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Official Report

RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE

Wednesday 25 January 2012

Session 4

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RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE
3rd Meeting 2012, Session 4

CONVENER

*Rob Gibson (Caithness, Sutherland and Ross) (SNP)

DEPUTY CONVENER

*Annabelle Ewing (Mid Scotland and Fife) (SNP)

COMMITTEE MEMBERS

*Claudia Beamish (South Scotland) (Lab)
*Graeme Dey (Angus South) (SNP)
*Jim Hume (South Scotland) (LD)
*John Lamont (Ettrick, Roxburgh and Berwickshire) (Con)
*Richard Lyle (Central Scotland) (SNP)
*Margaret McDougall (West Scotland) (Lab)
*Aileen McLeod (South Scotland) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Michael Anderson (Scottish Government)
Matthew Cartney (Scottish Government)
Iain Dewar (Scottish Government)
Richard Lochhead (Cabinet Secretary for Rural Affairs and the Environment)
Caroline Mair (Scottish Government)
Gordon Struth (Scottish Government)
Ian Vickerstaff (Scottish Government)
Andrew Voas (Scottish Government)

CLERK TO THE COMMITTEE

Lynn Tullis

LOCATION

Committee Room 1

Scottish Parliament

Rural Affairs, Climate Change and Environment Committee

Wednesday 25 January 2012

[The Convener *opened the meeting at 10:00*]

Subordinate Legislation

Marine Licensing (Exempted Activities) (Scottish Inshore and Offshore Regions) Amendment Order 2012 [Draft]

The Convener (Rob Gibson): Good morning, everybody, and welcome to the third meeting in 2012 of the Rural Affairs, Climate Change and Environment Committee. Members and the public should turn off mobile phones and BlackBerrys as leaving them in flight mode or on silent will affect the broadcasting system. I have apologies from nobody, so everybody is present.

Agenda item 1 is subordinate legislation. The committee will take evidence from the Cabinet Secretary for Rural Affairs and the Environment on the draft Marine Licensing (Exempted Activities) (Scottish Inshore and Offshore Regions) Amendment Order 2012. The instrument has been laid under affirmative procedure, which means that Parliament must approve it before its provisions can come into force. Following evidence taking, the committee will, under agenda item 2, be invited to consider the motion to approve the instrument.

I welcome the cabinet secretary, Richard Lochhead, and his officials, whom he may introduce to us.

The Cabinet Secretary for Rural Affairs and the Environment (Richard Lochhead): Thank you, convener. Your tartan tie looks splendid and reminds me that I have forgotten to wear mine this morning. I was intrigued by the instructions to put our phones in flight mode. I am just wondering where we are going this morning; I am looking forward to finding out.

The Convener: We are taking off.

Richard Lochhead: I will allow my officials to introduce themselves briefly.

Ian Vickerstaff (Scottish Government): I am from the Scottish Government legal directorate.

Matthew Cartney (Scottish Government): I am from Marine Scotland policy.

The Convener: I invite the cabinet secretary to make a brief introductory statement on the instrument.

Richard Lochhead: Thank you. I am here to discuss a number of issues, but first I will speak about the draft Marine Licensing (Exempted Activities) (Scottish Inshore and Offshore Regions) Amendment Order 2012. I will also speak to the motion on the order.

The draft order will, if approved, resolve three main issues that arose after the introduction of the new marine licensing regime in April 2011. The draft order will amend the secondary legislation that specifies classes of marine activity that do not require a marine license under the new regime. Those principal orders are the Marine Licensing (Exempted Activities) (Scottish Inshore Region) Order 2011 and the Marine Licensing (Exempted Activities) (Scottish Offshore Region) Order 2011.

Articles 5 and 11 of the draft order will add a new condition to the exemption concerning the use of marine chemical and marine oil treatment substances so that no deposit may be made below the surface of the sea without the approval of the Scottish ministers.

Articles 6 and 13 of the draft order will amend the 2011 orders to exempt from the marine licensing scheme, first, the retrieval of objects from the sea bed that have been accidentally deposited there and, secondly, removal activity that is carried out for the purpose of sediment sampling. However, in both cases the exemption will be only in circumstances in which the new provisions apply. Both exemptions are subject to conditions and do not apply where the activity will cause, or is likely to cause, navigational risk or significant environmental impact to specified areas.

Articles 3 and 8 of the draft order will clarify and extend the definition in the 2011 orders of a marine protected area to include historic marine protected areas which—as members may recall—are areas that are designated as such when Scottish ministers consider it to be desirable to do so in order to preserve marine historic assets that are of national importance. Together with articles 4, 9, 10 and 12, the articles will also make minor and consequential amendments to the 2011 orders that include addressing three drafting errors in one of the principal orders that the Subordinate Legislation Committee reported on in March last year.

For the information of the committee, I say that marine chemical and oil treatment substances are used in the treatment of oil and chemical spills to speed up their dispersal and to reduce environmental impact. The exemption covering the retrieval of items that are accidentally deposited on the sea bed is to facilitate, without the need for

pointless bureaucracy, the recovery of items such as tools that have been dropped overboard from a vessel. Sediment sampling is a very low-impact activity that is carried out for various reasons, such as scientific research by fish farms and regulatory bodies to monitor the environmental impact of various activities.

The changes that will be made by the order will be beneficial to all stakeholders and were widely supported by the industry regulators and third sector groups during the public consultation. I am happy to take any questions that the committee may have on the draft order.

The Convener: Thank you for that. Do members have any questions?

Annabelle Ewing (Mid Scotland and Fife) (SNP): I have a question about the process. Specified deposits can be made, but only subject to the approval of the Scottish ministers. What is the process and timing for that? How quickly would it be done—or not done, as the case may be?

Richard Lochhead: Anyone who wishes to carry out an activity that is covered by the Marine (Scotland) Act 2010 must contact Marine Scotland and request a licence. The order will exempt the activities that I mentioned from the requirement for a licence, because that is needless bureaucracy. The 2010 act and the requirement for licences have not been up and running for long, so I am happy to get back to the committee on the average time it takes to issue licences. For obvious reasons, we take as little time as possible; a lot of marine activity takes place and we do not want to hold things up, so issuing licences is a priority for us. The question is a good one.

The Convener: I have a general question on the effects of dispersal of oil spills. A little information on that would be useful to us. Clearly, finding out about the effects will require sampling on the sea bed. What impact do dispersants have on the environment?

Richard Lochhead: As far as I am aware, all the chemicals that are used in our waters to disperse oil slicks—thankfully, to my knowledge, they have not been deployed in recent times—must pass certain tests and meet certain criteria in order that they can be used for that purpose. As I said, we do not believe that a licence is required for that, because of the low environmental impact of the dispersant chemicals and, not least, because we want the chemicals to be used as quickly as possible to help to protect the environment should an oil slick occur. The measure is about protecting the environment as well as being about removing needless bureaucracy.

The Convener: Thank you for those remarks.

As members have no more questions, we move to agenda item 2, which is the formal debate on motion S4M-01685, which asks that the committee recommend approval of the instrument. The cabinet secretary will move the motion, after which a debate of up to 90 minutes can follow, although I hope that most of the issues have been covered. I invite the cabinet secretary to speak to and move the motion.

Richard Lochhead: I just make the obvious point that, when we put in place regulation, we continue our dialogue with stakeholders and, occasionally, it is brought to our attention that there is too much bureaucracy. We have identified a couple of activities in relation to which we do not want to put people through the hassle and expense of applying for licences. That is the background to the order.

I move,

That the Rural Affairs, Climate Change and Environment Committee recommends that the Marine Licensing (Exempted Activities) (Scottish Inshore and Offshore Regions) Amendment Order 2012 [draft] be approved.

Motion agreed to.

Prohibited Procedures on Protected Animals (Exemptions) (Scotland) Amendment Regulations 2012 [Draft]

The Convener: Under agenda item 3, we will take evidence from the cabinet secretary on the draft Prohibited Procedures on Protected Animals (Exemptions) (Scotland) Amendment Regulations 2012. The regulations have been laid under the affirmative procedure, which means that Parliament must approve them before the provisions may come into force. Following evidence, the committee will be invited, under agenda item 4, to consider the motion to recommend approval of the instrument. Once again, I welcome the cabinet secretary and ask him to introduce his officials.

Richard Lochhead: Thank you. I will let my officials explain their roles briefly.

Michael Anderson (Scottish Government): I am from the Scottish Government legal directorate.

Andrew Voas (Scottish Government): I am a veterinary adviser to the Scottish Government.

Gordon Struth (Scottish Government): I am from the animal health and welfare division.

The Convener: Thank you, and welcome to the meeting. I invite the cabinet secretary to make some brief introductory remarks.

Richard Lochhead: I am proposing an amendment to the regulations to enable an important part of our shared ambition with industry

and veterinary and scientific stakeholders, which is to eradicate bovine viral diarrhoea—or BVD, as we all know it—from Scotland. BVD is one of the most significant cattle diseases in Scotland in terms of its economic cost and impact on welfare.

A critical part of controlling BVD is identification of infected animals and herds through testing, and one commonly used and very helpful testing method is to use ear-tissue tags. The tags punch out a small tissue sample into a sealed container that can be sent for testing. I will show you the tags—Gordon Struth has some with him. The tags that I am holding up in one hand are normal tags, which are currently used, and those in the other hand are the tissue-sampling tags, which we are discussing today. The tags can be official United Kingdom identity tags or plain tags, which are sometimes known as management tags, and which I have just shown you. My officials brought the samples to let the committee see what they look like.

Section 20 of the Animal Health and Welfare (Scotland) Act 2006 makes it an offence for any person to interfere with the bone structure or sensitive tissue of a protected animal. Procedures that are carried out for medical reasons such as the amputation of a diseased or badly damaged limb, an operation to remove a growth and animal dentistry are exempted. The act also allows Scottish ministers to exempt other procedures.

Regulations are in place to allow most existing farm animal husbandry practices to continue for the general health and welfare of an individual animal, flock or herd for animal identification purposes and to ensure handlers' safety. At present, the regulations permit the application of an animal ear tag only for the purpose of identification. The ear-tissue tag as an official or UK identity tag applied to a calf is permitted, because the purpose of applying the tag is identification. However, in any other circumstances, applying an ear tag is unlawful. Nonetheless, such ear-tissue tagging is widespread in practice, but very few people are aware of its illegality.

The amendment will add screening for routine or random testing for disease to the purposes for which ear tagging is permitted. As required by the 2006 act, we have consulted on the amendment, and the response was overwhelmingly positive. The consensus was that any potential negative impact on the welfare of an animal through the application of another ear tag will be significantly outweighed by the welfare benefits deriving from control and eradication of BVD.

There are, however, some welfare concerns, as raised in particular by the Farm Animal Welfare Committee. It says that as the alternative of blood sampling exists and has lesser welfare implications, that should be the prescribed sampling method. However, ear-tissue tags have two advantages over a blood test. First, samples can be taken by the farmer without having to involve a vet, which can save cost and reduce inconvenience, and secondly, ear-tissue samples can be taken from very young calves, while blood samples cannot be taken from calves under one month old.

Calves that are born with BVD have what is known as persistent infection, and are by far the main source of the spread of BVD. Ear-tissue tags are therefore a good way of quickly identifying persistently infected calves so that they can be removed from the herd. Other welfare concerns surround the appropriate application of tags, and we will address those through providing clear advice in the guidance that we are sending to all cattle keepers very shortly.

The amendment goes wider than BVD to permit ear-tissue tagging for testing for other diseases because that may in the future become useful to the livestock industry as new diagnostics are developed. The amendment extends to pigs, sheep, goats and deer for the same reason.

The future of Scotland's livestock sector is a very important subject, and we will be happy to answer any questions that you have.

Jim Hume (South Scotland) (LD): I declare a farming interest. At present there are two tags for cattle: a management type and a standard type, as recommended by the European Union. Are we talking about a third tag in the ear? Would that be for all cattle?

I wonder about cost. If a farmer has a herd of 100 cattle, the cattle will calve probably over an eight-week period, so the farmer will continually be sending in little bits of flesh. I am interested in the practicalities.

10:15

Richard Lochhead: It is important to briefly explain the background to this debate, which will put that question into context. First, the industry effectively came to the Government and said that eradicating BVD would be so beneficial to the sector that we should proceed with regulations to achieve it rather than pursuing the voluntary approach. Therefore, in the view of the industry, the economic benefits of eradicating BVD clearly outweigh the cost of taking samples and having to abide by the regulations that the industry has asked for in the first place.

The industry will have to pick up the cost of the tags to take the sample, and the first part of the BVD strategy is the mandatory annual testing. The purpose of the ear-tissue tag is to take the sample;

the purpose of the other tag, which is permanent, is to allow identification.

I will allow our veterinary adviser to explain the way in which the testing will happen and how regularly it will take place.

Andrew Voas: The identification tag could be used as the tissue sampling tag for calves, which would avoid the need to have an additional tag. However, the purpose of the amendment is to deal with circumstances in which the animal is already properly identified but, at a later date in its life, there is a reason to use the tissue-sampling tag. The amendment would allow that to happen, and that would fit into the particular testing or sampling regime that the farmer had decided to adopt, in consultation with his veterinary surgeon.

Jim Hume: I imagine that most farmers would just want to use two tags—one in each of the animal's ears. Cows do not all calve on the same day, which would mean that there would be a dripping-in of samples over a period. Would it be possible to cope with that?

Andrew Voas: I believe that the samples can be stored, so samples could be kept until a batch could be sent off.

Jim Hume: Do you mean that they can be stored in a fridge?

Andrew Voas: Yes.

Claudia Beamish (South Scotland) (Lab): I would like a little more detail about the comments of the Farm Animal Welfare Committee—the United Kingdom advisory board—which is opposed to the proposal. Speaking as someone who hears farmers saying, "Oh no, I have to go out on the hills and look for another sheep that's lost its tag" and so on, I am aware of the issues around tags. However, I am interested in the advisory body's concerns about the process and its suggestion that blood sampling would be more appropriate than additional tags, and I wonder whether we are right to discount the suggestion.

Richard Lochhead: The regulation is designed to allow the option of testing via tags. As I said in my opening remarks, we are in a slightly embarrassing position in that people have been using the tags for sampling for a long time, unaware that it is illegal. That is why we want to fix the regulation. It is quite easy to see how the situation arose, because of the nature of the regulations.

The Farm Animal Welfare Committee takes the view that there is an alternative, and believes that it should be used first and foremost, as opposed to taking tissue samples. For the reasons that I have explained, we feel that ear tags are a justifiable option. We allow tagging for identification purposes, so it is not as if tagging is not accepted in other circumstances. We feel that the proposal would be more appropriate for the circumstances that face cattle keepers in Scotland.

Andrew Voas might want to say something about the views of the Farm Animal Welfare Committee.

Andrew Voas: The letter that we received from the FAWC expressed quite a fine argument. It put the individual animal's interest first and said that, if it were possible to take a blood sample rather than putting an additional tag on an animal's ear, that would be ideal. However, I think that the FAWC recognised that there would be circumstances in which an additional tag would be acceptable. It said that guidance could be issued to farmers to say that blood sampling is a possible alternative to tagging.

Annabelle Ewing: From the summary of responses that we have been provided with, I note that other respondents—the British Veterinary Association, the British Cattle Veterinary Association, the Royal (Dick) School of Veterinary Studies, the Scottish Society for the Prevention of Cruelty to Animals, the Royal Society for the Protection of Animals, Animal Concern and nine individual veterinary practitioners—do not appear to have raised the issue that the Farm Animal Welfare Council raised.

Could you elaborate on how guidance would likely work in practice? Will the Scottish Government monitor its application to determine whether its guidance with respect to older animals is being followed?

Richard Lochhead: The guidance is going to the printers in the next week, so it will, I hope, be posted out to cattle keepers in Scotland in a week to 10 days.

In terms of the follow-up, anyone who is found to have an animal with BVD and who has not followed the regulations will be in breach. We need an industry-wide effort to ensure that we are doing what we can to eradicate BVD from the cattle herd in Scotland. We ask all cattle keepers to be as responsible as possible in achieving that.

Gordon Struth can speak about how the enforcement process will work in practice.

Gordon Struth: Ms Ewing's question was about checking whether guidance that will advise on use of ear-tissue tags is being followed. That would be covered by the same welfare inspection processes by which we monitor issues around the application of any ear tags, whether for identification or tissue-collection purposes. There is nothing additional in relation to the additional tags.

Annabelle Ewing: As I said , it seems that the other animal welfare bodies have not raised the

issue that was raised by the Farm Animal Welfare Committee. Am I correct?

Andrew Voas: I think that those bodies accept the argument that we are proposing, which is that the overall welfare benefit of a BVD eradication programme outweighs the relatively minor and brief pain that is associated with additional tags.

The Convener: The provision is mandatory for cattle. However, there has been mention of sheep, deer, goats and pigs. Is there an intention to extend the provision to other animals, on a voluntary basis, or will it apply only to cattle?

Richard Lochhead: Clearly, the provision is driven by the BVD eradication programme, but we are taking the opportunity to ensure that, should it be necessary to conduct sampling in other species using the same methods, people do not end up acting illegally at that point. Given that diagnostics are always developing, we thought that we ought to ensure that we were prepared, should that need arise.

Jim Hume: The process will be farm-led, and the conditions in which the tagging takes place will have varying degrees of sterility. It might be that some samples prove not to be worthy of testing—they might have been left outside in the sun, for example. What would happen in that situation?

Andrew Voas: The test that is being done on the tissue is a polymerase chain reaction—PCR—test, which basically looks for fragments of virus. It is a fairly robust test, with regard to the conditions in which the samples are taken. Do you have a figure for the specificity of the test, Gordon?

Gordon Struth: No.

Andrew Voas: It is a fairly reliable test that is widely used on small pieces of tissue. It is very effective at finding tiny fragments of virus in samples of dried-up tissue or samples that might have been mishandled.

Jim Hume: When you say that herds will be tested every year, I presume that you are not talking about, for example, a cow that is 15 years old being tested every year. Instead, one animal will be tested once in its lifetime. Is that correct?

Andrew Voas: There are different options for testing herds. It is a matter of deciding which option best fits the particular herd. The process certainly will not involve testing every animal in a herd. The approach depends on the type of herd. That should become clear when the guidance is issued. However, there certainly will not be an annual test for every animal.

Jim Hume: That is obvious, because otherwise a 15-year-old cow would have 17 tags in it.

Andrew Voas: When an animal has a tissue sample taken to show that it is clear of the virus, that demonstrates that the animal does not have the virus at that point.

Jim Hume: So, the animal would not have to be tested again in its life.

Andrew Voas: No.

The Convener: It is useful for members to understand the detail of farming practices. We will discuss many more of them, I am sure. The measures certainly sound like a step forward.

Without further ado, we move to agenda item 4, which is consideration of motion S4M-01688, on recommendation to approve the draft amendment regulations. The motion will be moved, after which there will be an opportunity for a formal debate on the regulations. Procedurally, it can last for up to 90 minutes but, in practice, I hope that most of the issues have been dealt with. I invite the cabinet secretary to speak to and move the motion.

Richard Lochhead: I simply reiterate that, in recent years, Scotland has built up a good track record on tackling animal disease. We should give our livestock sector a big pat on the back for the industry-led movement to try to eradicate animal disease over the years. We have been lucky in that we have kept many damaging animal diseases out of Scotland while, unfortunately, other parts of the United Kingdom have suffered. We feel for livestock keepers elsewhere in the UK, but we are pleased that we have kept some of the situations away from our border. It is heartening that the industry has worked with the Government and come to us with plans to eradicate BVD. As members might have heard, eradication will be worth £50 million to £80 million to the livestock sector in Scotland in the next decade or so. That is about £16,000 a year to an average dairy business and about £2,000 a year to other cattle farms. So, as well as the welfare benefit that has been alluded to, there is a substantial economic benefit for the livestock sector.

I move,

That the Rural Affairs, Climate Change and Environment Committee recommends that the Prohibited Procedures on Protected Animals (Exemptions) (Scotland) Amendment Regulations 2012 [draft] be approved.

Margaret McDougall (West Scotland) (Lab): What action would be taken against a farmer who did not comply with the regulations?

Richard Lochhead: I will have to write to the committee on the penalty clauses in the original regulations. Today, I am discussing ear tagging and sampling for the disease. However, the penalties will be similar to those for other infringements of such regulations. I am happy to send details of the exact fines that are available to the courts.

Jim Hume: The papers mention that about 40 per cent of herds have evidence of exposure. Forgive my ignorance but, when there is evidence of exposure, what happens with individual animals and herds?

Richard Lochhead: The farmer is expected to deal with that situation. Much of the frustration that has led to the industry bringing forward the programme arises because some farmers have neighbours who have BVD in their herds but have not taken action to remove the infected stock from the herd. A farmer will be expected to take the necessary action to eradicate BVD from the herd.

Jim Hume: Will farmers just be expected to do that, or will they have to do it?

Richard Lochhead: The plan is to backdate the legislation to ensure that screening that has taken place since 1 December last year counts towards the screening that must take place in the first stage of the programme. All breeding herds must be tested by 1 February 2013.

From 1 December 2012, there will be a ban on farmers knowingly selling persistently infected animals and the use of declaration of herd and animal status at sales to drive the markets. So, the markets will, I presume, not take those animals and there will be a ban on farmers knowingly selling them. They will have to take whatever action they see fit, because they will not get them into the marketplace. That will be the position from 1 December 2012, so it is in the second year of the programme.

Jim Hume: That will give farmers time. Thank you.

The Convener: The question is, that motion S4M-01688 be agreed to.

Motion agreed to,

That the Rural Affairs, Climate Change and Environment Committee recommends that the Prohibited Procedures on Protected Animals (Exemptions) (Scotland) Amendment Regulations 2012 [draft] be approved.

The Convener: Thank you, cabinet secretary. We will have a change of officials for agenda item 5.

Agricultural Holdings (Amendment) (Scotland) Bill: Stage 1

10:30

The Convener: Item 5 is our final evidence session on the Agricultural Holdings (Amendment) (Scotland) Bill. We will question the cabinet secretary on what we have heard during our consideration of the bill. Again, I welcome the cabinet secretary, Richard Lochhead, and his Scottish Government officials, who are Iain Dewar, bill team leader, agriculture and rural development division; and Caroline Mair, solicitor, rural affairs, directorate for legal services. I invite questions from members.

Aileen McLeod (South Scotland) (SNP): Good morning. One of the key aspects that we have been discussing in our evidence sessions on the bill is the proposed succession provisions in section 1 and how a near relative should be defined. The bill proposes to include grandchildren in that definition. There is also an issue about the differences between those who can be assigned a tenancy and those who can succeed to a tenancy.

It is clear from our evidence that the proposed definition of "near relative" reflects the consensus that was reached by the members of the tenant farming forum. That said, when we took evidence last week, Christopher Nicholson from the Scottish Tenant Farmers Association said:

"From a tenant's perspective, we would encourage the definition of 'near relative' to be extended beyond a grandchild to include nephews and nieces. ... We hope that the definition will be expanded, as that would allow easier succession to and possibly assignation of heritable tenancies, which would help to preserve the number of heritable tenancies in Scotland."

In addition, Scott Walker from NFU Scotland said:

"It seems a bit strange to the layman, and certainly to many of our members, that in some situations there is a wider definition of who you can assign a tenancy to than who can get succession to it. It seems a little bit strange that, during your lifetime, you can assign a tenancy to a wider class of people, yet, at the point of your death, it is restricted to certain categories. That is a point to consider, but there is an industry-wide consensus that the bill is a step in the right direction."—[*Official Report, Rural Affairs and the Environment Committee,* 18 January 2012; c 520, 522.]

I would be interested in your view on whether the current definition in the bill will deliver the objectives of giving tenants greater security and encouraging new entrants or whether we should extend the definition.

Richard Lochhead: Thank you for the opportunity to come before the committee to give evidence on the bill, which is of course very

important for the future of the tenancy sector and which I hope will help to attract new entrants, as Aileen McLeod suggested.

I am sure that I do not need to tell the committee that there has been a long, challenging and often difficult road to get to where we are today in terms of the relationship between landlords and tenants in Scotland, with the first agricultural holdings act dating back to 1883. Over the subsequent century-plus, there have been changes from time to time to try to improve that relationship: to improve the balance of power between landlord and tenant; to ensure that we have a healthy tenancy sector in Scotland; to offer the necessary protection; and to make land available for letting so that new entrants can get on the first rung of the ladder. That is a big challenge that we face.

Today we are discussing the remaining measures that have still to be implemented following the previous parliamentary session, when the tenant farming forum considered the future of the matter, with a particular emphasis on how to attract new entrants to agriculture.

The "near relative" issue is one of those measures that the tenant farming forum unanimously agreed had to be addressed. We have before us the proposal to extend the definition of "near relative" to include grandchildren as a result of the forum's consensus view. We could easily ignore that consensus and put an alternative—or extend the definition further—in the legislation. However, we have chosen not to do that, because we agreed with the tenant farming forum that we would take forward its recommendations on a consensual basis, and its recommendation was to extend the definition of "near relative" to grandchildren.

Having said that, I will not sit here today and say that that is the end of the story. It has taken more than 100 years to get the current legislation on the books, and I cannot pretend to bring all the long-term solutions to the committee overnight. However, there is much more work to be done, and the succession issues will be part of that. That is recognised by the tenant farming forum, and certainly by the witnesses whom Aileen McLeod quoted in her question.

Related to this issue are the wider succession laws. Aileen McLeod rightly highlighted the difference between assignation and succession. We are talking about succession today, and there is perhaps no alignment in Scottish law per se between assignation and succession. The Scottish Law Commission has reported on succession issues, and the Scottish Government will respond to that in the coming months. This is a very legalistic issue and it is impacted upon by the wider law of succession in relation to all sectors of Scottish society. We will pay attention to that and see where that debate goes. We recognise, with regard to this particular legislation, that the succession issue is unfinished business.

The Convener: Are there any further points on that?

Claudia Beamish: Good morning again, cabinet secretary. What do you see as the advantages and disadvantages of extending the definition of "near relative" to nephews and nieces? As Aileen McLeod highlighted, that was raised as an area of concern.

Richard Lochhead: As Aileen McLeod mentioned, we want there to be more opportunities available—where that can be justified—to encourage the continuation of the farming tenancy within the family. We therefore have a definition of "near relative" at present, which is taken into account as it is in the interests of agriculture that it should be, but the case has been made to the Government in recent years that that definition is too tight. If the grandchild in the family wishes to take on the lease for the farm and become the tenant, they should have that opportunity.

It is clear that the debate as to how far we extend the definition will continue, and it is not easy to work out where the cut-off point should be in defining "near relative". As Aileen McLeod mentioned, some people feel that nieces and nephews should be captured by the definition.

As I said, we will work with the tenant farming forum and we will listen to the committee, which will address the issue in its stage 1 report, to see how the debate progresses in future. I think that most people—and certainly the tenant farming forum—recognise that it would be reasonable to include grandchildren as near relatives. If a farmer passes away at a fair age, and the grandchildren are coming up through the ranks and are involved in farming, it would make sense to allow them the opportunity to take on the tenancy, because their parents may not be around. We feel that that is a fair definition of "near relative" at this time.

Graeme Dey (Angus South) (SNP): Rather than revisiting the issue of nieces and nephews a year or two down the line, would it not be practical and sensible to get things right now, at this stage? There may not be a clamour, but sections of the industry are certainly keen to do that.

Richard Lochhead: Some stakeholders want to extend the definition, and I understand why they would want to put that case, but there certainly is not a clamour for it. All members of the committee will know that any farmer—whether an owner-occupier or a tenant—will have strong views on a variety of issues, including how to improve the amount of land coming on to the market for letting, and how to encourage new entrants. Those issues

are difficult, and for many reasons it has taken a long time to get to where we are today. I cannot turn back the clock and change history; I can only deal with the situation before me at the moment.

With legislation, we have to be careful about unintended consequences. We have to safeguard the rights of both landlords and tenants. Some would argue for extending the definition of "near relative" to go beyond grandchildren, but others would argue that such a definition might tie down a tenancy and make it so secure that the landlord who signed up for it in the first place would no longer have flexibility and would have their rights and expectations infringed.

We have not closed the door on any of the issues that we are discussing here. We have already given a commitment to consider, within 18 months of the act coming into force, the impact of the changes. In this session of Parliament, there will be an opportunity to consider how effective the latest changes have been in attracting new entrants and in helping the tenancy sector in Scotland.

Margaret McDougall: I would like to ask for some clarification, because I have come to this bill quite late on. If a tenant dies intestate and more than one grandchild is interested in succeeding to the farm, what is the procedure for deciding which grandchild will take on the tenancy?

Richard Lochhead: I have been cabinet secretary for a number of years now, and still I am seeking clarification on many of the issues that we are discussing, so do not consider seeking clarification a weakness in yourself. We are all seeking clarification on the legislation relating to agricultural holdings. It is a complex and difficult area, wrapped up in legalities, so I will bring in my legal colleague, Caroline Mair, to elaborate.

Different circumstances can arise when a tenancy is passed down the generations to near relatives. When a tenant passes away, there may be a will, or there may not be a will. The wider legal context kicks in when there is no will. If there is a will, and if a grandchild is named as the person taking on the tenancy, that will happen—and if Parliament passes this bill, grandchildren will have the right to inherit a tenancy. If there is no will, we move into a wider legal sphere. I will ask Caroline Mair to talk about the wider law of succession and what happens if there are various grandchildren.

Caroline Mair (Scottish Government): If there was no will, the tenancy would pass by the laws of intestate succession, under the Succession (Scotland) Act 1964. That would happen first. The amending bill is not changing that; the amendment that we are making is to change the definition of "near relative", which is relevant only when a landlord subsequently serves a notice to quit on a successor tenant. Matters such as competition between two grandchildren who want to succeed to the tenancy are determined under the law of succession, which the bill will not change.

10:45

Richard Lochhead: A separate debate is going on in Scotland about the law of succession, which impacts on such circumstances.

John Lamont (Ettrick, Roxburgh and Berwickshire) (Con): I have a general question. A point on which you have touched and which we considered last week with the NFUS and other witnesses is the bill's impact on the ability of landowners and prospective tenants to negotiate freely.

There is an idea that the freedom to contract is being undermined in some way. That is having an impact on supply of land, which in turn has an impact on new entrants' ability to come into farming. Farmers and landowners have told me that because they are not able to negotiate freely, they are entering into more short-term arrangements, as opposed to more secure tenancies. That means that tenant farmers are no longer prepared to invest in the land and farm steadings in the way that they would do if they had a more secure tenancy.

Given the drop in tenancies, which was highlighted a few weeks ago, are you concerned that, by interfering with parties' contractual freedom, you are indirectly undermining parties' ability to enter into the arrangements that they want to enter into? I know that that is not the Government's intention.

Richard Lochhead: Don't worry—I welcome general questions on the topic. Your question gets to the heart of the debate. You used the word "interfering"; others, including me, say that we are regulating, to ensure that there is not an imbalance of power between tenants and landlords. We have historical baggage to deal with in that regard, which is why we have regulation to ensure that a democratic approach is taken.

We are talking about three key measures, which are left over from work in previous sessions of the Parliament. In the first session, we adopted measures to improve flexibility in leases, in the Agricultural Holdings (Scotland) Act 2003, to make it easier for landlords and tenants to strike the deal that is best for them. Time will tell whether the increased flexibility that we introduced makes a difference, particularly in relation to the transfer from a short limited duration tenancy to a limited duration tenancy—the five-year and 10-year leases issue—to make it easier for landlords and tenants to have a longer lease, if that is more

appropriate for them, without having to start from scratch. I hope that the 2003 act will make a difference and that the extra flexibility will mean that more leases are created. That was the whole purpose of the approach. As I said, we will review the position, to see whether the new approach has worked. If it has not worked, the Parliament will have the opportunity to do more.

I do not think that we are interfering. South of the border, there is more freedom of contract, but many people argue that that is at the expense of security of tenure. There are many short-term leases south of the border and commentators there say that it is even more difficult for new entrants to come into farming. New tenancies and leases are not just about new entrants; they are about the existing set-up and how the whole system works. We are trying to have a system in which it is a bit easier for new entrants to get on to the first rung of the ladder. There might be more freedom of contract and flexibility south of the border, but it comes at the expense of security of tenure and does not necessarily help new entrants.

In Scotland, we are in a different situation and a different environment. We are trying to create a different regulatory regime, which promotes new entrants, in particular, and frees up more land for let while giving landlords the confidence to let their land.

John Lamont: I thank the cabinet secretary for that answer, but how does the 10 per cent drop in the number of tenancies fit with what he has just said?

Richard Lochhead: As I have said before, there are no magic bullets. I do not think that anyone around this table or anyone in Scotland, including me, can come up with one solution that will suddenly get all of us to where we want to get to, as we are in a difficult environment. Many factors influence the availability of land for let in Scotland. The flexibility or lack of flexibility of the agricultural holdings legislation could be one factor, which is why we are addressing that issue, but there are many other issues. We know that the demographics and the profile of younger people in Scotland are changing, which can have an impact, but the economics of agriculture are perhaps the biggest factor. Anyone who is looking to become a farmer will consider the economics, which will, I hope, continue to improve and make it more attractive for new entrants to come on board. However, a range of factors—not only what we are discussing today—influences a person's decision on whether to get involved in agriculture in Scotland.

There is a range of reasons for the 10 per cent drop in the number of tenancies. I do not welcome it, as I want to ensure that we have a healthy tenancy sector in Scotland, and we should be concerned by it, but tenant farmers buy their farms and become owner-occupiers, and then, by definition, less land is let. We have bigger farms in Scotland than there are elsewhere, so the economics sometimes drive tenant farmers to rent more land, which means that there is less space for new entrants to come in. Therefore, a range of factors is involved, and we have to tackle all of them, not just what we are discussing today.

The Convener: I want to clarify a point before we move on from section 1, on succession by near relatives. I understand that the acceptance of grandchildren as near relatives for the purposes of succession was won in case law in the Scottish Land Court. Will you confirm that, as it puts a perspective on our difficulties in reaching the stage that we are now at of putting into law something relating to grandchildren?

Richard Lochhead: There have been cases, which I will ask Caroline Mair to speak about. I recall that the conclusion of a case was not specifically down to the definition of a near relative, but I ask her to elaborate on that.

Caroline Mair: I would need to know the exact case in order to offer any meaningful legal comment, but I would be happy to provide any further written detail if that were requested.

The Convener: If I remember rightly, I think that there was one involving Cawdor Estates, but I may be wrong, and I do not want to be quoted exactly on that. I wanted to establish the fact that case law often leads to the obvious necessity for change.

The next section is on the prohibition of upward-only rent reviews.

Jim Hume: I think that we were all fairly surprised that there were cases, albeit just a few, in which tenancies' rents could only go up and tenancy reviews could be initiated only by the landlord. It is interesting that the NFUS put a different spin on things. I think that a substantial but not large number of its members stated that it was sometimes beneficial to have clauses saying that rents could only go up because, otherwise, people proposing to take on tenancies could offer an extra large amount per year so that they would win the tenancy and then negotiate down afterwards. Have you considered that in any of your deliberations?

Richard Lochhead: To be frank, I have not really considered that in my deliberations, and I cannot recall that point being made to me during my discussions with the NFUS. Some farmers may hold that view, but members may rest assured that many more farmers and others who are involved in the debate hold the alternative view that we should tackle that issue and, for the avoidance of doubt, simply make it law that any

such clauses that are inserted into leases would be void.

Jim Hume: I have asked this question before, and although it was a different audience I presume that I will get the same answer. When the bill is passed and receives royal assent, will existing tenancy agreements that have an upward-only rent review clause or a landlord-initiated-only review clause be seen as unfair and changed or is it only new tenancies that will be affected?

Richard Lochhead: We have a clear position that we will not apply the change retrospectively. It will be the law that, although any future leases cannot have such clauses, existing leases will stay as is. We have no reason to believe that there is a great number of them.

Jim Hume: I understand that it is a cleaning-up process.

A couple of points were raised at a meeting with the NFUS yesterday that some of us attended. The first concerns the problem at waygo when tenants have made improvements, such as a shed, with or without the landlord's permission or knowledge. There is an argument about whether the landlord will take over the improvements. Has the Government considered help for the arbitration of that so that there is investment in tenanted farms and tenants are rewarded for investing?

The second point was about diversification. It has been stated that, in many diversification projects, landlords look for a share. In one example, a landlord wanted 80 per cent of the income from a diversification project. That basically stops anyone from wanting to diversify. Is that something that you will consider in this session?

Richard Lochhead: We are aware of on-going concerns in the tenancy sector about waygo compensation and issues surrounding that. We cannot pull a rabbit out of a hat to give landlords enough confidence that it is worth while letting land and at the same time address some of tenants' concerns about compensation at waygo. However, we are keen for the industry to look at that. Within 18 months of the act coming into force, we will review its impact so far, which is an opportunity for the committee and the industry to have its say. We are aware that there are issues surrounding waygo.

Jim Hume: And the diversification issue as well I presume.

Richard Lochhead: That would be linked, yes.

Annabelle Ewing: I want to add something to the debate on upward-only rent reviews, in case it is helpful. Although the bill would prohibit the inclusion of such a clause in future leases, that does not mean that rents would not go up. In the commercial sector, even when a tenant manages to negotiate away an upward-only rent review—which does not happen every day of the week because of the imbalance in the respective powers of the tenant and the landlord—we find that the rent can still go up, according to the applicable circumstances, when the rent is being reviewed. It is important to bear that in mind. I am sure that the tenant farming forum is well aware of that; we note that it has signed up to this provision.

Richard Lochhead: That is a fair comment. The issue is the prohibition of upward-only rent reviews and landlord-instigated-only rent reviews. Landlords and tenants support what we are doing on that. As Annabelle Ewing says, there will still be a rent negotiation and the opportunity to change rent levels.

The Convener: Section 3 is on the effect of VAT changes on the determination of rent.

11:00

Annabelle Ewing: The committee considered issues relating to section 4(1) in the evidence session with the bill team and in our stakeholder evidence session last week. At present, the provisions on near relatives will apply only when a tenant has died on or after the date when the legislation comes into force. In our previous evidence sessions, it emerged that the majority view in the tenant farming forum was that the provision should apply when a tenant has died before the legislation enters into force, but no notice has been served. Why was the majority view in the tenant farming forum not reflected in the bill? Scott Walker of the NFUS said:

"Provided that someone has not gone through the entire process"—

or, in effect, no notice has been served—

"we believe that this aspect of the bill should still be allowed to apply to them. In that sense, we would not support what is proposed in the bill and would prefer the view that is held by most of the organisations within the TFF to apply."—[*Official Report*, *Rural Affairs, Climate Change and Environment Committee*, 18 January 2012; c 536.]

Does the cabinet secretary agree?

Mr Walker also said that he does not believe that such a move would be retrospection in the true sense, because the process would not have been gone through and there would therefore be a clearly identifiable set of circumstances to which the measure could be applied. I ask the cabinet secretary to comment on the debate that we have had on the subject.

Richard Lochhead: The member raises a valid concern, but the subject is a difficult one, for a couple of reasons. First, as you will imagine, we would rather avoid retrospective legislation

because we do not want to be challenged on it. As I said, existing situations have expectations and rights built into them. If we try to change those retrospectively, we must be careful about the surrounding legalities. Therefore, our default position is not to implement legislation retrospectively. Secondly, with any new measure, there is a cut-off point; there will always be some people who just miss out on the benefit, irrespective of when the measure is introduced. Whatever we do on the definition of the term "near relative", I expect that some people will miss out because of the timing, but it might be only one or two people, given that nobody expects many people to be affected by the measure.

We are reluctant to legislate retrospectively, but the member will have the opportunity to make her view known to the committee.

Annabelle Ewing: I wonder whether the bill team could reflect a bit more on the point that, because the application is dependent on a practical step being taken—a notice being served—the measure would not be retrospective in the true sense, as it would apply in a certain set of circumstances. That was the point that the chief executive of the NFUS and others made. I hope that that legal point will be reflected on further, because it perhaps addresses the concern about retrospective legislation. I am trying to be helpful.

Richard Lochhead: That is a helpful point. I assure the member that I will reflect on the point, which we are aware of.

The Convener: As there are no further points on that matter, I would like to correct something that I said earlier about succession. At last week's meeting, Christopher Nicholson talked about the need for a wider agreement on assignation, succession, rent review and so on. He said:

"The issue is not just the cost of taking a case to the Scottish Land Court. Richard Blake"—

of Scottish Land & Estates—

"mentioned the Fleming v Ladykirk Estates case, which demonstrated that a tenancy could be assigned to a nephew. However, although the tenant won the case in the Land Court, the nephew did not become the tenant, because the landlord started an appeal process to the Court of Session and the tenant did not have the financial means to fight the case. The tenancy was lost and one more new entrant from a farming family was denied a start."—[*Official Report*, *Rural Affairs, Climate Change and Environment Committee*, 18 January 2012; c 539.]

That case involved a nephew and puts in context the gains that have been made, mainly through the Land Court. I am sure that there are also cases that involve grandchildren, on which it would be interesting to reflect as we draw up our stage 1 report on the principles of the bill. The process of securing change seems extremely slow. I did not want to cast aspersions on other estates; but the Ladykirk Estates case is germane to the issue of nephews, nieces, grandchildren and so on.

Graeme Dey: I will ask about a more general issue, given that we have the cabinet secretary with us. A 10 per cent drop in the number of tenancies in Scotland has been referred to. During our evidence session with stakeholders, the Scottish Tenant Farmers Association said that it thinks that somewhere in the region of 100 tenants have bought their farms since the 2003 act came in. It was also brought to our attention that when a large estate is broken up tenants can "lose" tenancies and become owner-occupiers. It is clear that such factors impact on the drop in tenancies; it is also clear that a large number of tenancies appear to have gone. What do you think lies behind the figures?

Richard Lochhead: We need a healthy tenanted sector in Scotland. We need everyone who has influence over the amount of land that can be let in Scotland to rise to the challenge of ensuring that the next generation of food producers and farmers has access to land to farm. That is the biggest challenge that we face in the context of this debate. We need landowners, landlords and owner-occupiers, as well as tenants, and to acknowledge that that is a priority.

Of course, the people who have the most power in that regard are those who own the land. Given the nature of land ownership in Scotland, we need people who have land to do what they can to make more land available. The Government is speaking to such people more than it has ever done, making in the strongest terms the point that we need to see more land put on the market. We feel that the legislation takes account of the needs of not just tenants but landlords, so the environment should be right for more land to come on to the market for letting. If that does not happen, we will have to keep returning to the issue. That is the Parliament's job, and I am sure that the committee takes a close interest in the matter too. We need to see results. We do not want to run out of patience or to have to spend even more time trying to legislate; we want more land in Scotland to be available to let.

Graeme Dey: It appears that less land is being made available. Why is that?

Richard Lochhead: Agriculture has changed. As I have said before, we are not frozen in time. The economic and global environment—not just the Scottish or European environment—is radically different from the environment 100 years ago. The size of farms is different and the number of people who are available to work in agriculture is different. There are new technologies. The whole profile of land use and agriculture in Scotland is changing and will continue to change.

There is an added complication, in that many landowners are awaiting the outcome of the common agricultural policy reform process before they make their next move. They might be hesitant, so I say to them that if they agree that we need new entrants in agriculture, as they say that they do, they should please do what they can to make land available. They have the land; they can make it available.

The bill is reasonable and takes account of the needs of landlords and tenants. We will return to the debate time and again, until we are confident that the next generation of farmers in Scotland has the opportunity to farm.

The Convener: Concerns have been expressed in our discussions about the need for more adequate information on the number of tenancies and we are well aware of the debate in the press about reductions, particularly in secured tenancies. I do not know whether you will be able to answer this series of questions just now, but I need to put them on the record to help our deliberations. First, is it normal practice for a tenancy to pass through assignation to the next generation?

As I said, I am happy for you to answer these questions later, but if you can respond immediately, that is fair enough.

Richard Lochhead: You are probably best to ask the questions and I will see whether I can answer them. If not, I will get back to you.

The Convener: I want to put them on the record anyway.

How many individuals will be affected by the change to the definition of "near relatives"? How many limited duration tenancy agreements included upward-only or landlord-only rent clauses? Are estimates available for new entrants lacking access to farm tenancies? To what extent is the 10 per cent drop in the number of tenancies in Scotland between 2005 and 2011 a result of tenants purchasing their farms or landowners taking land back in hand or reletting it under alternative arrangements?

It would be very helpful to get some answers to those questions.

Richard Lochhead: I am happy to write back to the committee on those questions; indeed, they are questions that I often ask. We are aware of the lack of data on the issue and are working with the industry on ways of capturing a lot more to understand exactly what is happening out there. In particular, it would be fantastic to have an answer to your final question on exchange of tenancies and the number that have been taken back in hand, but such information is very difficult to gather. However, it is a fundamental question and I agree with the committee that getting an answer to it would give us an exact picture of what is happening out there and allow us to understand why it is happening and to address some of the issues.

I am afraid that other issues, such as the number of people who will be affected by the change to the definition of "near relatives", will depend on future circumstances. I do not want to predict the demise of any particular farmer in Scotland, but the fact is that we cannot predict who will wish to take over tenancies when existing farmers pass away, or the demand from grandchildren to inherit them.

I will do my best to come back on your questions, convener.

The Convener: We will give you a list to ensure that you get back to us before we produce our report.

Richard Lochhead: We will let you know exactly where we are going with gathering data and new ways of doing these things.

Claudia Beamish: At last week's meeting with industry stakeholders we were told that there were as yet no figures for the possible number of informal expressions of interest from new entrants keen to get into the industry, some of whom are not relatives of farmers but have been involved with the industry in some way. Those people are finding things very difficult and I wonder whether there is any possibility of collecting data on that issue. I also wonder whether you can provide—if not today, then at some other point—information on efforts by the Forestry Commission and the Crown Estate to develop starter units and RSPB Scotland's suggestion regarding the possibility of conservation tenancies.

Finally, I know that, given the very difficult economic circumstances, there is no magic wand in this respect and that all businesses are finding it difficult to secure finance. However, the committee is aware of the difficulties faced by new entrants in getting finance for short tenancies. As with the questions that the convener asked, are you able to comment on those matters now or do you want to get back to us?

Richard Lochhead: I can probably answer all three points and maybe follow up with some more detail.

The first issue to address is understanding how many potential new entrants there are in Scotland and how they wish to enter the industry. Today we are talking about tenancies, but many aspiring entrants find different ways of getting into the industry. As the industry is so capital intensive, the most challenging way is to become an owner-occupier, and the evidence shows that most new

entrants who are owner-occupiers manage to achieve that only with support from family who have existing connections to agriculture. It is very difficult for anyone who is not currently involved in agriculture through family connections to become a new entrant as an owner-occupier. There are some very wealthy people who achieve that—I know many of them—but it is not easy for other people whom we want to encourage.

11:15

There is a case for establishing a register that aspiring new entrants can put their name on, and I am looking at how we can achieve that. From time to time, I come across individuals who wish to have their own farm—I am sure that committee members meet such people, too. In the case of tenancies, it would be good to establish a national register with the co-operation of all the stakeholders. That would allow those who can make land available to know that there is a demand and to understand the kind of people who want to get on to the first rung of the ladder, and it would help us to understand how many such people are out there.

We want to look at such a register, and Claudia Beamish makes a good point. I fully accept that there is a lack of data overall, and the issue relates to the previous point from the convener.

I am interested in the idea of starter units. A lot of industry work is taking place at the moment, and I am very interested in the RSPB idea of conservation starter units. I will look into that—thank you for bringing it to my attention. As a Government, we are also looking at what influence we have. As the committee may know, the Forestry Commission is in the midst of establishing starter units. There will be more announcements on that issue in due course, and I will follow up in more detail. I agree that the Crown Estate and other landowners in Scotland have a role to play. The Crown Estate is working on that at the moment, so there is a lot of dialogue taking place with some major public sector landowners to see what can be done.

The final question was on finance. At the moment, new entrants receive extra finance through the Scotland rural development programme. They receive added support from other schemes that are up and running, and there are specific new entrant schemes available. However, as we have just discussed, although Government and European schemes to assist with cattle, equipment, training and skills are important and there is more to do through them, they are pretty meaningless if people cannot get access to land or, in some cases, access to several million pounds to purchase and own a farm. There is a big jigsaw. We can put some bits of the jigsaw together, but we also have to address some fundamental issues.

Margaret McDougall: When it gave evidence last week, and when I spoke to it yesterday, the NFUS raised the issue of land agents. Does the Scottish Government have any proposals for taking forward a code of practice for land agents?

Richard Lochhead: We have no direct proposals, but I understand that the industry is looking at the issue. That fact has maybe been alluded to in the evidence that the committee has received from witnesses. The chartered surveyors, who tend to be involved in the land agent business, are all members of a professional organisation, which is looking at the issue.

Some of the anecdotes that we hear describe situations that are not healthy for the tenancy sector in Scotland. Some of the practices that I have heard about are abhorrent, but I have often heard the stories only anecdotally. I like to think that the majority of individuals are involved in negotiating and drawing up agreements that lead to good outcomes. We have to remember that there are many good, healthy and positive relationships between landlords and tenants, and we must not tar everyone with the same brush.

Through legislation, we are trying to protect our tenants and ensure that the problems that occur in the cases that are brought to our attention do not happen again. A code of practice to address some of the issues with land agents would be a good thing, as long as there is a way in which the professional organisations of which the agents are members can enforce it internally.

Margaret McDougall: So the Scottish Government would have no input into that whatsoever.

Richard Lochhead: We have no intention of using legislation in that regard. The professional bodies are clearly the best people to police any individual who is out of line or behaving in a way that we think is unacceptable in today's age. Such people should be held to account by their professional organisation.

The Convener: On that point, cabinet secretary, Andrew Wood from the Royal Institution of Chartered Surveyors pointed out that not all land agents are members of his organisation. Can you confirm whether we have the ability to regulate the affairs of the RICS in the Scottish Parliament, given that it might be something to look into?

Richard Lochhead: To answer your question specifically, there are always ways and means in terms of codes of practice. As you know, there is legislation elsewhere in the Scottish Parliament whereby we make codes of practice conditional or statutorily establish codes of practice. Frankly, we

could have the power to ensure that codes of practice were a factor, but in the case of land agents who are members of professional bodies, those bodies should hold their members to account. I would much rather see the industry ensure that the land agents whose services are used are members of professional bodies. That is surely the way forward.

The Convener: Thank you for that.

Annabelle Ewing: Leading on from that, in Scots law an agent by definition acts further to the instruction of somebody else. That brings us back to the essence of this debate regarding the power balance, shall we say, between the tenant and the landlord. The agent acts on the instructions mostly of the landlord, but from time to time acts on those of the tenant.

I was heartened to hear last week from the tenant farming forum in particular of the determination to explore further the use of the Arbitration (Scotland) Act 2010 as a potential way forward for avoiding terribly lengthy and costly cases coming before the Land Court and for finding a better dispute resolution mechanism for the sector. That was very encouraging, but obviously such things take time. What, if anything, can the Scottish Government do to facilitate the examination of how the 2010 act can be used in that regard? I understand that it is an excellent piece of legislation and that there is a determination to use it in any event to make Scotland a centre for arbitration. The sector that we are discussing would perhaps be an important start on that road. Can the cabinet secretary comment on that?

My more technical question concerns the Land Registration etc (Scotland) Bill. Scottish Land & Estates Ltd expressed last week what was at least a minor concern about the fact that limited duration tenancies of more than 20 years will require to be registered and wondered what the fee level would be. It was also concerned by what it understood to be a requirement to register all paperwork for such leases. I am not entirely sure that the requirement would be as wide as Scottish Land & Estates fears. Obviously, though, those are technical questions concerning a bill that is outwith the cabinet secretary's jurisdiction, but I felt that it was important to put on the record that those concerns were raised at the evidence session last week.

Richard Lochhead: It so happens that I met Scottish Land & Estates last week in the Parliament to discuss a range of issues and, as you can imagine, many of them were related to some of the issues that we are discussing today. Scottish Land & Estates made a similar point to me about the Land Registration etc (Scotland) Bill, which I undertook to consider. You have reinforced that organisation's concerns, so that will ensure that it is at the top of my mind to do something about that.

Clearly, we encourage arbitration. We are very much in favour of going down a route that is more cost effective than ending up in the Land Court. As you said, that is expensive, emotionally and financially draining, and can lead to difficulties, particularly for those who do not have much money or wealth in the first place. It is worth bearing it in mind that arbitration was statutory until the 2003 act but, because that provision was seen as too bureaucratic and expensive, it was removed. We have come round in a bit of a circle because the Land Court is equally expensive and bureaucratic in some cases. We are now looking at using arbitration again, and I wrote to the tenant farming forum just over a year ago, urging it to consider the issue. When I go around Scotland and speak to farmers, I hear some horrific stories about the impact of long drawn-out legal cases that end up in the Land Court. That is not good; if we can do anything to support an alternative way of resolving such disputes, the Scottish Government will do it. I am not ruling anything out at this point. I am waiting to hear back from the tenant farming forum about how it sees a better way forward. We need a better way forward. We should not have long drawn-out court cases if we can avoid it.

Jim Hume: I will return to some of the convener's questions. The Scottish Government told us that there was a lack of figures and data about how many tenants have become owner-occupiers and how many landlords have taken their land back in hand. For as long as I can remember, twice a year, in December and June, farmers and farm-holdings have had to fill in returns in which they have to state the hectarage that they own or tenant. Cabinet secretary, you could extrapolate some information from those data.

Richard Lochhead: We discussed that previously. Iain Dewar will give you a bit of information about where we think the debate stands.

Iain Dewar (Scottish Government): At the moment, the information that we collect through the agricultural census gives us a high-level picture. It provides us with information about the amount of land that is rented and owner-occupied in Scotland. Since 2005, it has also given us some general information about the number of tenancies. We fully acknowledge that we need to get to the detail underneath that information so that we can better understand the interactions and what happens when a 1991 tenancy comes to an end. Is the tenancy to be bought or converted to a limited duration tenancy? If it is to be converted to

an LDT, will the tenant be the same or will there be a new tenant? Is the conversion happening at the point of succession? It is quite difficult to interrogate the data to extract that information. We have started discussions with statisticians about how we might take the data that we get from the agricultural census and cross-reference it with corporate database information and perhaps information from the Registers of Scotland about who owns title to the land, and so on.

It is a very complicated business. At the moment, we are hoping to get that information and put an evidence base in place to inform the proposed review of agricultural legislation so that the review will have a sound evidence base.

The Convener: That feeds into what we were discussing earlier. Off the top of my head, I wonder whether the census should contain questions that allow you to access more directly the changes that might have taken place, if it is not too complicated already.

Richard Lochhead: We reduced the number of questions in the census and we took that as reducing bureaucracy. We have been talking about it ever since we reduced the number of questions. We will take that idea away and think about it. However, you are right that we need to ask the right questions, which are those that we need to know the answers to.

The Convener: I think that we have run out of questions for the moment, but we have left you with quite a few more to answer before we make up our minds about our report. I thank the cabinet secretary and his officials. We have had a wide-ranging discussion in a legalistic area, but it is one that is important to so many people out there who are producing the staff of life, our most fundamental product. It is important that we know that there is an opportunity for people to do that and the bill should make it easier for that to happen.

Richard Lochhead: Thank you for today's opportunity. There are no simple answers to some of these complex issues and we will treat your views and comments about the issues that have been before us today and about the wider debate very seriously. We need to hear your ideas and conclusions from listening to the evidence. No one has a monopoly on the solution to what is a very serious issue for Scotland, which is the future of our land. To ensure food production, we need to ensure the future of the tenancy sector, so that young people who want to get involved in agriculture get that opportunity. That is still a huge challenge for the nation because we do not have all the answers. The Government will gratefully receive anything that you can contribute to that.

The Convener: Thank you very much. We now move into private. I thank those who have been with us in the public gallery and those who have given evidence.

11:31

Meeting continued in private until 11:56.

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