. An experiment at Langholm removed gamekeepers from an area of ground that had been a very productive grouse moor. Did that result in an immediate decrease in the grouse population?

Alex Hogg: Five gamekeepers lost their jobs through the experiment at Langholm. When they tried to reintroduce harriers there, they asked the head gamekeeper, Brian Mitchell, what he thought the ground could stand. He said that the ground could possibly take another pair of harriers on top of the two pairs that were already on the ground. The grouse moor was viable. At the end of the five-year experiment, there were 28 pairs of harriers and no grouse, and the five gamekeepers lost their jobs. There are now two pairs of harriers again, but there is no wildlife left in the area because crows and foxes have eaten it all.

The Convener: On that note, thank you for giving evidence. I am sorry that the session was slightly truncated because of our large agenda. You are welcome to observe the rest of the afternoon's proceedings.

14:30

Meeting suspended.

14:31

On resuming—

Scallop Industry

The Convener: Members will recall that the committee has examined issues affecting the Scottish scallop industry on several occasions, with a particular focus on amnesic shellfish poisoning. Most recently, on 8 October, the committee took substantial evidence on ASP and the proposed technical conservation measures for the scallop fishery. Following that meeting, the committee wrote to both the relevant ministers with several questions and recommendations. Members have the papers containing the ministers' responses and supplementary letters.

Today, we will hear from the Minister for Environment and Rural Development, Ross Finnie, and the Deputy Minister for Health and Community Care, Mary Mulligan, who is, if I remember correctly, an ex-member of the committee. Mary Mulligan is here to discuss ASP only, while Ross Finnie will be able to deal with ASP and the technical conservation issue.

The Deputy Minister for Health and Community Care (Mrs Mary Mulligan): The officials in attendance from the Food Standards Agency Scotland are Lydia Wilkie and Martin Reid. They have attended previous committee meetings, so members will be familiar with them.

The Convener: I am sure that they remember those meetings.

Mrs Mulligan: I am sure that they do.

I thank the committee for inviting me to discuss ASP. The Food Standards Agency Scotland, which is developing options and recommendations on the proposals for a tiered system for ministerial consideration advises me on matters relating to food safety. The options will take account of all relevant factors, such as the impact on the scallop industry and the legal framework within which we must operate.

The committee has heard from Martin Reid, of the Food Standards Agency Scotland, and from Paolo Caricato, of the European Commission, on the proposals for a tiered analysis regime. Therefore, I will take this opportunity to update the committee on the actions that the agency has taken since that committee meeting. Following a request at that meeting, the agency wrote to the European Commission about the ASP action level for scallops. The agency also wrote to invite members of the scallop industry to meet officials to discuss progressing the tiered system proposals.

With a view to researching a suitable traceability system, agency officials have met representatives of two traceability software companies and will attend a further meeting at the end of this week. I am aware that the agency agreed to visit a large processor to examine the traceability system that it employs. The industry has been unable to accommodate the agency as yet, but it has offered assistance in arranging that meeting.

A full regulatory impact assessment is being prepared to be presented alongside recommendations to ministers using financial information that has been received through extensive consultation. The agency will liaise with Executive colleagues and use data from the recently published report on the economic impact of toxin closures. I assure the committee that the regulatory impact assessment will contain a thorough quantitative assessment of the proposals' effect on the scallop industry. I am happy to take any questions.

The Convener: Does Ross Finnie have anything to add?

The Minister for Environment and Rural Development (Ross Finnie): Not a lot. However, I will take the opportunity to introduce the officials who accompany me. On my right is Dr Paul Brady, who is the head of fisheries and rural development in my department, and to his right is Gabby Pieraccini, who is in charge of inshore fisheries.

I will set the record straight on a matter of which the convener is aware, following my letter to him. Public health is a matter for my colleague Mary Mulligan. My role and remit and those of my department are to become involved in how ASP or any other disease might impact on the sector as a whole. It is not for us to determine or adjudicate on whether such measures are appropriate. The measures are entirely for the Minister for Health and Community Care and for the Food Standards Agency Scotland.

I emphasise that at no time has my department underestimated the difficulties that ASP has caused. We commissioned an economic analysis from EKOS Ltd, which highlighted some of the difficulties that closures have caused. The Scottish Scallop Advisory Committee will fully consider that analysis. Members might recall that that committee was established under Rhona Brankin and has the job of bringing all stakeholders together to discuss matters of importance to the sector.

We are aware of the sector's concerns about the potential outcome of whatever decision the Minister for Health and Community Care and the Food Standards Agency Scotland make and of the decision that the Commission makes about the testing that will be introduced. That has been

brought to our attention several times. We continue to discuss with the industry how we will deal with that and the commercial decisions that the industry might or might not take.

We have been approached about compensation. We have consistently said that we have followed the policy of successive Governments on compensation for losses incurred as a result of toxin closures. We do not make payments for them.

My officials have had positive initial discussions with colleagues in the Fisheries Research Services about the possibility of commissioning new scientific work to examine issues such as the ASP trigger and action levels. We are concerned about how the system and the industry operate. The results would be a matter for determination elsewhere. That has been progressed at the Scottish Scallop Advisory Committee.

I am sorry that I cannot contribute hugely. Later, I will deal with conservation measures. My job is essentially to liaise with the industry. We deal with it directly and my officials deal with it regularly. We communicate the industry's concerns internally, but attempts to direct how and on what basis public health decisions should be taken are passed on to the health department, the Minister for Health and Community Care and the Food Standards Agency Scotland.

The Convener: Thank you, minister. We can assume that Mary Mulligan will answer most of the first round of questions, but if you want to add anything, I will happily bring you in on the impact on the industry.

Mr McGrigor: Minister, you will understand that the majority of the fishing industry considers the ban on scallop fishing to be somewhat draconian, considering that there has not been a case of illness in Scotland from eating Scottish scallops—

The Convener: I am sorry to interrupt. I tried to make it plain, though perhaps I did not make it clear enough, that the first round of questions should focus on ASP.

Mr McGrigor: My question concerns ASP. One of the points in question is the portion size of scallops that was used to determine the trigger level. The portion size is 12 king scallops. Most people who eat scallops would agree that it is unlikely that anyone would eat such a portion—most people would be sick before they had finished 12 king scallops. The portion size is generally considered too large.

I also gather from the secretary of the Western Isles Fisheries Association that financial instrument for fisheries guidance funding has been sought to facilitate a survey on portion size, which the European Commission requires to ascertain the correct portion size. Would it not be a good idea to wait until the evidence of that survey is received, before settling on a trigger level of 4.6 micrograms per gram, which will shut down most of the scallop fishing waters off the Scottish coast?

Mrs Mulligan: This is the Weetabix question—how many can you eat? Clearly, the scientific evidence must be balanced against the assumed number of scallops that people are consuming and the damage that that amount would cause should the scallops be infected with the poisons. Therefore, although we are pleased that no one has been ill, in the absence of empirical evidence we must use the scientific advice to guide us on the level at which the trigger should be placed. Given that the trigger was set at 20 micrograms per gram for the whole scallop, testing one part of the scallop requires that a pro rata estimate be made, which is why we decided to set the level at 4.6 micrograms per gram.

I am aware that, in previous discussions, the committee has suggested that the scientific evidence must be reviewed. The agency has made representations to Europe to continue to review that. The process will be on-going and will take time, but we are already in a situation where it could be suggested that we are not complying with the directive. Therefore, we must consider the options to bring us into compliance. One option is a tiered system, on which the agency has been consulting—it will provide ministers with its recommendations.

Mr McGrigor: My point was that FIFG funding was sought to facilitate a survey, whose results we should wait for before making a decision. What is your reaction to the fact that 90 per cent of the toxins in a scallop are in the gut and the mantle and can easily be removed by fishermen? Will we see an industry destroyed because that process is not allowed to happen?

14:45

Mrs Mulligan: We do not want to see an industry destroyed. By maintaining confidence, we believe that we will support the industry's continuation for many years.

Mr McGrigor referred to the survey that is being conducted. Obviously, we will await the results of that survey. We cannot make an alternative decision until we have that outcome, so we must continue the discussions about how we should test for ASP in scallops.

Stewart Stevenson: I shall try to break my questions into small chunks. To what extent has the minister's department been involved in obtaining a derogation from Europe's basic limit of 20 micrograms per gram?

Mrs Mulligan: The FSA sought the derogation following discussions with the industry.

Stewart Stevenson: I just wanted to be certain about who took the lead.

You say that a tiered option is being developed, and we have seen some information already. On what timetable is that option being developed?

Mrs Mulligan: The tiered testing is being consulted on.

Stewart Stevenson: I wrote the words "tiered option being developed" during your opening remarks. I am checking what you meant when you said that.

Mrs Mulligan: The tiered option is not in development, but is being consulted on.

Stewart Stevenson: Section i) of Malcolm Chisholm's letter says:

"To date, no significantly different proposals have been put forward to that suggested by the Agency which would fulfil the requirements of the Directive and the Decision."

Do you agree that that is predicated on working within the decision and the present derogation?

Mrs Mulligan: As far as I am aware—I will ask officials to clarify the matter—

Stewart Stevenson: I think that Lydia Wilkie is nodding her head.

Mrs Mulligan: As far as I am aware, no other suggestion has been made. I will check that with Lydia Wilkie.

Lydia Wilkie (Food Standards Agency Scotland): The proposals that we are developing must meet the requirements of the existing decision, because otherwise the legislation that the Scottish ministers might introduce will not meet our European requirements.

Stewart Stevenson: If other proposals are made to simplify a tiered testing system—I use that only as an example—could the derogation be renegotiated? Would you intend to do so if appropriate proposals were made?

Mrs Mulligan: If proposals were presented to us, we would need to ensure that they fulfilled the directive's requirements. If they did not fulfil those requirements, but might fulfil the terms of the Commission's decision, we would investigate the possibilities further with Europe. We have always said that we want to reach a negotiated settlement that is acceptable to the industry and will allow us to remain within the guidance that Europe has given us. Therefore, we are more than willing to discuss any other suggestions that have been made, provided that they keep us within the directive.

Stewart Stevenson: The comment that we are open to returning to Europe and to renegotiating the derogation is important. That is likely to offer the prospect of a way forward. I see that the convener is anxious to allow other members to speak. With his consent, I might ask questions later.

The Convener: If that is possible, you will.

Rhoda Grant: Minister, would you consider delaying the implementation of the tiered testing system, given that science is being carried out that could affect the derogation?

Mrs Mulligan: As I said, someone could claim that we are not complying fully with the directive. We are therefore anxious to move on that matter to ensure that we are in full compliance. As I said to Mr Stevenson, we want to reach a settlement that most people will find the most acceptable. However, that is becoming more difficult the longer we are in this situation. Although we are concerned about delaying implementation, the inquiry and the consultation process over the summer have presented opportunities for people with an interest to suggest alternatives that can be examined in the light of the directive.

Rhoda Grant: Are you willing to find out whether the time scale in which scientific research is to be completed will allow you to delay the tiered testing system?

Mrs Mulligan: The difficulty is that the science is an on-going process. Although we have asked for a further scientific review, that might be delayed because of the demands on those who would carry it out. As a result, it would be difficult to say that we could delay the introduction of the tiered testing system until we received the results of the research. However, the science does not stand still. Because we are continually learning new things, we would have to keep it under review anyway.

Rhoda Grant: The committee has heard evidence that details simple ways of including traceability in the tiered testing system. The industry is hugely concerned that a bureaucratic system of traceability could put a lot of operators out of work because of the pressure of fulfilling the criteria, keeping all the forms, trying to second-guess where they might be fishing on a certain day and so on. Will you assure us that work will be carried out with the fishing industry to ensure that the system has the most simple form of traceability that will provide what is needed without requiring a lot of bureaucracy?

Mrs Mulligan: The FSA has been considering the committee's points about the traceability system. Obviously, there were concerns about how bureaucratic the system could become. As we do not want that to happen, the FSA is

examining how to improve the situation and is discussing the matter further with the industry, which has said that it will be able to provide a simpler system. We hope that that on-going discussion will help to improve the original proposal.

Rhoda Grant: Could we run a traceability system pilot before the tiered testing system is introduced to ensure that it has no negative impacts on the industry?

Mrs Mulligan: I suspect that that might be possible, but I could not give you any details about it at the moment.

The Convener: In answer to Rhoda Grant's first question, you said that you would not want to delay implementation too long. However, that response suggests that there is room for delay. Can you quantify that for us? How long a delay is too long? How long would you be able to delay?

Mrs Mulligan: At the previous meeting, the FSA said that it was keen to make recommendations to ministers on how to proceed by the end of the year. However, if we were having very full discussions about how to take the matter forward, we would not want to curtail them. The difficulty is that no alternatives have been suggested. As a result, there is no reason for us to delay implementation any further. We need to pursue any suggestions or points that people might have as quickly as possible.

The Convener: Are you happy that all the alternatives have been sought?

Mrs Mulligan: I am happy that the consultation process has been widespread and has allowed people to suggest any alternatives.

Fergus Ewing: The minister will be aware of the evidence that we took from the industry on 8 October that the effect of the FSA's proposed tiered testing method would be "catastrophic" and "disastrous". The committee accepted that evidence, which came from across the board. We all want to work with the FSA. However, the minister has probably not specifically considered some adminicles of evidence. Is she aware that the FSA gave an undertaking to the Scottish Scallop Advisory Committee that, prior to the publication of the consultation paper, the SSAC would be consulted to ensure that the industry in partnership with the FSA could propose a practicable scheme, not an impracticable one? Sadly, that undertaking was not adhered to, as Mr Martin Reid admitted in his evidence on 8 October. Were you aware of that?

Mrs Mulligan: I am aware of the answer that was given on 8 October. However, as I said in response to the convener, the consultation process has been wide enough to involve as many contributors as possible. We remain willing to accept contributions that people have to make.

Fergus Ewing: The industry is anxious to work with the FSA, but is the minister aware that the industry has still not received the data on which the ASP working group's report was based? Should not the industry receive that raw data now?

Mrs Mulligan: All relevant information should be made available to all those who are involved. There is no reason to be secretive. All of us have the industry's interests at heart. We need to have some open dialogue about progress.

Fergus Ewing: I agree absolutely. In that spirit, are you aware that the FSA had sight of the ASP report in January 2001, but that the industry did not get hold of it until November 2001 and that was only because the Commission, not the FSA, provided the industry with a copy?

Mrs Mulligan: As two FSAS representatives are present, perhaps they could explain the process for providing such information.

The Convener: That would be useful.

Lydia Wilkie: It is important to say that that report belonged to the Commission. Releasing it was not in our gift. We released parts of the information because they related to our country. Over several months, we sought the Commission's agreement to release the document. That took longer than we wished, but in the end the Commission agreed to release all the scientific information. My colleague Martin Reid probably knows more about the detail, if you require that information.

Fergus Ewing: I will make progress, because much ground must be covered. The Deputy Minister for Health and Community Care said that the FSA sent a letter to the European Commission following the committee's evidence session on 8 October. I believe that that was an attempt to progress the science, which the industry challenges. Has the FSA provided the industry with a copy of the letter that it sent to the Commission? Was the industry involved in that letter's compilation, to ensure that industry input was maximised and that we had the benefit of the knowledge and experience that the industry's information provides?

The Convener: Mr Reid has been elected to answer.

Martin Reid (Food Standards Agency Scotland): We wrote to the European Commission just a few days after the committee's meeting on 8 October, as the committee requested. The letter took the form that the committee suggested, which was to ask that the Commission consider reviewing the action levels as set out in the directive. That was all that it was

necessary to do at that time. The Commission indicated that it is prepared to consider that in conjunction with the request for a study into portion size. That will now be referred to the Community reference laboratory in Vigo, in Spain. The matter will be taken forward at a European level; it is now up to the Community reference laboratory to consider the proposal in the context of its other work. As soon as we hear the outcome, we will advise all those concerned of the response.

15:00

Fergus Ewing: With respect, that did not answer the question, which was whether you would provide the industry with a copy of the FSA's letter to the Commission. I hope that the answer to that is yes, because I cannot see why it should be kept secret if we are to be open.

Will the FSA give an undertaking today that it will be completely open and willing to work with the industry to try to provide a workable solution to some of the problems and questions that have come from MSPs of all parties?

Martin Reid: On your first point, we would be more than happy to provide a copy of that letter to the industry, to committee members or to anyone who would like a copy.

On the second point, I feel that we have to date worked openly and closely with industry through three written consultation exercises, numerous public meetings—including five this year—through the Scottish scallop advisory committee and through attendance at industry meetings, at which we discussed the issues. We have been open, transparent and approachable throughout the whole exercise, although I accept the point about the written consultation paper and the Scottish scallop advisory committee. Aside from that, I think that we will continue in the vein in which we have already operated, working closely with industry and the enforcement bodies to develop proposals and, hopefully, improve the proposals that we have already tabled.

Fergus Ewing: I am grateful for that.

Do you accept the evidence from Dr Colin Moffat of the marine laboratory? In his submission of 17 October 2002, on the science of your proposals, he said that the methodology was flawed. In particular, he referred to the lack of any basis for the test's being based on a 1:1,000 ratio. Do you accept that?

Martin Reid: We can only take the advice of the scientists who put forward the recommendations to the European Commission. The decision about what should go into the recommendations was based on that scientific advice.

Fergus Ewing: I understand that, but if you feel that Dr Moffat is right and the science is wrong, your advice to ministers must surely reflect that. The Deputy Minister for Health and Community Care has told us that her response has to be "proportionate" to the health risk. If you are saying that your role is to provide her with advice, that advice must be based on your actual views. Is it your actual view that Dr Moffat is correct, and that the methodology under the current rules is at best questionable and probably wrong?

Martin Reid: That is one of the scientific points that must be pursued in Brussels. I am not a scientist and could not sensibly comment on a paper produced by a scientist. We rely on the national marine laboratory to give us advice.

Fergus Ewing: But is the FSA not in the business of giving scientific advice? If you cannot do it, are you admitting that you cannot perform your function?

Martin Reid: We seek the best scientific advice available at any given time on any given issue.

Fergus Ewing: Is it not the marine lab that provides the best available advice? I thought that it was.

Martin Reid: With respect, the marine lab was part of the team that negotiated, or rather discussed, the proposals that led to the development of the detail that makes up the Commission's decision, including the trigger levels. The FSA's negotiating position in Brussels, which is clearly documented, was that the trigger level itself was not necessary, provided that comprehensive end-product testing was in place. That perhaps goes to an even more fundamental level than the point that Mr Ewing is making.

Fergus Ewing: I have some final points to make, and the minister may wish to resume answering. First, the current rules were not based on testing scallops off Scotland, but on testing mussels off Canada. Will the minister confirm that the necessary new research into the biochemistry, specifically the reaction of domoic acid, not in mussels, but in scallops, with the other two acids involved, will be funded through the financial instrument for fisheries guidance?

Secondly, will no decision be taken on ASP and no regime be implemented until such time as we, and the industry, have a chance to study the outcome of all the research on both portion size—which Jamie McGrigor mentioned—and on the biochemistry? Once we have had a chance to consider all the scientific advice, would it then—and only then—be the time to make a decision? Furthermore, may we rest assured that that will not contravene European law?

Mrs Mulligan: I am aware that the original advice was partly based on tests on mussels from Canada, but the advice is that similar circumstances can arise with scallops from Scotland. We have to take cognisance of that fact.

As I said earlier in response to a question from Rhoda Grant, the scientific research that we are requesting will continue to examine the catch from within the Scottish shores. We will therefore have a firmer base on which to take our decisions. However, the question remains about the time scale for taking the issue forward. I urge those within the industry who want to discuss the matter further to make contact now with the Food Standards Agency Scotland and discuss it further. We want to take the matter forward in a way that will not be damaging to the industry but will maintain the safety of all those who might consume the scallops. To do otherwise would put the industry at risk and I would not want to be responsible for that.

Stewart Stevenson: When did the industry last contact your department?

Lydia Wilkie: We last wrote to the industry at the end of last week and we have been in telephone contact about traceability systems, attempting to progress the matter. We have been actively pursuing the industry.

Stewart Stevenson: I ask the minister what she means when she asks the industry to be in contact with the FSAS. Lydia Wilkie's answer appears to suggest that a regular and focused series of conversations is taking place.

Mrs Mulligan: I was in no way criticising anybody for not speaking to anybody else. What I am saying is that we do not have an alternative proposal to the tiered system that we could investigate. If there is such a thing, Mr Stevenson, I would obviously urge the FSAS to investigate it. So far, such a proposal has not been made.

Richard Lochhead: Given that most of the questions have been asked, I will try to be brief. The minister said that, if we do not adopt a tiered system soon, we would have to fulfil the obligations under the directive in full. What pressure is on the Scottish Executive to bring the issue to a head and where is it coming from? Is there a deadline?

Mrs Mulligan: There is no deadline as such except for the fact that the directive has been issued. It is up to the Executive to initiate the procedures to fulfil the directive. That is what we are seeking to do, but there is no deadline in terms of a date.

Richard Lochhead: Is it fair to say that Europe is not exactly banging your door down to get the directive implemented? We have seen France break the law over the ban on Scottish beef and Europe doing nothing about it. When France eventually allowed Scottish beef back into the market, Europe took no action despite the fact that France had waited years to do so. Is it fair to say that the Executive could easily allow implementation of the directive to be delayed, wait a year or two and get the science sorted out or whatever it takes and that, if it did that, Europe would not bother?

Mrs Mulligan: Is Mr Lochhead suggesting that the Executive should not fulfil its part with regard to European Council directives?

Richard Lochhead: All I am saying is that, if there is a case being put, you should wait until the science has reached some sort of conclusion. Perhaps it is worth waiting if you are under no pressure to bring the issue to a conclusion.

Mrs Mulligan: I will turn that suggestion on its head and say that I have some concerns that, were we not to ensure full compliance with the directive and someone was made ill, we would be in grave danger of not having fulfilled our obligations. There is, therefore, some pressure to move along the right path, but I have tried to make it clear today that we are anxious to ensure that we do so in collaboration with the industry, which, I am sure, also wants to ensure that we are offering a safe food product.

The Convener: I am assuming that you are aware of the number of people who have suffered from ASP since it was discovered: to wit, none.

Mrs Mulligan: Yes, but none of us wants anyone to die from it, do we?

The Convener: I am quite sure that we do not.

Richard Lochhead: What could happen in the next few months that has not happened in the past few years that would cause someone to be ill?

Mrs Mulligan: I am not a fortune teller, unfortunately, but I believe that we must make some progress, given that the directive has been issued.

Mr McGrigor: Minister, you say that you are told that the poison can exist in scallops, but I must reiterate that there is no case of that ever having happened in relation to scallops. In fact, scallops have the best shelf life of almost any shellfish. Furthermore, before the testing regime was started, using the 20 micrograms per gram level, hundreds of tonnes of scallops were harvested without a case of poisoning appearing. You say that you do not want to destroy the industry, but the Food Standards Agency is spending an enormous part of its budget looking for a poison that does not seem to be a problem. With respect, for no apparent reason you and the Food Standards Agency are pushing towards ending the scallop industry as we know it.

When Paolo Caricato spoke to us in October, he suggested that the FSA, which is the competent body, had suggested using the tiered testing system and that, if we wanted to do it another way, we should apply to Europe to say that we did not agree with the suggested way. If we use the level of 4.6 micrograms per gram, nearly all the scallop grounds in Scotland will be closed. Surely there must be a better way to go about testing if we do not want to destroy the industry, minister.

Mrs Mulligan: We have no intention of destroying the industry. We are more than willing to consider alternatives to our current course of action, which is why I am asking whether there are any other suggestions for ways in which we might make progress. The bottom line for the health department, which I represent, is food safety. The available science gives us the levels that we are using. Until we can prove that those levels are not correct, we must continue to use them.

Mr Rumbles: I ask this question as a layman, minister. Your responsibilities lie in public health and one of your remits is to ensure that the general public are not poisoned by the food that we eat. Could you tell me, in a comparative way, what the most dangerous foods are for the Scottish consumer? At what danger level would you place scallops?

The Convener: I ask you not to go through the foodstuffs one at a time, minister.

Mrs Mulligan: I was just wondering about the libel rules in case a particular brand was mentioned. At the moment, I am dealing with questions on scallops and my concern is for producers and consumers in the scallop industry. Our decisions depend on the advice that I receive, which is scientifically based, and the current advice is as you have been told.

Mr Rumbles: As a layman, I want to pursue the point, because I want to understand the relative dangers to the Scottish public. You are moving to protect the Scottish public against a danger from scallops. I am asking for a comparison. What is the level of danger to the Scottish public from other foodstuffs for which you have responsibility? What is the problem for public health in comparison with other foods that are consumed in Scotland?

15:15

Mrs Mulligan: Since taking on the role of deputy minister, I assure you that I have received regular updates from the Food Standards Agency on a number of foods that may pose a risk. On several occasions, foods have been removed from shelves and stores, and we respond as and when we have the information available. The scientific information that is available at the moment is that we need to test scallops at the proposed level to ensure that we maintain our good record of people not being affected. Until we can provide scientific evidence to the contrary, it would be foolhardy, to say the least, to ignore it.

Mr Rumbles: I am trying to follow the logic. You say that there is a potential risk to the health of the people of Scotland from eating the product, but there is no evidence that anybody has suffered from such poisoning. Are we saying that we are not interested in comparing scallops with all the other food products that we examine? Why are we pursuing this issue when so many jobs are dependent on the scallop industry? As a layman, I would imagine that there are far greater problems with food products in Scotland for which the Food Standards Agency and ministers have responsibility. Why is the effort being made on an industry that does not cause any ill health when anecdotal evidence says that there is a lot of ill health elsewhere?

Mrs Mulligan: Information is provided to people to ensure that they do not become ill from other food products. This is not an isolated case. Your committee may have chosen to discuss it, and there are genuine concerns about the future of the industry, but we take similar action about risks from other foods as well.

Mr Rumbles: So if there are problems with particular foods in Britain and people suffer illness, you will recommend proposals to close down the industry?

Mrs Mulligan: We continually issue information on food safety, which may result in foods being withdrawn from consumption. We continue to advise on the preparation of foodstuffs, and all factors are taken into account. The situation with scallops is obviously causing us great concern, and the committee is pursuing that concern.

The Convener: I am keen for us to make progress towards technical conservation measures, but several members have points to make. I hope that both questions and answers will be brief.

Rhoda Grant: Given the concerns about the science and the fact that scientific projects that could pin the matter down once and for all are either continuing or about to start, can we ask the Commission for a delay in our implementation of the directive? That might also be useful in speeding up the scientific research and making the projects a more urgent priority.

Mrs Mulligan: If we were to implement the Commission decision for derogation, it would expect us to introduce complete scallop testing, which is what other countries in the same situation are having to do. We could delay the implementation of a tiered system, because that is

our derogation, but we would be expected to comply with whole scallop testing.

Fergus Ewing: Surely you are not suggesting that a decision will be taken before the results of the research that I mentioned are available and are studied?

Mrs Mulligan: Any decision will be taken once we have as much sound scientific evidence as we can ascertain, and with the advice of the Food Standards Agency.

Fergus Ewing: That is not a particularly heartening answer. Are you aware that the industry has already submitted certain proposals?

Mrs Mulligan: To whom?

Fergus Ewing: To the FSA.

Lydia Wilkie: Can I—

Fergus Ewing: May I stick with the minister? I know, for example, that on 19 September the Mallaig and North West Fishermen's Association made proposals, which were subsequently rejected by the FSA on 18 October, although they were rejected on grounds that seem to me to be seriously questionable. Is not that something that your department, minister, might want to look closely at now, given that you did not seem to be aware that the proposals had been made?

Mrs Mulligan: I said in a previous answer that any proposal for an alternative scheme would need to be tested against whether it complied with the directive. If the FSA has responded that that is not the case, further discussions need to take place. However, I said that no schemes had been proposed that would allow us to comply completely with the directive.

Fergus Ewing: Yes, but with respect minister, should not your civil servants start to take a close look at the reasons why the FSA said that the scheme—which seems to be practical and workable—has been rejected? The reasons seem to me to be flawed. Is it just entirely up to the FSA? Surely your civil servants should take a close interest? If they do not, we will see the sacrifice of an industry, because apparently we are not willing to challenge, examine or reconsider the advice of the FSA.

Mrs Mulligan: The FSA continues to work closely with the civil servants in the department. These matters will be examined on their merits. Should a scheme be proposed that satisfies the directive or the decision, I would expect the FSA to put it forward as part of the recommendations that will be made, and to provide me with that information. I am not aware that that is the situation at the moment.

The Convener: On that note, we must draw the discussion to a close. I am sure that the minister will have picked up the genuine concern of all members of the committee that the decision is in danger of being rushed. In particular, I suspect that we will communicate with you to the effect that we can see little reason for not delaying—you have already stated that there is room for some delay—to await the full scientific evidence to back what is to be implemented. That is the concern of this committee.

Thank you for giving us evidence and for answering questions. We are moving on to technical conservation measures, so if you wish to leave us—hard though it may be—please feel free to do so. Thank you for attending.

Mrs Mulligan: Obviously, I am also concerned about the future of the industry. We will continue to examine any options that will allow us to make proposals on which we can get agreement.

The Convener: Thank you for that.

I am aware that Ross Finnie has sat patiently for more than three-quarters of an hour. I thank him for doing so, but I am sure that he will understand that it was important that he was here during that session in case he needed to make a contribution.

We move to the technical conservation measure aspect of this fishery. I begin by asking Ross Finnie if he wishes to make any opening remarks.

Ross Finnie: Thank you, convener, for your concern, but as I am with you for most of the afternoon, I had geared myself up for the excitement of that prospect.

We all start from the same standpoint. We ultimately want the same thing, which is a sustainable future for the scallop industry. I do not think that any of us would wish to see affecting the scallop sector the same problems that over the past decade or more have affected other fisheries around our coast.

The Executive's proposals contain many points on which there is broad agreement across the sector, for example the limits on French dredges and regulations on dredge design. However, a large part of the sector is now opposed to proposals for weekend bans and restrictions on the number of dredges per side. I recognise that and I have been listening to what has been said since those proposals were announced.

I am also aware that new information will soon become available. We expect to see the latest scientific evidence on the state of the stocks in the next few weeks. We will also receive an industry-sponsored report, the Ecodredge report—please do not ask me what that means—on aspects of the industry, including various technical recommendations. I am conscious that that will be relevant in the context of conservation measures.

Briefly, my position is this: I want to act in a way that is demonstrably fair and effective; therefore, I give you the assurance that I do not intend to proceed without reflecting carefully on the forthcoming Ecodredge report and on the deliberations of the committee. I do not believe that we should delay the decision until we have resolved the ASP issues. I recognise that ASP is a major problem, but it is not my view that closures because of ASP are a conservation measure. In some areas, such closures may allow stocks to recover; however, in others, they may allow other species to displace scallops. Closure of the fisheries is not a reliable or controllable means of delivering conservation benefits, and such closures simply divert effort to stocks in areas that remain open. ASP thus increases the need for technical conservation measures.

I am keen to proceed as quickly as possible with conservation measures. However, I repeat that I shall proceed only on the basis that the measures are fair and effective and on the basis that all the evidence has been presented to me. I will not proceed until I have had time to consider the forthcoming Ecodredge report and the deliberations of the committee.

Fergus Ewing: Will the period of reflection, which we welcome, also include a formal process of reconsultation of the industry? Having spoken at length to many people who are involved and who depend on scallops for their livelihoods—fishermen, processors and restaurateurs—I know that there is great concern that the responses that were made some years ago are not relevant now, post-ASP. Those people want to come up with effective conservation measures, but they believe that there needs to be a fresh start and a reconsultation. Will that be offered to the industry to assist you in your reflections?

Ross Finnie: The way in which ASP is being dealt with may have changed, as we did not test for ASP two or three years ago. However, we do not accept the connection between conservation and dealing with ASP. The fact that we did not test for ASP four or five years ago is relevant in terms of ASP; however, I have not seen any evidence that a proper connection can be made between dealing with ASP and conservation. I am, therefore, not sure about the first point that you make.

I hope that the information on the state of the stock will become available instantly, not just to me but to the scallop industry ASP steering group. I hope that the issue will be discussed by that group and I expect that my officials or I will meet the group to discuss the findings of the Ecodredge report.

Fergus Ewing: A formal reconsultation process is required, but you have not committed the Executive to that. Perhaps you will reflect on that.

A weekend ban is contained in the proposed technical conservation measures. In the minister's view, how many boats in total currently fish for scallops and how many would the weekend ban be likely to affect?

15:30

Ross Finnie: The first point that we must understand is the one to which I referred in my introductory remarks, in which I was careful to say that I was conscious of the opposition that we now have. The process has been fraught, in so far as many of the suggestions that were made at the outset of the consultation, including that of the weekend ban, came from the industry itself. It was only when the regulations were published that that view turned round.

Something like 191 Scottish vessels are licensed to fish for scallops. We understand that some 102 have caught scallops in 2002; 51 have caught scallops only. For the limitation exercise, our discussions were about how to restrict effort, but I do not know that we have records indicating the total amount of effort that goes into the fishery.

Fergus Ewing: I understand from the industry that only a small number—just over 100 boats—would be affected. Therefore, in so far as the aim of a weekend ban is conservation, that aim would be achieved only in respect of a tiny fraction of the scallop vessels.

Ross Finnie: That might explain why the industry originally suggested a weekend ban, but it does not explain why it is now opposing such a measure.

Fergus Ewing: The explanation might be that the opposition is from those who will be affected.

It has been suggested to me that another reason why it is crucial to the continued success of scallop processors and restaurateurs that scallops can be caught in Scotland over the weekend is the Spanish market. It is essential that the scallops can be transported to Spain to meet the second bi-weekly market, on a Thursday, so that the produce can then be available for the Spanish citizenry to consume at the weekend. People can achieve a premium price of between 20 per cent and 25 per cent from that market. Although perhaps not all the advisers involved would agree, the industry's view is that any weekend ban would have a severe impact on that valuable market.

Ross Finnie: I am not sure about that. Our information on the implications of a weekend ban on the export market to Spain is that the industry is already able to handle the not infrequent disruptions that occur due to weather and other incidents. As the weekend ban would not cover

the whole coast, processors would still have access to supplies. My department looks at the information that continues to come forward, but the picture is not as stark as that which has been presented by Fergus Ewing. We are well aware of the existing position that there are disruptions in those areas that might be affected by the ban. Also, scallops are caught in other areas that would not be affected by that ban.

Fergus Ewing: The impact of the weekend ban on vessels that, because they fish from ports such as Mallaig, must sail for longer distances to reach their fishing grounds will be very difficult indeed. Given the bad weather in the more northerly ports such as Mallaig, which means that boats are tied up more frequently, would not the impact of a weekend ban be almost to force skippers to take the boats and their crews to sea in times when they might be taking a risk in doing so? I have discussed that issue at length with fishermen's representatives today. In short, will the lives of some fishermen not be put at risk if the weekend ban continues to be pursued?

Ross Finnie: Clearly, any attempt to restrict effort by limiting days at sea carries that possible implication. Careful consideration must therefore be given as to whether effort is required to be reduced. To be blunt, it is extremely difficult to consider conservation measures in this kind of fishery that do not require some form of effort limitation.

However, the logical conclusion is not necessarily the somewhat dramatic position that people will be forced into putting lives at risk. Of course, if we believed that that would be the case, that would affect how we implemented effort limitation. However, although that may be the industry's position on the ban now—this is one of the awkward positions with this evidence—the suggestion of reducing effort over a weekend came originally from the industry.

Fergus Ewing: I accept that entirely. I will conclude the point. Given that you acknowledge that circumstances have changed—the exercise was embarked on years ago—does everything not suggest that there should be a fresh start?

The Ecodredge report cost £1 million, to which the UK contributed for the express purpose of evaluating and improving dredge design and fishing effort. Once that report is available, surely the industry should be reconsulted on technical conservation measures after it, too, has had a chance to consider the report. To propose technical measures before everybody can consider the Ecodredge report is to put the cart before the horse.

Ross Finnie: I have said clearly that I am not about to take any action until I have read and considered the Ecodredge report, so I am hardly putting the cart before the horse.

Fergus Ewing: If you do not accept a reconsultation, that is exactly what you are doing.

Ross Finnie: I say with respect that neither you nor I have read the Ecodredge report. If it comes up with information that is seriously deleterious to the industry, I will have to take that view. If the report does not require immediate action, that will be part of my reflections. Until I have read the report and know its results, I will not bind myself to a course of action. I said clearly in my opening statement and I repeat that I am not about to take action that would be detrimental to the industry without properly reflecting on the Ecodredge report's findings.

Rhoda Grant: I welcome those comments and the delay to the instrument's introduction until you have read the Ecodredge report. If Ecodredge produced alternatives to conservation, would you be willing to consider them? They might include proposals on the end-scallop size rather than cutting days at sea.

Ross Finnie: It goes without saying that my reflection must include a proper consideration of any options or alternatives that the report proposes.

Richard Lochhead: The industry first proposed conservation measures in 1998. We have had the Parliament since 1999. What are the reasons for the delay?

Ross Finnie: Much discussion has taken place with the industry, and the industry committee has been developed. It is interesting that the two issues that are being discussed in parallel this afternoon have dominated the discussions. There is no particular reason for the delay. There has always been a problem about establishing matters. I do not criticise the industry; as I said, we have tried to accommodate that. Some of the industry's original proposals that were worked up are proposals with which the industry is unhappy. In my opening statement, I said that the issue was more some of the technical matters in relation to dredge, the amount of dredge and dredge sizes, which are now agreed. That has contributed to the delay.

I am concerned to be apprised of the latest evidence about where the industry stands, which is why I am anxious to read the Ecodredge report. Given the delay, it would be foolish of me to proceed, as that information will be available imminently.

Richard Lochhead: If at any stage—whether post report or whenever—some conservation measures were introduced, when would they be reviewed? Would that be within a year?

Ross Finnie: The option is always open of saying that a review of evidence will be undertaken. We must be slightly careful. We must at least set out the framework under which we will define conservation measures. Such measures must be time limited. Our decision on for how long it will be necessary to implement those measures to establish a recovery of prime stock will be a response to the evidence. I would like to think that the time scale will be proportionate to the scale of the problem, which we hope will be evinced in the Ecodredge report, but that is not an ad infinitum position. That must be subject to review.

Richard Lochhead: Your letter to the committee says that evidence of the biggest decline in stocks was from areas that had been fished, which is self-evident. What analysis has been conducted of areas that have not been fished because of ASP closures? What is the impact on stocks in the boxes that have been closed?

Ross Finnie: Compared to the evidence that was produced for the effect on stocks that were actively fished, what impact have boxes that have been closed as a consequence of ASP regulations had on stocks?

Richard Lochhead: Well said.

Dr Paul Brady (Scottish Executive Environment and Rural Affairs Department): The advice of our scientists is to consider the overall health of the stock. As members know, most of the closures are short term, and the scientists' argument is that although a short-term conservation benefit is gained from closing a box, as soon as the box is reopened the fishermen re-enter it. My understanding is that the scientific tests and surveys target the whole stock and do not operate on a box-by-box basis.

Richard Lochhead: Perhaps I can encourage the minister to consider that issue further. As we know, other areas of the fisheries sector are suffering because averages are used.

In his opening remarks, the minister stated that he is concerned about the general welfare of the scallop sector. What is happening in Brussels in relation to the white-fish sector? Has he considered the impact that a proposed ban on white-fish fishing would have on the scallop sector? Also, given the knock-on effect that the loss of infrastructure in the white-fish sector would have on the scallop sector, what would be the impact of the 80 per cent cut that was proposed at yesterday's meeting?

Given that the minister is before the committee, will he reflect on —

The Convener: I must stop the member. His subtlety is getting greater and greater and he is introducing items that are not on the agenda. The minister may wish to respond but, as this topic is not on the agenda, he is under no obligation to do so.

Ross Finnie: One relevant issue in Richard Lochhead's question is the prospect of displacement in the shellfish fisheries, which is of considerable concern in relation to the provisional proposals that were put to the fishermen when they met yesterday, but not with Commissioner Fischler.

Richard Lochhead: And the loss of infrastructure?

Ross Finnie: Yes, the knock-on effect of the loss of infrastructure is very much in our minds when addressing the potential impact of, or alternatives to, those measures.

Mr McGrigor: It has been suggested that there will be a strong move towards buying scallop entitlement and increasing its cost, thus requiring greater effort to repay the investment. I have been informed, rightly or wrongly, that no additional scallop licences will be granted. Therefore, how could there be increased effort if the entitlement for extra licences for scallops is no more?

Ross Finnie: I am not sure how either your speculative question or the further information that you have given the committee relates to fact. There are a number of unused scallop licences, which creates the opportunity for displacement and increased effort, and I can only speculate over how that affects the price of licences. There is a potential problem, and Mr Lochhead's point was fair.

Mr McGrigor: Do you agree that the scallop industry is a case in which joined-up thinking is required? On the one side, there is the problem of ASP, and on the other side, there is the question of whether we have technical conservation measures. We have one lot of associations saying that they want to protect the artisanal fisheries and another group that wants to travel. Rather than developing it on a piecemeal basis, do you have an overall strategy for the future of the scallop industry?

15:45

Ross Finnie: I do not think that we are moving on a piecemeal basis. It would be easy for my officials and me simply to disassociate ourselves from final decisions that have to be taken by health ministers on ASP and not to be cognisant of the evidence and its potential impact on the industry. That is why we continue to attend meetings with the scallop industry. Those and other meetings may have ASP as their general subject for debate, but we attend because of our

concern for the structure, direction and future of the scallop industry. That is what we are about. It may not be a question of us working in silos, but it is a question of why we attend those meetings.

On the joined-up thinking, we must try to ensure that we end up with a sustainable scallop industry and, in doing that, we must have regard to both the opportunities for and threats to the industry that might be posed by displacement from other fisheries.

Stewart Stevenson: How many scallop licences are not issued and when did the minister last receive an application for a new licence?

Ross Finnie: Strangely enough, I do not keep that register on my desk. I am happy to take note of that question, although I do not receive licence applications personally—they come to my department. We will answer that point later.

Stewart Stevenson: And we thought that you were omnipotent.

Ross Finnie: Indeed.

The Convener: Did I understand that you would get back to Mr Stevenson on that point?

Ross Finnie: We will certainly respond to Mr Stevenson's point.

The Convener: To the committee?

Ross Finnie: Yes.

Fergus Ewing: I want to pursue the issue of effective conservation measures. I hope that I am wrong, but you seem to suggest that effort limitation and a weekend ban are the effective way to go, and that other conservation measures are not likely to work. That seemed to be the tenor of your evidence.

Ross Finnie: No, with respect, that was not what I said.

Fergus Ewing: I am very glad.

Ross Finnie: For goodness' sake, I thought that we agreed that the agreed measures—the ones that were not even being questioned—were dredge limits and the other technical measures. They were not disagreed. What was brought to my attention was the disagreed measure and its impact. That was your question. You did not ask me to address the other measures in the proposals on dredge limits.

Fergus Ewing: I am pleased to hear that, although we can perhaps look back at the *Official Report* of your earlier remarks. I wanted to raise one issue in particular. One method of technical conservation—the ring size adopted—is important and can have a positive impact. I understand that the instrument proposes a ring size of 75mm but that the industry may be prepared to go further than that and let small prawns escape. [MEMBERS: "Prawns?"] I am sorry. I am thinking—

The Convener: Of Jamie McGrigor?

Fergus Ewing: Indeed.

If that is true, minister, does it not indicate that it would be sensible to get round the table, following reconsultation with the industry, in the light of the altered circumstances after ASP? If there is to be a substantial period of reflection, which will continue until after Ecodredge is available and digested, there is every reason to involve the industry fully with a fresh consultation exercise.

Ross Finnie: As I said to you earlier, I have every intention of passing the Ecodredge report to the scallop industry committee. The report will be discussed and its impact will be felt. If the industry is volunteering to implement larger mesh sizes, I am very happy for that to be considered. I have no problems with that. As I indicated at the outset, I want to make clear that other issues—the limits of French dredges and the regulations on dredge design—are involved. Those are issues that are broadly accepted and are very important as part of the package of conservation measures.

Fergus Ewing: I have one further point, which has not been touched on fully. In the opening statements, reference was made to a financial appraisal that will be carried out. Will it be carried out by the minister's department, the health department or jointly?

Ross Finnie: The opening statements referred to financial considerations that were largely driven by issues to do with ASP. It is those who are collecting evidence on that who are addressing that issue.

Fergus Ewing: I mention the financial appraisal because of the EKOS report, which I understand was commissioned by the Executive and published at the end of September. Although the report was out of date by the time of its publication, nonetheless it highlighted the significant economic impact on the scallop industry of the sea-bed closures that were caused by ASP. Your summary demonstrated that a total of £3 million was lost in 1998-99, which equates to an average drop in vessel earnings of around 28 per cent per vessel or £109,000. Your conclusion was that the west of Scotland fleet is currently breaking even.

Is it not the case that, if the tiered testing system goes ahead, technical conservation measures may be irrelevant because there may not be a scallop fleet left to implement them, as it will not be economic to do so? It is clear that boats cannot continue to fish for more than a short time if it is obvious that that will lead to massive losses. We are in danger of seeing the disappearance of the

scallop fleet and the fishing communities in the west Highlands.

Ross Finnie: Even by Fergus Ewing's standards, that is quite the most remarkable jump in logic that we have heard for some time. He can shake his head, but we have not yet established the precise facts. The Rural Development Committee has just spent an hour or so discussing exactly what measures can be taken to try, as best we can, to comply with the European directive with regard to the health requirements on ASP. The committee has pointed out, and the Executive is aware of, the serious economic impact that such compliance will lead to. However, Fergus Ewing has leaped to the conclusion that technical conservation measures are completely unnecessary because the end of the industry is nigh. Unless I was listening to different evidence, that evidence has not been produced.

There are clear dangers to the industry in terms of its ability to comply. It was our industry that made the suggestion of three-tier testing as an alternative to whole testing and they are to be commended for so doing. However, technical difficulties have emerged that make the three-tier testing suggestion difficult to implement.

If the Ecodredge report points to any collapse in the fundamental stock levels, I will accept that there is a threat to the industry. The threat, however, will arise from not taking conservation measures and so allowing the stocks to degrade to a point at which there is no industry left.

We have to be careful in respect of the language that we use. I am not, my department is not and my colleague the Minister for Health and Community Care is not in the business of putting this sector out of business. My concern in relation to conservation is to ensure that there is a sustainable industry that can operate within safe stock limits. That is what we are about.

Fergus Ewing: I endorse those aims. I simply say that the FSA's predictions of the impact of your testing system being "catastrophic" and a "disaster" were the predictions that were made by the witnesses from whom we heard on 8 October. If you are claiming that I am exaggerating then I am afraid that you are making a comment on that evidence. That evidence was given by several witnesses, who were united on the perceived impact of the ASP issue. I hope that you will reflect on that.

Mr McGrigor: Minister, I also agree with what you have said about conserving stocks. Most of the people in the industry to whom I have spoken want conservation measures of one sort or another. The main danger is losing the market for scallops due to the supply drying up. Do you agree that if there is not a continuous stream of the product, we are liable to lose the market and the industry will go to the wall?

Ross Finnie: Yes. That is why in my response to the earlier question about weekend closure, I indicated that we had examined that issue. If there are disruptions, there are other areas from where supplies can be procured. In designing a package of measures, it is important to understand that point. It is recognised in the measures we have agreed with the industry. Periods of closure that do not take that possibility into account or that affect the whole sector could have the effect of losing us the market. However, I do not think that that will happen with the current measures.

We are getting off topic here because I made it clear that I want to reflect on the evidence that will emerge from the Ecodredge report. However, Mr McGrigor's point is one that has to be taken account of in finalising and formulating any package of measures.

The Convener: On that point, I am happy to draw the questioning to a close. I thank the minister for the time that he has given to this agenda item, bearing in mind that we will be taking evidence from him again very shortly.

I therefore thank Mr Finnie, Dr Brady and Gabby Pieraccini and ask them to stand down from the committee while we discuss the response that we want to make to the evidence.

We asked the minister to appear in front of the committee because of the responses we received to letters of concern that we had written. I do not know how the committee wants to respond to the minister. If we are going to respond, we should do so by means of a letter that can be signed off by the three reporters fairly speedily. However, I am keen to get input from committee members.

Rhoda Grant is looking pensive.

Rhoda Grant: I will make some suggestions, if that would be useful.

On the latter part of the evidence about conservation measures, we should welcome the fact that those are not going to be put in place until after the reports have been studied and consulted on.

On ASP, we should write to the minister thanking him for giving evidence, and also to impress on him a couple of points. First, the industry must be involved in writing up the tiered testing regime. There has been concern that the industry was promised those consultations prior to the full consultation but that it did not get that. We must impress on the minister the fact that the industry must have that involvement before anything else happens.

We should also ask that any proposed tracing

system be piloted before it becomes a statutory instrument. It is important to see how that would work and affect different sectors in the industry, given that anything from divers to quite large boats are involved. We need to put those matters in line first.

Moreover, we need to stress the urgency of the scientific research that has been proposed and make it clear that it should be pushed along.

The Convener: Thank you for those productive comments.

16:00

Fergus Ewing: I want to endorse Rhoda Grant's proposals and suggest some of my own. We have heard about several important pieces of research that either have been or are about to be commissioned and that bear directly on the issues before us. It would be totally in order to take account of the results of that research before any scheme is formulated—indeed, it would be preposterous if that did not happen. All the research on portion size and biochemistry that were referred to should be considered.

I believe that an application to the FIFG for funding for the biochemistry research is outstanding. I hope that, given the urgency of the situation, the Executive might be persuaded to put whatever pressure can be brought to bear to ensure that funding is allocated to the research. After all, as the current evidence is based not on scallops but on mussels, biochemistry is a very serious issue. Indeed, that seems to be a rather glaring omission in the process. However, the main point is that no scheme should be introduced until after the research is available.

Moreover, the response we received to the question about timing was not clear enough. That issue will be of paramount importance to the whole industry. It will want to know whether, next spring, it will feel the impact of the FSA tiered-testing model or some other scheme.

We have heard that the industry has not been fully involved, although the FSA feels that it has been. Instead of reaching any conclusion about who was right or who was wrong, I should point out that Mr Reid acknowledged that there was a failure to fulfil an undertaking to involve the industry before the consultation took place. It was good that he did so. However, it was a key omission, because it has led to an impracticable scheme being proposed. Perhaps if the industry had been more fully involved, the FSA's proposals in the consultation paper would have had the industry's blessing and imprimatur. It is certainly not the industry's fault that we are sitting here six months later and there has been hardly any progress.

We should recommend that the FSA be urged to ensure that it does everything in partnership with the industry and that it makes available all its documents and evidence, including the raw data upon which the ASP working group report was based. We have heard that Mr Reid has not yet provided those raw data to the industry. It is essential that the industry has them; it has a great deal of knowledge about these matters and, without such data, it is at a disadvantage and is not an equal partner.

We must also touch on the issue of EU law. The letters that we have received from the minister admit that there is no deadline for putting forward a testing regime. The minister said that the delay cannot be "indefinite". I hope that the committee will agree that it would be totally unacceptable for a scheme to be introduced before Christmas, as the FSA suggested on 8 October. At least, its recommendation was that a scheme should be implemented this year. That would be disastrous. The minister should accept that there is no legal imperative and therefore no need for any undue haste.

As I suggested in my first question to Mary Mulligan, no decision should be taken until all the scientific evidence has been received and the industry has had an opportunity to be fully involved in devising a workable scheme in the light of all the available evidence and the conclusions based on it.

Mr Rumbles: I am sorry if I appear to be somewhat difficult at this point, but I understood that we were on agenda item 2, which is to take evidence on the Scottish scallop industry from Ross Finnie and Mary Mulligan. I do not see any agenda item 3 for the consideration of the evidence. The minister and Fergus Ewing disputed what was said today, and I would like the benefit of seeing the *Official Report* before I make any comment. It would be appropriate to comment only then. We are discussing something that is not on the agenda.

The Convener: It is important that we make progress on a matter about which we have heard evidence in today's meeting and at our previous meeting. Time is of the essence.

Mr Rumbles: I was not under the impression that we were going to discuss a report or our next steps forward. I thought that we were going to do that at our next meeting.

The Convener: I concede that that is a perfectly reasonable procedural point. Members will bear in mind that we have already agreed that next week's meeting will be totally in private. Are members content that we discuss the topic under that condition?

Stewart Stevenson: Is it not right that we have reporters on the subject and that the input from Rhoda Grant and Fergus Ewing is essentially informing them?

The Convener: And Jamie McGrigor. I am happy with that procedure, but Mike Rumbles is procedurally correct in saying that the consideration of today's evidence is not on the agenda. That is perhaps my omission.

Stewart Stevenson: Could I suggest that the reporters consider whether they want to write to the minister in the light of today's evidence?

The Convener: It is worth while for the reporters to consider it among themselves and come back to the meeting with their views on that, so that we can proceed further. Are members content that we hold those discussions in a private meeting?

Fergus Ewing: I would prefer it to be done in public.

The Convener: In which case it will have to wait for a fortnight.

Stewart Stevenson: I am uncomfortable that, because of a procedural issue, we are failing to make progress on such an important matter. I do not want the minister to have a reason—I hesitate to use the word "excuse"—for saying that we are not keeping up with the pace that she wishes to make. It is important that we are ahead of the minister rather than behind her. It is in your hands, convener, to rule on procedural matters.

The Convener: I have to rule on procedural matters bearing in mind procedural correctness. I have no doubt that Mike Rumbles is procedurally correct. I could ask him whether he sees a way in which it could be handled through the reporters that we have, given their diversity.

Mr Rumbles: I am perfectly happy for that arrangement to take place. I am pointing out only that we are not supposed to be discussing the evidence at the moment. I am content for it to be dealt with by reporters and then for the report to come to the committee.

The Convener: I suggest that a letter to both ministers comes back to committee members for their consideration, having been agreed by reporters—even if that is done by e-mail. We can proceed on that basis. It is important that we maintain our momentum. Would you be happy with that, Mike?

Mr Rumbles: Yes.

Fergus Ewing: I understand Mike Rumbles's point and I know that he is putting it forward as a procedural matter, but we had embarked on the process of discussion and two contributions had been made before he thought of it. We have started, so can we not try to finish?

The Convener: We are trying to do exactly that. Two members have made their points, and Jamie McGrigor wishes to say something as the third reporter.

Mr McGrigor: I think that we should write to the health minister to point out that FIFG funding is currently being sought to do a survey into various aspects of the testing system. Until that evidence has been seen, there should be no move to lower testing.

The Convener: At this point, I propose that we hand over the duty of drawing up a draft letter to the clerks, who will then refer it to the reporters. I hope that they will then come to an agreement on the terms of the letters, so that it can be referred back to members for any other comment. If there is none, we will assume that those letters can be sent out.

Fergus Ewing: We would all want such a letter to be sent off as soon as possible.

The Convener: I have a slight, precautionary note on that, which is that we must bear in mind that the clerking team will be spending a considerable amount of time this week drawing up the draft report on agricultural holdings. That report has to be the number 1 priority, but I think that I can give an undertaking that the letters will go out to members as soon as possible.

Fergus Ewing: I am sure that the reporters can help the clerks on that. Can I clarify whether the matter will come back before us in a fortnight's time?

The Convener: I did not think that it needed to if members are happy with the terms of the letters as agreed by the reporters.

Fergus Ewing: If members are not, we can come back to it.

The Convener: If members are not, we will have to come back to it in a fortnight's time.

While the minister regroups with another set of officials, I thank Dr Brady and Gabby Pieraccini for their input.

16:10

Meeting suspended.

16:16

On resuming—

Agricultural Holdings (Scotland) Bill: Stage 1

The Convener: Welcome back, ladies and gentlemen. Agenda item 3 is resumption of our stage 1 consideration of the Agricultural Holdings (Scotland) Bill. We will take our final evidence on the bill. I welcome again Ross Finnie, who has a different hat on. As is becoming customary, I ask him to make any opening remarks before we ask questions. It would be useful if the minister introduced his formidable array of officials.

Ross Finnie: I am sorry about that. Not even my best attempt would give me a majority over the committee, but I am trying hard. On my right is David Milne, and further right is Douglas Greig. They are the lead policy officials on the bill. On my left is James Shaw, who is the instructing solicitor for the bill except the dispute resolution provisions, which provides a role for Judith Morrison, who is the instructing solicitor on dispute resolution. She is familiar to committee members, as she has appeared before. Further on my left is Anthony Andrew, who is the head of the Executive's land and property division and has advised on land valuation issues.

I am conscious that time runs on, so I will proceed. The bill is one major element of our land reform programme. It is directed exclusively at reforming the tenanted sector of our agricultural communities. The Executive is committed to a pluralistic system in which a strong tenanted sector supports the owner-occupied sector.

It is clear from the many years during which the proposals have been compiled and from the responses to the bill that landlords and tenants share the view that the bill is needed for two principal grounds. The first is the need to improve the workings of the Agricultural Holdings (Scotland) Act 1991, which have been found wanting in some ways. The second is the need to expand the range of tenancy agreements, to expand the ability to engage in diversified activities for those who wish to and to help reform the dispute resolution process.

If members look at other European countries, they will find that almost every successful agricultural economy in the EU has a strong tenanted sector. It is important to recognise the benefits of such a healthy sector. It provides a vital way in for new blood to our rural industries. A healthy rented sector gives the ability to rent land when that is needed and allows successful farm businesses flexibility in the way they operate. Tenants benefit from investment by landlords as partners in their enterprise and tenants can invest more in their particular enterprise as tenants. If we are to achieve those benefits, it is important that we reform the current framework.

The bill develops some of the key messages of our agriculture strategy. It also offers benefits and new opportunities to existing tenants who will receive new rights and find it easier to enforce some of their existing rights. Limited duration tenants will be able to diversify into non-agricultural activities and all tenants will find cheaper and simpler recourse to the dispute resolution arrangements that are provided for in the bill. Last, tenants under the 1991 act will, of course, acquire a pre-emptive right to buy their holding from a selling landlord.

New opportunities should emerge for new tenants to enter the market. The new blood and new ideas they bring can stimulate more productive use of tenanted land. I hope that the limited duration tenancies will be directed towards that aim. The introduction of the new tenancy options should encourage landlords to let land. I hope that they will also benefit from the revised dispute resolution arrangements. Rural communities as a whole should benefit from the aggregation of all of those activities and the extension of the activities they provide for.

Since the proposals in the bill first emerged from the work of the land reform policy group four years ago, we have continued to work closely with a wide range of interests and have consulted broadly. I am therefore pleased that most of the witnesses who have appeared before the committee over recent weeks have broadly welcomed the general thrust of the bill.

I am, of course, conscious that questions remain about some of the more detailed aspects of the bill and I will be happy to deal with as many of those concerns as possible. That is a phrase that ministers can use very readily when they have as many supporting officials with them as I have. We are always prepared to look further at some of the issues that have been raised to see whether we can, or cannot, improve the way the bill works or is intended to work.

The Convener: Thank you, minister. As no committee member has caught my eye, I will begin.

Very few of us would disagree with most of the proposed contents of the bill, but it is a matter of some concern that much of the evidence we have taken has centred not on the contents of the bill but on what a sector of the tenanted sector would like to see in it. They would like the pre-emptive right to buy for secure tenants under the 1991 act to become an absolute right to buy.

Everybody has welcomed the intent of the bill, which is to revitalise the tenanted sector. If the pre-emptive right to buy became an absolute right to buy, would that revitalise the tenanted sector?

Ross Finnie: I can only repeat that the policy thrust behind proposing an agricultural holdings bill is, as the convener rightly said, to address serious issues in the tenanted sector. The thrust of the proposals that we have introduced is entirely directed at rejuvenating the operation of the existing law and of affording new opportunities to the tenanted sector.

Granting tenants the right to buy raises a different range of wider policy implications. I am wholly unpersuaded that doing so would do other than damage the pluralistic approach to holdings that is taken in our agricultural community. That is not the intention of our proposal. It is a related, but separate, proposal that would have very wide ramifications. As that proposal was not the thrust of our proposals, it is not a matter on which we consulted widely.

We are very concerned that extending rights in such a way would not only damage the pluralistic approach but have wider policy implications for any other sector that had commercial rented premises. We might discuss later the various technical issues that surround such a proposal but, as a general principle, it would be harmful and counter to the bill's policy thrust.

The Convener: In its evidence, the Scottish estates business group felt that if the bill as published became law, it would be helpful to establish what it called a tenant farmers forum, which would consist exclusively of tenants and landlords under an independent chair. The group left us in no doubt that the proposal had the complete agreement of all stakeholders, apart from—at that stage—the tenant farmers action group. Have you been approached with that suggestion? If so, what is your reaction to it?

Ross Finnie: The answer to your question about whether I have been approached with the suggestion is yes. If we analyse the perceptions of landlords and tenants with regard to the ways in which the 1991 act is not working, we will find that there are problems with, for example, partnership arrangements, which were seen as a means of obviating the 1991 act's security provisions. Furthermore, there are strong feelings about issues such as write-down agreements, recompensation at waygo, the use of post-lease agreements in relation to the responsibility for repairs and renewals and so on. Such issues clearly demonstrate that there has been no sense of communication. As a result, there is a strong prima facie case for having a tenant farmers forum.

However, I am bound to say that, having considered the proposal, I am not satisfied that it would be appropriate to enshrine it in statute. One of the bill's major features finds its roots in the challenge to the industry that I made in our white paper for it to come together and formulate proposals for limited duration tenancies. Since then, both sides have woken up to the realisation that speaking to each other is not that much trouble.

The tenants and landowners groups—including the Scottish Landowners Federation—have made a thrust towards far greater co-operation. If people genuinely believe that, after the bill is passed, relationships can be improved and ingrained problems can be resolved earlier, there is nothing to prevent them from setting up the sort of organisation that you referred to. Indeed, I have already indicated that we would be very happy to co-operate with them in that. However, I am reluctant to turn it into a statutory body, which would carry the risk that people will begin to think that it is a non-departmental government body or something. Goodness gracious, let us keep away from quangos.

The Convener: I did not mean to give the impression that that was the Scottish estates business group's intention, because I do not believe that it was.

Ross Finnie: No, I do not think so either, but your question contained two suggestions. My general view is that the proposal has much to commend it; however, my team and I are not persuaded that it would be sensible to enshrine such an organisation in statute.

Mr Rumbles: Andy Wightman was one of several witnesses who gave evidence to us on 5 November. I asked:

"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?"

His reply was:

"Yes, I think that that is the Executive's view."—[*Official Report*, *Rural Development Committee*, 5 November 2002; c 3738.]

I just want some clarification, because that is not my interpretation of the Executive's view. Have you any comment on the evidence presented to us by Andy Wightman?

16:30

Ross Finnie: Without being disrespectful to Andy Wightman, whom and whose views I know well, I am not sure that he is best placed to answer on behalf of the Scottish Executive about its policy objectives. We are trying to improve diversity in the range and nature of holdings, which is self-evident in the bill.

On the question of conferring compulsory purchase, for many years only crofting legislation

has had special treatment in law, which has rightly been done to protect communities. There are three statutes under which someone can acquire a right to buy, but it is not an absolute right to buy because each individual case has to meet certain tests on which the Scottish Land Court would adjudicate. Those tests involve a judgment on whether such an acquisition could have a detrimental effect on the landowner. There is a distinction to be drawn between continuing the absolute ability in certain crofting and community situations and the generality of agricultural land, which represents some 80 per cent of Scotland's total land mass.

Mr Rumbles: At the beginning of evidence taking at stage 1, I asked the convener for a ruling, and he ruled that we could take evidence on the so-called absolute right to buy, even though it is not in the bill. It has been an issue that has come to the fore throughout our evidence taking, but it is clear that the Scottish Executive does not want to include the so-called absolute right to buy in the bill. However, if the committee recommended such a section to Parliament, do you believe that it would so severely damage the bill that it would have to be withdrawn? Would it wreck the bill, or would you still proceed with it?

Ross Finnie: I am in danger of going down hypothetical routes. I want to make one observation. In my dealings with those who exhibit their frustration with the way in which the 1991 act currently operates, I have found it instructive to divide them into different camps. There are those who are philosophically committed to a right to buy. However, a substantial number of people, with whom I have had meetings and consultations, are deeply dissatisfied with some of the operations in the 1991 act. One example is the use of limited partnerships as a mechanism of interfering with the security of tenancy that should be afforded under the 1991 act but which can be obviated by the use of such a mechanism.

Other issues include the use of write-down agreements in compensation and waygo, and the use of post-lease agreements in terms of responsibility for repairs and renewals. There are also some question marks over the rent review formula. I would like to come back to that in evidence, if I may, because I am sufficiently persuaded by those genuine concerns, rather than the principles, that if we get beyond stage 1 to stage 2, they can be addressed.

On Mike Rumbles's question, before I reached any view on whether a right to buy was needed, I would have to ask myself—as I have done—about the fundamental issues behind the resurgence in that requirement. I can only repeat that I do not want to comment on what I would or would not do about a section that I have not yet seen. However, my view remains that, in some shape or size, granting an absolute right to buy would have a detrimental effect and be contrary to the policy objectives of the bill, which is designed to found on the pluralistic approach and improve greatly the workings of the tenanted sector.

Mr Rumbles: I will follow that with one more question. The evidence that we have taken suggests that one reason why many witnesses have focused on something that is not in the bill is the tremendous amount of agreement about what is in the bill. Witnesses have complimented the bill. The difficulty that has been sitting in the wings is the absolute right to buy, or the compulsory purchase of private property. Has that clouded the other issues in the bill?

Ross Finnie: I am not sure whether it has clouded the issues, but I have not heard enough about the reasons for the improper operation—improper is not the right word; I will say imperfect operation—of the 1991 act. In speaking with other groups, I have acknowledged, as does the bill, those other issues. If the bill proceeds beyond stage 1, we can do even more than the bill contains to rectify those faults and therefore remove much of the frustration among those who feel that the 1991 act is being improperly operated.

Mr Rumbles: The minister is unwilling to answer hypothetical questions, but I note that he has referred several times to what will happen if the bill proceeds beyond stage 1.

Richard Lochhead: I cast my mind back to the Executive's original proposals, which did not include a pre-emptive right to buy—that was added later. The bill's boundaries were extended beyond simply rearranging the regulations about tenancies. If the bill included an absolute right to buy, would that not be perfectly well within the bill's general principles, so the Executive would have no case for opposing it?

Ross Finnie: A pre-emptive right to buy was always in our contemplation. When we issued the first white paper, we had difficulties with the earlier Land Reform (Scotland) Bill in formulating proposals that satisfactorily met the requirements of proper valuation. Those issues proved more difficult to resolve than we expected and it seemed imprudent to publish a further proposal while they were unresolved.

Between the issuing of that white paper and the issuing of the draft agricultural holdings bill, those matters were resolved. I still see a fundamental difference in principle between granting an existing tenant a pre-emptive right to buy, as between a willing seller and a willing buyer, and granting an absolute right to buy, which by definition has an element of compulsion.

Richard Lochhead: The minister said in his opening remarks that the bill's purpose is to further the interests of the rural economy and that the bill is a central component of land reform. Is increasing ownership as opposed to tenancies in rural communities good for the rural economy? Will it lead to more or less investment in the rural economy?

Ross Finnie: If more people invest in the rural economy, that will be the outcome. The issues must be separated. The tenanted sector has become somewhat stuck. I draw a comparison with other countries that have successful rural and agricultural economies in which their tenanted sectors operate successfully.

The three years of consultation on the bill drew out what is wrong with the existing legislation. The bill aims to remedy that by taking account of the full consultation and to produce a more vibrant tenanted sector that has the capacity to make a significant contribution to the rural economy.

Richard Lochhead: Although the minister is opposed to the absolute right to buy because of the issues of compensation and valuation, the Land Reform (Scotland) Bill gives crofters the right to buy salmon fisheries. In an answer to one of my written questions, the minister stated:

"We also believe that the creation of the crofting community right to buy salmon fishings should not impact upon the value of these fishings."—[*Official Report, Written Answers*, 12 November 2002; p 2195.]

Why would an absolute right to buy impact on an estate's value, if the absolute right to buy salmon fishings does not?

Ross Finnie: I have not referred to compensation and valuation in the meeting. I have made it clear that my first and fundamental opposition to an absolute right to buy is based on policy and principle. Our policy is to create and ensure a fully functional and pluralistic approach between landlord and tenant in the rural community.

There are a number of concerns about compensation, all of which are fairly technical and some of which relate to the ECHR. If somebody arrives at a demonstrable loss, I am concerned that the only person who would be liable for the loss would be the Executive. I do not wish to embark on such a course of action and that is not wholly inconsistent with policy, because liabilities are not the direction in which we wish to go with public expenditure on the rural economy.

Richard Lochhead: So the minister's fundamental opposition to the absolute right to buy is based not on compensation or valuation issues, but on the future impact on the tenancy sector.

Ross Finnie: Yes.

Richard Lochhead: What would be the impact on the tenancy sector of introducing the absolute right to buy for secure tenancies, which have not been created for around 20 years?

Ross Finnie: The point of the bill is to remedy what have become defects in the way in which the current legislation operates. The bill gives impetus to a more pluralistic approach in developing the tenanted sector and gets rid of some defects. I like to think that, in addition to the stimulation of new interest through limited duration tenancies, we might begin to see the prospect of new long-term tenancies.

From what I have seen in the past nine months, there is nothing in the nature of the tenanted sector to prevent new longer-term tenancies; they are still an option. The sector has become stuck and I like to think that the range of options that are available and the change in the tone and tenor of the way in which we operate will alter that. One thing is certain: if we moved to an absolute right to buy, we would, at a stroke, make permanent the fact that there will be no further long-term tenancies.

Richard Lochhead: A couple of weeks ago, I met a tenant farmer who said that he would rather have compensation for his investment in improvements during the tenancy than be unable to retire and allow his son to take over the tenancy because he has no cash. Does the bill address that issue and, if so, how?

Ross Finnie: No. In our discussions with both sides of the industry and with many people, two related issues arose. I must be careful, but if the bill goes beyond stage 1, we must do something about agreements on compensation at waygo because people do not get a return for their investment.

I would want to lodge an amendment to provide that write-down agreements would not bind either party, for example. I am not yet clear about that because of the complex issues. We do not indulge in retrospective legislation, but we would have to deal with situations that occurred after the bill's passage. I am unable to advise the committee precisely how we would deal with that. However, I would want to remedy that very genuine concern by improving the bill during its passage.

16:45

Rhoda Grant: You said that you wanted proper compensation so that the tenanted sector could become unstuck. The current lack of compensation at waygo means that very few people can move on, and that is causing the tenanted sector to stick. An absolute right to buy could rectify that quite simply. You mentioned considering compensation at waygo, which would

perhaps have the same effect. Some evidence that we received suggested that landowners might not be able to afford to pay proper compensation. If that were the case, landowners would not allow tenants to invest in the farm, because they would be unable to pay compensation at waygo.

Ross Finnie: It is difficult to legislate for the potential financial position of a landlord at the point of someone seeking to exit. Richard Lochhead has just left the room, but I wanted to articulate to him that there are write-down agreements that militate against the interests of tenants. Those write-down agreements should not bind those parties. One cannot always speculate about financial provision. I am unsure quite how, if someone is allowed to receive such compensation at waygo, that would be improved simply by having an absolute right to buy, which would affect other aspects of the tenancy. The issue of compensation at waygo is being overridden by the use of write-down agreements. At the next stage of the bill, I would wish to propose amendments to address what I believe is a genuine concern.

Rhoda Grant: If there were an absolute right to buy, the landowner would be compensated not only for the value of the farm, but for any detriment that was suffered through selling it. That would then give tenant and owner a financial basis upon which to sell a farm, enabling them to retire or move to a different property. It would also create some vibrancy in the sector. There are also issues about people's homes. People are very unwilling to give up a farm, if that farm is their home. They are unwilling to move if they do not have financial compensation to buy somewhere else, even at retirement, far less to move on to a bigger farm.

Ross Finnie: That argument cuts both ways. For example, someone who owns a farm may not have arranged their financial affairs to allow for an unplanned situation in which they would suddenly be compelled to dispose of their property. Why should someone contemplate that, if they are in a landlord-tenant arrangement? I do not want to go down that road. If a tenant cannot afford to buy, that leads to questions and comparisons of total retirement and whether a tenant could actually afford to raise money for the purchase. I am not happy about going down that road—we must deal with matters on an individual basis. There is not a principle involved.

The Convener: It was put to us in evidence that often a problem with secure tenancies is that tenants are required to live in the farmhouse on a tenanted property. The removal of that requirement might go a considerable way towards alleviating secure tenants' concerns. Would you welcome amendments at stage 2 to alter the situation?

Ross Finnie: I would be happier to reflect on the evidence that has been given on that matter. We need to consider whether someone can devote themselves to the management of a farm if they are resident at some distance from it. If there is compelling evidence that removal of the residency requirement would improve the operation of the tenanted sector, I would be happy to consider that.

Rhoda Grant: I want to return to the issue of an absolute right to buy and to ask about investment. If someone owns their farm, they have collateral to raise funds to invest in it. If they do not, they must consider other ways of securing investment. However, the landowner may prevent the tenant from doing that if they believe that they will have to pay compensation at waygo. There seems to be a problem, which the bill fails to address, with the balance of power and with investment in rural communities.

Ross Finnie: I have conceded that the provisions in the bill relating to waygo do not deal adequately with that issue. If we proceed with the bill, I will deal with the question of compensation at waygo for improvements.

Another issue is that of repairs and renewals. There are clear indications that the use of post-lease agreements on the responsibility for repairs and renewals has militated against tenant farmers. I want to address that problem, which is one of a number of factors that are working against the proper operation and spirit of the 1991 act.

Rhoda Grant: We were given an example of a case in which a landowner might not be happy to compensate a tenant at waygo. If there has been an agreement to set up a hatchery as part of the diversification of farms, a landowner may be unhappy to pay compensation for that, given that they may not find another person to take it on. Without a right to buy, we are stalling diversification and investment.

Ross Finnie: The member and I could trade examples to illustrate the balance of advantage. However, we need to consider the sector as a whole—the people whom we consulted and who contributed to the consultation. As I indicated earlier, a number of people take the view that an absolute right to buy is needed. In my view, that has nothing to do with improving the tenanted sector of Scottish agriculture. However, tenants are entitled to assistance. We must address seriously some of the issues that have been raised and to which I referred in my evidence.

Fergus Ewing: As the minister said, there is a sense of frustration among secure tenants. That is caused by the strictures of the legal format of the 1991 act. I welcome the minister's indication that he intends to lodge amendments to the bill that is before us, but we need to know what those amendments will be.

If sitting tenants are no longer to feel frustrated, will it not be necessary to apply compensation provisions and ban write-down agreements and post-lease agreements retrospectively? If we do not do that, all the sitting tenants will share the same frustrations that they have had for decades. I understand from Sir Crispin Agnew's evidence a fortnight ago that there is no legal reason why the bill should not apply changes retrospectively.

Ross Finnie: I am not about to get into an argument with either Fergus Ewing or Crispin Agnew about the state of Scots law. Perhaps James Shaw would do so, but I would not necessarily encourage him.

Let me be clear. It is simple to say that we could make provisions regarding write-down agreements that were entered into in the future. That is self-evidently the case, and the same is true for future post-lease agreements. What we are not absolutely clear about is how precisely to deal with existing write-down agreements or how to deal with the payment of appropriate compensation for things such as dilapidations. At this stage, all that I can undertake to do is to say that, if I get to that point, I will lodge amendments that I hope will address both issues.

Although Crispin Agnew may have made that clear statement, I am sure that even Fergus Ewing would concede that retrospection is a difficult issue to address. It is not simple. Perhaps James Shaw also wants to comment.

James Shaw (Office of the Solicitor to the Scottish Executive): There may be slight confusion here about what retrospection means. My understanding from the evidence is that, at the date of the bill's coming into force once it is enacted, it will attack agreements that are in existence at that time. For example, if Mr Ewing's point is whether we will attack—to pluck just one example from the list—a write-down agreement that is in existence on the day before the bill's coming into force, the answer is that we will look at that. That would not be retrospection, because the provision would be attacking something for the future, which it might nullify from that point. That is retrospection in the sense that I think Fergus Ewing meant. However, if by retrospection he means making that agreement void from the start—say, if the agreement was entered into 20 years ago—that is not what the bill will do. Such an agreement will have had effect for those 20 years. However, the amendments that we introduce may have the effect of making such agreements null and void on the day that the act comes into force.

Fergus Ewing: Whatever the legalistic answer is—I am not an expert but, to be fair to him, Sir Crispin Agnew most certainly is—there is a far more important point of policy. Unless existing agreements—

Ross Finnie: I understand that. I have given an undertaken that I will try to do that. Fergus Ewing tells me that I must address agreements that are already in existence, but I say to him that I am not yet able to describe how I might do that. All that I undertake to do is to be quite clear about going forward as regards new arrangements and to say that I want to be in a position to deal with those arrangements that are already in existence—as James Shaw described—so that the tenant gets that benefit.

Fergus Ewing: Will existing sitting tenants who, when they entered into their contracts some time ago also entered into write-down agreements or post-lease agreements, be able to get the benefits of compensation?

Ross Finnie: We are seeking a solution to that.

Fergus Ewing: That could be a major step forward in removing some of the frustrations, but let me move on.

Section 2 provides for a mechanism to convert secure tenancies to limited duration tenancies. Rhoda Grant mentioned how, in some cases, the current system deters tenants from retiring because they cannot achieve proper compensation. That point is accepted across the board. I assume that the Executive wants to see 1991 tenancies becoming limited duration tenancies or the possibility of that happening.

Will the minister respond to the suggestion from the National Farmers Union of Scotland that the termination of a heritable tenancy should attract statutory compensation? It is well known that the value to the landowner of land that is subject to a secure tenancy is 50 per cent or 60 per cent of the market value of that land if it could be offered with vacant possession. The point is that, if tenants who have tenanted their farms for decades—in some cases for generations—are converting the heritable rights that their families have held to the new vehicle that is the LDT, which will last for 15 years or thereabouts, should not some payment be made to them in exchange for some or all of the share of that value?

That is what the NFUS appeared to be recommending in its submission to us. Will the minister undertake to consider that and give a positive indication that he feels that that would be an encouraging move to end the current sense of frustration? I am sure that the committee would welcome that.

17:00

Ross Finnie: I am not wholly persuaded that I want to end long-term tenancies. Your comment was predicated on the view that I want to move to short-term tenancies, but I am simply providing a

mechanism whereby that can happen. However, I am also trying to indicate that in the operation of the leased sector, I am trying hard to remove some of the provisions that have been open to various interpretations and which can cause frustration—I think that we share that word—for tenants and landlords. That bill will not necessarily cover all rights.

Compensation is an issue. If someone were to give up their existing tenanted right, they would get compensation at waygo, but there is an issue about valuation. If we are to have clearer legislation on the share of the value at waygo, the circumstances that you just described will have to be part of our consideration of the relevant section.

Fergus Ewing: I want to move on to the pre-emptive right to buy and the absolute right to buy. How many secure tenants does the Executive expect to benefit from the exercise of the pre-emptive right to buy over the next 10 years, assuming the bill becomes law?

Ross Finnie: I do not know whether I can give you a precise number.

Douglas Greig (Scottish Executive Environment and Rural Affairs Department): We know that 1 to 2 per cent, or perhaps slightly more, of agricultural land changes hands every year. There is nothing to suggest in our statistics that there is a variation between owner-occupied land and land that is under a secure tenancy. The provisions on triggering the pre-emptive right to buy apply to 70 per cent of land transactions, which is exactly what we saw in the Land Reform (Scotland) Bill. From that point of view, a significant number of the transactions that take place every year will trigger a tenant's right to buy, but I cannot give you an exact number off the top of my head.

Fergus Ewing: Does the minister agree that in the case of some land holdings, the pre-emptive right to buy would be unlikely to apply for the foreseeable future—indeed for generation unto generation—because of the way in which the land is held legally? Does he agree that the pre-emptive right to buy will be academic for many secure tenants on estates in which property is held in trust, including vast estates in the area of Scotland that I represent?

Ross Finnie: The pre-emptive right to buy might be academic for those who are in the trust, but it would certainly not be for those who might reasonably have expected a practice that takes place, by and large, but that—surprise, surprise—occasionally does not, much to the disadvantage of those involved. Since the publication of the bill, amendments have been lodged in relation to the trigger points for rights of purchase. As we move to stage 2, it is clearly important to align the trigger points in the Land Reform (Scotland) Bill with the trigger points that are in the Agricultural Holdings (Scotland) Bill, for no reason other than consistency. The pre-emptive right to buy is not purely academic although I accept there are substantial arrangements for the law of inheritance and inheritance tax, which are not within my domain.

Fergus Ewing: I suppose the underlying policy question is why is the right to buy okay for some tenants, but not for others—in fact, not for the vast majority of sitting tenants?

Ross Finnie: Sorry—a right to buy?

Fergus Ewing: A pre-emptive right to buy—

Ross Finnie: With all due respect—

Fergus Ewing: Perhaps I should formulate the question again. We heard from your adviser that 1 per cent of farms might go on the market in a year. That suggests that, during the next 10 years, one in 10 secure tenants—at best—would have the opportunity to acquire the pre-emptive right to buy. Why should not the other 90 per cent have the chance to develop their businesses and the opportunities that ownership of their farms might present? Judging by your figures, it seems that only one in 10 farmers would benefit from the pre-emptive right to buy, as opposed to 100 per cent of farmers under an absolute right to buy.

Ross Finnie: I do not accept that proposition. I am concerned about the percentage of farmers who would benefit from the bill. As the bill is designed to address a range of issues—of which the pre-emptive right to buy is but one—I cannot accept the proposition that the reforms it contains will either have no effect on or be of no benefit to those in the sector. As I said in an earlier answer, as a matter of policy, I draw a distinction between an arrangement that confers a right between a willing seller and a willing buyer and a right that confers upon one party some compulsion. Those are separate issues.

Rhoda Grant: Fergus Ewing mentioned estates that are held in trust. I refer you to the same issue in relation to estates that are owned by companies that change hands, especially companies that are not registered in this country.

Ross Finnie: That issue was raised during our consideration of the Land Reform (Scotland) Bill. The practical matter of trying to ascertain or enforce the registration of those companies is extraordinarily complex.

Mr McGrigor: One of the bill's intentions is to facilitate diversification. We heard evidence from one estate—although there are probably more—that has different tenancies on its land, including non-agricultural tenancies. Given the current state

of farming, those tenancies produce far more income than the farm, or the rent from the farm, does. If the pre-emptive right to buy were given to the agricultural tenant only, it would act against investment by the other tenants on a property. The bill would work against diversification, rather than encourage it.

Ross Finnie: Under which provision are those leases made, if the tenancies are not on agricultural land?

Mr McGrigor: An estate may lease land to various tenants who carry out their business on the estate. Such supporting tenants could be fish-farming tenants or horticultural tenants. If the pre-emptive right to buy were given only to the agricultural tenant, what encouragement would there be for any other tenant to invest?

Ross Finnie: I am not sure under which piece of legislation one might confer a different right. The pre-emptive right to buy would be explicitly conferred upon those who have a long-term tenancy under the 1991 act.

Mr McGrigor: I am talking about the pre-emptive right to buy discouraging diversification.

Ross Finnie: That is a view that I do not share. I do not understand the circumstances under which one would grant a right to buy to persons who were engaged in agricultural activity but who might also be engaged in some ancillary activity.

If you are talking about an estate that is not on agricultural land and is not governed by an agricultural tenancy, that would be covered by different legislation. I do not think that one should be led to the conclusion that the pre-emptive right to buy would necessarily discourage diversification.

Douglas Greig: I would like to add to that. The pre-emptive right to buy will not apply to the new limited duration tenancies, so such tenancies will not act as a disincentive to diversification. The new limited duration tenancies will have an ability to diversify built into them from the start, so diversification will be permitted. I am not quite sure why you suggest that the new tenancies will act as a disincentive to diversification.

Mr McGrigor: I want to pursue my point. Let us suppose that an agricultural tenant and a sporting tenant were on the same land but that the tenant bought the land through the pre-emptive right to buy. If he then decided to use a method of agriculture that worked against the interests of the sporting tenant, such as putting on far more sheep, that would mean that all the investment that the sporting tenant had put in would be to no avail.

Ross Finnie: In your example, we would need to know on what basis the property had been split and what rights had been granted to the respective parties. I do not think that splitting a property would create a separate tenement—I would have to ask lawyers about that. If one splits a property, rights and obligations must be conferred on both parties at the point at which the division is made. Conferring a pre-emptive right to purchase on one party would not obviate the agreement that was entered into at the point at which the land was split.

We are talking about commercial leases that do not fall within the ambit of the 1991 act. I would have thought that a commercial lease arrangement would be an entirely different proposition.

Richard Lochhead: I want to ask about the criteria for objecting to diversification that would be available to landlords. Among the intended uses of the land to which a landlord could object are uses that would

"lessen significantly the amenity of the land or the surrounding area"

or that would

"be detrimental to the sound management of the estate".

Are not those criteria extremely wide? Would not the landlord be able to use almost any reason to object to diversification?

Ross Finnie: Where do those provisions appear?

Richard Lochhead: They appear in section 35.

Ross Finnie: We spent a long time constructing section 35. We sought to be reasonable to all sides. The important point is that if a landlord were to seek to use the provision in a way that the tenant regarded as unreasonable, the bill would give the tenant the right to challenge the landlord's view in the Land Court. I hope that that provision will be influential in persuading landlords not to use the objection criteria unreasonably, but in the way that was intended.

Richard Lochhead: That is fair enough. A landlord could also object if the intended use of land would

"cause the landlord to suffer undue hardship".

The reasons are wide ranging—they appear to encompass everything.

Ross Finnie: The landlord would still have to prove the point. It is possible to contemplate some form of diversification that would have an adverse effect. For example, a tenant of land that is a parcel of an estate might contemplate a use of the land that could have a prejudicial effect on the management of the estate as a whole. However, the burden would be on the landlord to state clearly which of the reasons set out in section 35(9) would apply.

17:15

Richard Lochhead: If a landlord has a business on the estate several miles down the road and a tenant farmer wants to diversify into a similar business, would that constitute "undue hardship" to the landlord?

Ross Finnie: The case is somewhat hypothetical. If the business were the only one of its kind and competition was being created, the landlord might have a view on that. However, it would be unreasonable for the landlord to object to the tenant's doing something slightly different. It is difficult to speculate on the issue.

Richard Lochhead: I am trying to get an indication of how widely the provision will apply.

Ross Finnie: The test of reasonableness must apply.

The Convener: It is important to remember that we are considering the general principles of the bill. We will deal with detailed amendments at stage 2.

Stewart Stevenson would like to ask a short supplementary.

Stewart Stevenson: I will keep it well under half an hour.

The Convener: You are dead right.

Stewart Stevenson: To what extent was a transfer of interest in a trust or a closed company considered as being appropriate to trigger the pre-emptive right to buy?

Ross Finnie: Did you say a closed company?

Stewart Stevenson: Yes.

Ross Finnie: That is a taxation term, rather than a corporate term.

Stewart Stevenson: But it is a readily identifiable company with an upper limit on the number of shareholders. Functionally, it is equivalent to a trust, but it is structured somewhat differently.

Ross Finnie: I know what a closed company is. I am not sure that the term is applicable to the bill.

Stewart Stevenson: You may choose an alternative term.

Ross Finnie: We considered a range of potential transfers. We need to extend the bill to encompass transfers for value, which this bill does not cover but which are included in the Land Reform (Scotland) Bill. When drafting the bill, our main concerns were traceability and enforceability. James Shaw may want to comment.

James Shaw: I am not sure that I can add much. I do not recall any discussion of closed companies, although it is not for me to comment on that matter. Stewart Stevenson is closely involved in the Justice 2 Committee, which is the lead committee on the Land Reform (Scotland) Bill. There was concern that the pre-emptive right to buy might be triggered all over the place by the resignation or death of trustees. The bill contains provisions to deal with that. As the minister has indicated, consideration is being given to streamlining this bill with the Land Reform (Scotland) Bill as amended at stage 2.

Stewart Stevenson: I was thinking less about the trustees than about those who benefit from the trust, who may not be the same people. The minister spoke about considering a pre-emptive right to buy when a transfer is made for value. I seek to distinguish between that and a situation in which a transfer is made of value, but not necessarily for value.

I have a simple question that may have a complicated answer. In the light of the experience of some other countries—in particular Denmark—is it legal to legislate that land may be owned only by entities that are domiciled in the UK?

Ross Finnie: That is not an express provision of the bill. It has proved extremely difficult to include in the bill transfers of companies whose ownership is not registered in the United Kingdom. We considered all sorts of companies, although I would not necessarily describe them as closed companies.

The issue was about being able to trace the owners of the shares and ensuring that the process of transferring the shares would be transparent, so that we could find out when the transfer happened. None of the circumstances apply particularly to overseas companies, and the clear advice was that the section would be incapable of being enforced in such circumstances. We examined the issue carefully in the context of the earlier consideration of the Land Reform (Scotland) Bill, and I know that the Rural Development Committee and others asked us to consider extending the trigger mechanisms. Much discussion and debate took place on those issues internally. The committee has before it our genuine attempt to make provisions that are enforceable, so that ownership can be traced and acted upon.

Stewart Stevenson: At some stage, it would be appropriate to prevent foreign entities from owning land.

Mr Rumbles: I want to return to retrospective legislation. Earlier, my colleague Fergus Ewing referred to the evidence that the committee received from Sir Crispin Agnew. Fergus Ewing asked Sir Crispin Agnew:

"Is there any reason why those changes should not apply retrospectively to all existing secure tenants covered by the 1991 act?"

Sir Crispin Agnew replied:

"That is purely a matter of policy; there is no legal reason why the bill should not do so."

However, he went on to say:

"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."—[*Official Report, Rural Development Committee*, 5 November 2002; c 3734.]

Is not there a world of difference between retrospective legislation involving a willing seller and buyer and retrospective legislation involving the compulsory purchase of private property? Sir Crispin Agnew says that there is no legal impediment to legislating to change agreements retrospectively, but we must be careful about the appropriateness of that. Will the minister comment?

Ross Finnie: The question is whether we could have such legislation. There are other technical issues that we have not addressed. If the advice is that we make changes retrospectively, that is the advice. James Shaw made a slightly different distinction, between going back to day 1 and the impact on an existing agreement from the point at which the bill is passed. Certainly, that was true for the two items that we mentioned earlier, but those were not the issue to which you are referring now. The passage of the bill would affect the impact of write-down agreements and post-lease agreements without our going back to rewrite them. Do you stick to your earlier view, James?

James Shaw: I certainly would not change the view that I expressed on retrospection. The minister has said that certain things must be done in the future, because we are still considering the technicalities of existing write-down agreements and post-lease agreements and we need to consider the effect on the relationship between the landlord and the tenant.

Mr Rumbles: With respect, I am not sure that you understood fully the meaning of my question. I was referring to the evidence that we received from Sir Crispin Agnew, who said that, in his opinion, there is no legal reason why we cannot have retrospective legislation. However, he adds a caveat by saying:

"it is difficult to know whether it is appropriate to change agreements retrospectively in cases where people have entered into them in good faith."—[*Official Report, Rural Development Committee*, 5 November 2002; c 3734.]

Ross Finnie: Our answer is that we agree with that wholly. The reason why I was unable to answer definitively Fergus Ewing's supplementary question about write-down agreements and post-lease agreements was because we recognise that the act will have a retrospective effect. We must consider further the impact that it might have, as well as the basis upon which those contracts were entered into. Therefore, the answer is yes. I am sorry that I did not quite understand the other part of the question.

Fergus Ewing: We have not raised a point about which we received much evidence, which relates to sporting rights. It is fair to say that, with the possible exception of one witness, there was broad agreement among tenants and landowners that the work of gamekeepers is important and should not be hampered, prejudiced or imperilled and that jobs should not be put at risk.

Today, we heard evidence from two representatives of the Scottish Gamekeepers Association. They argued that they were concerned about the impact of a pre-emptive right to buy and more concerned about an absolute right to buy, but that their particular concerns were of a practical nature. If a sitting heritable tenant on an estate where there might be five or six farms purchases one farm, that might hinder or make impossible the continued operation of sporting rights and the jobs that depend on it. Do you share that concern?

Ross Finnie: My concern arises only in relation to a pre-emptive right to buy, because that is the only proposition that I am promoting in the bill. One must think through the precise problem and the nature of solving it.

As I understand it, two propositions have been put to you. One involves dividing an estate into parcels and the second is about who might be able to afford to buy the land.

The proper course of action is to proceed with the right of the tenant to acquire the rights—I am sure that you will understand the issues better than I do—but not to separate the rights within the land or to create separate tenements within that.

If you were in a position to exercise that right and did not wish to exercise it or there was a better way of dealing with the situation, there would be nothing to prevent you from setting up a commercial arrangement when you exercised the right.

Fergus Ewing: I accept that that is a possibility, but I do not feel that it addresses some of the concerns that we have heard in evidence today and in previous sessions. Practical concerns were enumerated today by the gamekeepers who appeared before—

Ross Finnie: I am sorry to interrupt you, but the other issue is that under the proposition that I am promoting, there is a willing seller. If the seller wanted to dispose of the rights, they would need to find a buyer.

Fergus Ewing: I am afraid that that does not address the concerns that we heard today. Unless there is a mechanism that provides for sporting rights to continue to be operated, a purchaser might not continue to operate them. The purchaser might also have different policies on access, forestry, fencing, stock control and times when stock are out on the hill. We heard all those points and many more from the gamekeepers. We are considering the principles rather than the details.

The proposal could be amended in at least two ways. One would be to exclude the sporting rights, which would require statutory provision for sporting rights to be dealt with separately—in the way that salmon rights and minerals are dealt with. A second option would be to create sporting rights as a form of servitude. There is no reason why we could not consider that, although it is not something about which we have heard technical evidence, and no doubt that will be required.

If we wanted to ensure that sporting rights continued to operate and that the pre-emptive purchasing tenant purchased land subject to those rights, a management agreement of some sort would be required. Sporting leases may already include provisions that we would expect to be adopted in or imported into a contract of purchase made under the bill. The argument was well made that at present there is insufficient protection for sporting interests and gamekeepers' jobs.

I hope that the Executive will consider the two alternatives that have been proposed as possible ways of addressing the real concerns that we have heard about at length.

17:30

Ross Finnie: I am happy to consider the practical implications of what has been proposed—it would be very silly for me not to do that. However, I am bound to say that making sporting rights a separate tenement from land contradicts the provisions of both the Abolition of Feudal Tenure etc (Scotland) Act 2000 and the Title Conditions (Scotland) Bill. As the committee would expect, we must consider the issue in the round—in a joined-up way. We must also consider the point that I made about the willing seller. The sale of a plot on an estate might interfere seriously with sporting rights. However, in the case of a willing seller there may be other considerations for us to address.

I would be happy to consider any anomaly at a later stage. The principle that we are advancing is that full rights should be granted to tenants. The point that Fergus Ewing properly makes must be considered within the framework of the Abolition of Feudal Tenure etc (Scotland) Act 2000 and the Title Conditions (Scotland) Bill.

Fergus Ewing: I accept that. Gamekeepers are concerned about the continued operation of a particular form of land use. I hope that I am not misrepresenting them when I say that who owns the land on which sporting rights are exercised is not of paramount importance to them. The important point is that it should continue to be possible to exercise those rights. There may be a third option—to import into the contract of purchase under the pre-emptive right to buy management rules or a management agreement.

Ross Finnie: I will consider that.

The Convener: We have almost reached the end of this evidence-taking session. I will finish by asking the minister to clarify an issue that has arisen—how the bill would impact on current limited partnerships. I raise this matter in the light of an e-mail from Moray Estates that has been circulated to all of us. At a recent meeting with the deputy convener, the factor of Moray Estates expressed concern that section 24 of the bill appears to extend the pre-emptive right to buy to all tenants who hold their tenancy under the 1991 act. That would include limited partnership arrangements. Can the minister clarify what impact the bill would have on current limited partnerships?

Ross Finnie: Section 24 extends the pre-emptive right to buy. However, section 58, headed "Rights of certain persons where tenant is a partnership", makes it clear that that would apply only to new partnerships formed following the passage of the bill. You must read section 24 in conjunction with section 58. The provision applies only to new partnerships. I would be happy to write to you to clarify the matter. The extension of the pre-emptive right to buy is limited by part 6 and section 58 of the bill.

The Convener: I would be grateful if you would write to me on that issue.

Ross Finnie: I would be happy to do so.

The Convener: I will be happier to receive your letter.

I thank all participants for answering our questions, particularly the minister and his officials.

It has been a long, tiring afternoon. Nevertheless, we still have a couple of items on the agenda. Item 4 is consideration of the evidence that we have received on the Agricultural Holdings (Scotland) Bill at stage 1. Today's session was our last evidence-taking session on the bill. As well as oral evidence, we have received a number of written submissions and a considerable amount of supplementary information from some witnesses. That information has been circulated to all members and I hope that they will pay attention to it.

We will now draft a report. As I mentioned, it will be produced in a short time scale. It is almost impossible to have it available in hard copy by Thursday, but it will be distributed by e-mail on Friday, to allow members to access it as soon as possible. If members have any points other than the most obvious ones that have been discussed during our evidence-taking sessions, it might be helpful to the clerks if they advanced them now. Do members have anything unusual that they wish to be included in the draft report?

It seems that members are happy to leave matters until our first discussion of the draft report, which will take place next week. I thank members for being helpful, as they always are.

Subordinate Legislation

Plant Health (Phytophthora Ramorum) (Scotland) (No 2) Order 2002 (SSI 2002/483)

The Convener: Item 5 is consideration of SSI 2002/483, which relates to plant health. Given what appears in brackets in the order's name, I will not follow my usual tradition of pronouncing the full title. The Subordinate Legislation Committee has considered the order and has raised a number of points for our consideration. The relevant extract from the Subordinate Legislation Committee's report was sent to members by e-mail yesterday and hard copies of it have been circulated today.

I feel obliged to point out that the order represents another example of an item of subordinate legislation that has breached the 21-day rule, in that it was brought into force two days after being laid before the Parliament. The committee has raised serious concerns about that issue on previous occasions. A letter from the Executive to the Presiding Officer accompanies the order, which explains that the order relates to an emergency procedure that has been introduced in response to a European Commission decision. The Executive was given insufficient time to comply with the 21-day rule, because although the decision was published only on 20 September, there was a requirement that it be brought into national law by 1 November. That being the case, I am slightly sympathetic to the Executive's need to break the 21-day rule.

As no member wishes to comment, I can take it as read that we do not wish to make any further comment on the order to the Parliament. We should take all decisions after 5 o'clock at night.

Richard Lochhead: I would like to raise a housekeeping point.

The Convener: That would be in order.

Richard Lochhead: My office was informed that there was a waiting list of eight people for the public seats for today's meeting. I have noticed that, since 2 o'clock, half the seats have been empty. That is unacceptable. I ask the clerks to complain to whoever arranges the tickets for the public seats, because some of my constituents were refused tickets.

The Convener: I have experienced a similar problem. It is a fair comment that we should consider how the seating is allocated, as a number of people have been refused tickets.

Fergus Ewing: I have another housekeeping point, which is of some importance. As other members have said, the *Official Report* of today's meeting will be examined carefully, particularly in

relation to the ASP and scallop matters. I hope that the industry representatives who were here today will have an early chance to study the responses that the minister gave, so that when we come to produce our letter, we will have the benefit of their input and reflection, in so far as that is possible. Can we see whether we can get the *Official Report* of today's proceedings as high up the batting order as possible?

The Convener: I think that it is already high up the batting order—my information is that it will be available on Monday.

Mr McGrigor: I agree with that, but I think that the *Official Report* of the meeting should be made available to any fishing representative, not just to the ones who were here.

The Convener: It will be available to those who wish to access it as of Monday. On that happy note, I close the meeting. Thank you for your forbearance.

Meeting closed at 17:39.

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