



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE

Wednesday 18 September 2013



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### RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE

#### 26<sup>th</sup> Meeting 2013, Session 4

#### CONVENER

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

#### DEPUTY CONVENER

\*Graeme Dey (Angus South) (SNP)

#### COMMITTEE MEMBERS

\*Jayne Baxter (Mid Scotland and Fife) (Lab)

\*Claudia Beamish (South Scotland) (Lab)

\*Nigel Don (Angus North and Mearns) (SNP)

\*Alex Fergusson (Galloway and West Dumfries) (Con)

\*Jim Hume (South Scotland) (LD)

\*Richard Lyle (Central Scotland) (SNP)

\*Angus MacDonald (Falkirk East) (SNP)

\*attended

#### THE FOLLOWING ALSO PARTICIPATED:

David Balharry (Scottish Government)

David Barnes (Scottish Government)

Richard Lochhead (Cabinet Secretary for Rural Affairs and the Environment)

Jonathan Pryce (Scottish Government)

Drew Sloan (Scottish Government)

Paul Wheelhouse (Minister for Environment and Climate Change)

#### CLERK TO THE COMMITTEE

Lynn Tullis

#### LOCATION

Committee Room 6



## Scottish Parliament

### Rural Affairs, Climate Change and Environment Committee

*Wednesday 18 September 2013*

[The Convener opened the meeting at 09:30]

#### Subordinate Legislation

##### **Specified Products from China (Restriction on First Placing on the Market) (Scotland) Amendment Regulations 2013 (SSI 2013/221)**

##### **Landfill (Scotland) Amendment Regulations 2013 (SSI 2013/222)**

**The Convener (Rob Gibson):** Good morning and welcome to the 26th meeting this year of the Rural Affairs, Climate Change and Environment Committee. Members and the public should switch off their phones.

Agenda item 1 is subordinate legislation. The committee is asked to consider the two negative instruments listed on the agenda.

Members should note that no motion to annul has been received in relation to the instruments. I refer members to paper 1 and point out that we were given notice that both instruments are in breach of the 28-day rule—an explanation of the relevant sections is in the Government's responses.

No member wants to comment. Is the committee agreed that it does not wish to make any recommendation in relation to the instruments?

**Members indicated agreement.**

## Agricultural Issues

09:31

**The Convener:** Item 2 is an evidence session on agricultural issues with the Cabinet Secretary for Rural Affairs and the Environment. The session is divided into four parts: rent reviews; agricultural holdings issues; the Salvesen v Riddell case; and the common agricultural policy. As this is a catch-up briefing, I remind the cabinet secretary that he can introduce each section as we come to it, so that we can make sure that we get a focused discussion.

The first section is rent reviews. I welcome the cabinet secretary and his team. Do you want to make an opening statement, cabinet secretary?

**The Cabinet Secretary for Rural Affairs and the Environment (Richard Lochhead):** Thank you very much, convener. I look forward to speaking to members on a range of issues that are very important to the future of Scotland's rural communities and its agricultural sector. It is a beautiful day outside—I hope that that is a good sign that the weather a year from today will be just as beautiful.

On our agricultural holdings work and the forthcoming review of the future of tenancies in Scotland, the Scottish Government is very committed to creating a vibrant tenancy sector. We want to provide opportunities for new entrants—for people who want to farm. To be successful in securing that aim we need to create the right climate for agricultural tenancies to innovate and flourish.

One of the reasons why some of those issues are high on our agenda is that, as cabinet secretary, I have become increasingly frustrated and disappointed in recent years by the trend in agricultural tenancies. I feel that I have given the industry ample opportunity, particularly over the past five years, to create the conditions that are necessary to deliver on my aspirations. However, that has not happened, and the statistics show that the number of holdings and the tenanted area have continued to fall.

In fact, the published figures for 2012 indicate that the number of holdings with tenancies stood at 6,670, the lowest we have ever observed. That represents an 11 per cent decrease since 2005. I am committed to trying to address that situation, which is a tricky and complicated one. We are committed to reviewing the effectiveness of the Agricultural Holdings (Amendment) (Scotland) Act 2012 and have said we would start that within 18 months of the act coming into force. That is what we intend to do now.

That commitment provides all of us with the ideal opportunity to consider what changes to policy and legislation are required to enable the achievement of a vibrant tenant farming sector in Scotland. I will make an announcement soon on how we will take the review forward and on the timetable. I confirm that I intend to take the review forward as a minister-led review, rather than as an external review. I will be appointing the review group members in due course.

Among other things, I anticipate that the review will include consideration of the future strategic direction for tenant farming as well as the outputs of the tenant farming forum's workstreams, which include proposals relating to rent reviews, assignation and succession arrangements, provision and maintenance of fixed equipment, waygo compensation arrangements, diversification issues, and dispute resolution. I also intend to address any other issues that are raised during the review, including any issues on which the tenant farming forum has not been able to reach consensus.

As the committee will be aware, I have also agreed to include consideration of the absolute right to buy. There are strong views about the absolute right to buy across Scotland. Some state that it is the elephant in the room for tenant farming and that it is time to bring it out into the open and have a full and frank debate in Scotland about the future of tenancies and the role of policy. Others suggest that the issue relates directly to the diversification of land ownership in Scotland, given that many argue, as I have in the past, that land ownership in Scotland is far too concentrated. Of course, many tenant farmers across Scotland have expressed concern to me that the current state of play very much stifles investment in farming businesses.

Those issues have led me to believe that it is time to have that discussion in the open. It is inconceivable that an absolute right to buy for tenant farmers should not be considered alongside other issues affecting tenant farming in Scotland. The matter should therefore be taken into account as part of the review of agricultural holdings legislation.

In terms of the scope of the review, I announce today, for the avoidance of any doubt, that consideration of the absolute right to buy will be restricted to secure agricultural tenancies under the Agricultural Holdings (Scotland) Act 1991.

Given the current land reform debate in rural Scotland, we need to consider what is in the best interests of rural communities and the role played by land ownership. It is also important that we give all tenant farmers and stakeholders the opportunity to enter into full and frank dialogue about the absolute right to buy as we explore how

we might free the inertia in the tenant farming sector and our options to increase churn in the sector.

An important source of information on the absolute right to buy and the other parts of the review will be the forthcoming research that aims to fill the data and information gaps on tenant farming. Key research elements include: surveys to gain improved understanding of the views and experiences of tenant farmers and landlords on a range of tenant farming issues, such as the absolute right to buy, rent reviews and waygo compensation; gaining an improved understanding of other countries' land tenure arrangements; further quantifying the level, nature and type of tenure arrangements in Scotland in 2012; gaining an understanding of the historical reasons for change in tenure arrangements over time; and gaining an improved understanding of the impacts of the absolute right to buy on tenant farmers, landlords, the taxpayer and the wider economy.

Part of the research outputs will feed into the review group's consideration of how to address rent reviews. Members will be aware that the rent review working group concluded its work and made its initial recommendations to the tenant farming forum and me in November 2012.

Following on from that, the committee received evidence from the rent review working group and stakeholders in March this year. At the time of that evidence session, the committee was informed that a formal TFF and Scottish Government response was not expected before June 2013.

We originally expected to receive the outputs of the TFF workstreams, including the TFF's final views on rent reviews, earlier. That would have enabled our response on rent reviews to feed into the review of agricultural holdings legislation. The other TFF workstreams include waygo compensation and the other issues that I mentioned, and are also in the pipeline.

Although good progress has been made and continues to be made by the TFF, its final recommendations are not now expected until October. However, I can give a recap of the main recommendations that were made by the rent review working group, and would be glad to discuss the Scottish Government's interim position on each area.

The main recommendations were that there should be no adjustment of section 13 of the 1991 act, but that we should attempt to improve the operation of the existing rent review formula in light of the clarification that was provided in the Moonzie decision; that we should improve understanding of section 13 of the 1991 act by developing a layperson's guide, a practitioner's guide and an explanatory note to be sent out with

all rent review notices; that we should improve access to information about comparable rents by establishing and maintaining a voluntary rent register; that we should accelerate the process and reduce the cost of dispute resolution; and that we should develop the alternative dispute resolution procedures of arbitration or expert determination.

Those issues are quite complex. There is no simple answer to some of the tricky issues that have bogged down the tenancy debate in Scotland, perhaps for generations, but we are making progress on some issues and, as I indicated, a lot of progress has been made on others. There are many controversial debates that it is now time to bring out into the open.

I am happy to take questions from the committee.

**The Convener:** Thank you for teeing up this part of the meeting with those important indicators of the ways in which the Government intends to move.

What are your views on the relationship between landlords and tenants in Scotland?

**Richard Lochhead:** Many of the issues that have plagued the tenancy debate in Scotland over the past few years have arisen from disputes between tenants and landlords. Clearly, one regular instigator of such disputes is the rent reviews that take place, but many other issues cause grievances between tenants and landlords.

I need a better understanding—indeed, the debate needs a better understanding—of whether the vast majority of agreements are ticking over nicely and whether there are a few sore issues that dominate the headlines and grab our attention. We have to understand the exact lie of the land and whether there are problems in relationships throughout Scotland or whether they arise in only a few examples that grab our attention. That will guide the discussion of what needs to be fixed, whether through legislation or by other means.

**The Convener:** The rent review process needs to be speeded up. There is a great deal of concern among tenants about the time that it takes to complete reviews. The rent review working group argued that professional representation is important for both sides to speed up the process. Is there a role for the Government to help if either party is unable to cover the cost of such representation? Is professional representation the best means of solving the problems?

**Richard Lochhead:** Very few cases go right to the Scottish Land Court—or beyond, as we have seen in some cases. We need to understand better whether that is because there are few such

cases or whether in some more serious disputes one party feels that it cannot afford to go through the whole process and consequently we never hear about those cases going to court.

There have been a few high-profile court cases where professional representation was clearly required. That can be very expensive and I understand the tenant farmers who say to me that they cannot afford to participate in that process because of the cost—notwithstanding the fact that it is possible for them to apply for legal aid and legal representation.

The affordability of going through the legal process is clearly a serious factor in the debate.

**The Convener:** So several people have had difficulty finding the wherewithal to contest their case. Does the review intend to examine whether there can be simplification of the legal approaches to settling such cases when they come to the Land Court?

**Richard Lochhead:** There is no doubt that dispute resolution will be one of the key issues in the review. The rent review working group has reported on the time that rent reviews take and about other, sometimes painful, issues that arise from rent reviews. The bodies that are implementing the group's recommendations are doing good work on producing better guidance for tenant farmers and practitioners. We are helping to fund some of those measures to ensure that there is good guidance so that people better understand the system and their rights. We hope that that will empower tenant farmers to have more of a say in such discussions.

One of the recommendations was for a transparent register of rents throughout the country, so that there would be more comparators to empower certain parties within the negotiations. That has still to make some headway, but at least the guidance, including the practitioner's guide, that is now being published has been put together. I hope that those documents will make a difference and arm parties with the information and knowledge that they require to argue their case.

Professional representation is very expensive but the Scottish Agricultural Arbiters and Valuers Association—to give it its proper name—has come up with a shortened arbitration process as one potential route for people to use to avoid expensive court processes. However, although the sector has given a lot of thought to the issue, we will have to review it.

09:45

**The Convener:** It looks as if the Royal Institution of Chartered Surveyors and its

members, in trying to solve increasingly difficult problems, are forming a growing industry. The simplification that you just explained might be a great help with that. We want to tease out some more of issues on how to make the process easier.

**Nigel Don (Angus North and Mearns) (SNP):** Good morning, cabinet secretary; it is good to see you. As you said, timing is quite important—if negotiations start early enough, the parties have a better chance. The rent review group made a recommendation about a code of conduct, whereas we now seem to be talking about a guide. When will that guide be issued? What are your thoughts on having a guide rather than a code of practice, which might have some formal weight?

**Richard Lochhead:** That work is under way. Some tenant farming organisations suggested that we should have a code of practice and that it should be underpinned by statute. As we look to future legislation, the review will decide whether there is a case for a code of practice with statutory underpinning, which would mean that it could be referred to in any future court proceedings in which adherence to the code of practice by the various parties would be a material consideration.

The guidance that I referred to is being published. There is a general good practice guide for rent reviews, and we are helping to fund a document for the practitioners. I understand that that is being put together at the moment.

The rent review working group did some good work by making those recommendations, and they are, in the main, being fulfilled—other than the recommendation on having a transparent register of rents across the country, which is causing some difficulties. The debate around that recommendation is about trying to find an impartial body that can take responsibility for such a register. Work is being done on that at the moment.

**Nigel Don:** How will the Scottish Government monitor the effects of the guides and the code of practice—I put them all together, although it will depend on which organisation they come from—and over what period will the Government monitor them before it can form some intelligent views on whether they are working?

**Richard Lochhead:** We will do our best to monitor the guides' effectiveness. As with every other issue in the debate, I have no doubt that, as we always do, we will learn lessons. If disputes arise despite the fact that work has been undertaken and people have had better guidance and a new code of practice, we will have to understand why they are still happening. I am not sure what more we can do to monitor the situation other than to remain engaged with our

stakeholders and monitor how many disputes arise across the country.

**The Convener:** Alex Fergusson wants to ask a question on that point, and then we will go back to Nigel Don.

**Alex Fergusson (Galloway and West Dumfries) (Con):** Thank you, convener. Good morning, cabinet secretary. When we took evidence from the rent review working group, it put it to us strongly that if we took a lot of the mystique and the fear factor, if you like, out of the current rent review system, we would remove a lot of the potential for conflict that you have mentioned. Do you agree?

**Richard Lochhead:** Yes, I agree. I am not necessarily saying that fear is the only factor, but I agree with that statement. That is why we supported taking forward the recommendations on the new guides—the layman's guide and the practitioner's guide. Information can arm parties in negotiations. Tenant farmers are busy being farmers; they are not necessarily experts on tenancy law and their rights and responsibilities in relation to the information that they may require to have to hand if they go through a rent dispute or whatever. The more information there is in the hands of tenant farmers so that they understand what their rights are, which may give them confidence about how to go through a dispute and reach a resolution, the better.

**Alex Fergusson:** I am sure that you would agree that there are many examples of rent reviews having been settled quite amicably between landlords and tenants. What work has been done to identify why many cases are perfectly happily settled? What work has been done to identify the differences between those cases and the cases that end up in conflict? It is surely important to understand the differences.

**Richard Lochhead:** It is important that we understand that, which is why we will survey Scotland's tenant farmers to find out their experiences. As a rural MSP—and there are other rural MSPs sitting around the committee table—I know from personal experience that there is a fear factor among some tenant farmers. There are often situations in which an absentee landlord takes no interest or next to no interest in their estate, and certainly next to no interest in the fortunes of the tenant farmers on it. They would much rather have no tenant farmers on their estate because having any seems to be an inconvenience. It is clear that that is not healthy for agriculture, local communities or local economies. Circumstances can arise because of absentee landlords or other situations that can lead to very unhappy scenarios for tenant farmers. Things do not go well in some circumstances. However, it is clear that, where the landlord has a constructive



and positive relationship with their tenants, there is happiness all round. I know of many estates in Scotland where that is the case.

**Alex Fergusson:** My contention is simply that we need to learn from the good examples to better understand how to deal with the bad ones.

**Richard Lochhead:** Yes, and the challenge that always faces legislators, of course, is how to legislate for the bad cases without impacting too much on the good ones.

**Alex Fergusson:** Indeed.

**Richard Lochhead:** Sometimes there is just no way round that.

**Graeme Dey (Angus South) (SNP):** Good morning, cabinet secretary. Given the fear factor in the tenanted sector, how confident are you that the review will get to the truth? Is there a danger that some tenants at least will feel intimidated into not revealing the true situation that they are encountering?

**Richard Lochhead:** Again, it is very disappointing that there is a fear factor in tenant farming in Scotland. Unfortunately, that is symptomatic of the place that we have reached on the future of tenant farming. The fact that we are in that situation shows that something is wrong with the current system.

As part of the review, we will have to find ways of ensuring that we get good, genuine evidence through the survey, and we encourage people to bring forward their cases to us. As members can imagine, many farmers across Scotland have already personally contacted me with their own experiences—as indeed have landlords with their views—so, irrespective of the fear that there is among some businesses that there may be repercussions if they speak out against landlords, I know that there are tenant farmers out there who are willing to share their experiences on a confidential basis. The responses to the survey will, of course, be treated in confidence. We encourage all farmers to let us have their views, their positive experiences and their not-so-positive experiences.

**Graeme Dey:** Thank you. That is useful.

**The Convener:** Does Nigel Don have another point in this area?

**Nigel Don:** I do. I think that my point draws things together.

It is clear that there are psychological elements that we cannot legislate for, but does the cabinet secretary feel that the guides and codes that will come out soon will add up to a comprehensive picture of how things should be done so that at least a tenant farmer can look at them and say, “I know everything about what we should be doing”?

Will they be comprehensive and therefore allow at least some transparency in the process? Do you see them as being a complete statement of what the process should be?

**Richard Lochhead:** Yes—I am keen to use the review to take a once-in-a-generation look at the future of tenant farming. I have been in this job for six or seven years, and I have learned a lot about the big issues in tenant farming. Those include the relationships between tenant farmers and landlords, and the need to offer opportunities for new entrants to get tenancies or for existing families to continue farming the land to produce food for the country. We also want to encourage the many positive relationships that already exist between landlords and tenants. We need to use this opportunity to come up with some solutions, which may be out-of-the-box solutions or more radical answers. I hope that we can get it right this time and address some of the issues that the committee has raised.

**The Convener:** We will move on to a different subject now.

**Jim Hume (South Scotland) (LD):** Good morning, cabinet secretary. The formula for determining rents has been referred to as a bit of a black art. At present, as you know, it is based on a notional market value for comparable holdings, the scarcity of lets and what is called marriage value, which relates to the economies of scale involved if one farm is letting a neighbouring farm. I do not know whether the rent review group is happy with the formula, but it is not recommending any changes to it. However, the Scottish Tenant Farmers Association would be happier with a more English system in which rents are based on productive capacity. What is your view on where we should go with a system for determining value for setting rents?

**Richard Lochhead:** One reason why I supported setting up the rent review group was to have a panel that could look at those issues. The group made its recommendation, which was that the rent test should not be changed via legislation. There is legislation in place already, and criteria in the existing acts that should be used.

The group expressed the view that some people out there were not using those tests properly or were, for other reasons, not following good practice. It agreed that it was not the legislation that needed to be changed but the behaviour of the practitioners—or rather, a certain minority of practitioners—and tenant farmers’ understanding of their rights and of what the test should be according to the legislation. We need to get that information out there so that the few cases that are causing disputes can, it is hoped, be avoided in future. If people go through the process in the correct manner and adhere to the legislation that

is already in place, the disputes would, one hopes, not occur.

It is a tough issue, and I understand the position of the Scottish Tenant Farmers Association, which asserts clearly that the individual circumstances of each tenancy must be taken into account. However, most rent reviews take into account comparators elsewhere in tenant farming and throughout the country, and there is an element of sense in that too. All that I can do is listen to the views that are expressed during the review, and see whether there is a case for revisiting the issue. However, at present, we hope that the measures that are being taken, along with the guidance that has been issued, will make a difference.

**Jim Hume:** Are there any particular measures that could possibly help in better encouraging good practice?

**Richard Lochhead:** The only issue at the back of my mind, to which I referred earlier, is whether the code of practice should, once it is in place, be underpinned by statute. We should consider that as part of the review, because those who are not following good practice might be encouraged to do so as their behaviour could be used against them in court if the code was underpinned by statute.

**Jim Hume:** That is useful—thank you.

**The Convener:** Claudia Beamish has a supplementary on that point.

10:00

**Claudia Beamish (South Scotland) (Lab):** Are you minded to look again at section 13 of the Agricultural Holdings (Scotland) Act 1991, in spite of what I understand to be the recommendation of the rent review group?

**Richard Lochhead:** In terms of the rent test?

**Claudia Beamish:** Yes.

**Richard Lochhead:** I can only refer to my previous answer—I do not have a closed mind. As I said, if there is a code of practice, underpinning that by statute would strengthen the obligation on practitioners to ensure that they adhere to it. I think that that could help. Likewise, I am open to views from committee members or stakeholders on whether that needs to be revisited.

We set up the review group, which has made its recommendations. As I said in my opening remarks, it is always difficult to ascertain whether it is the case that a few difficult cases are grabbing all our attention while the vast majority of rent reviews are going along swimmingly. Do we need to change the legislation if just a few cases are affected? Could they be addressed in other ways? I am keeping an open mind on whether we need to change the legislation.

**Claudia Beamish:** Thank you.

**The Convener:** Thank you for that.

**Richard Lyle (Central Scotland) (SNP):** Good morning, cabinet secretary. I welcome your statement and your continuing determination to take matters forward on behalf of the farming community.

I turn to the establishing of a register for farm tenancies and rents. One of the recommendations of the rent review group was that a register of rents should be set up. The committee has heard evidence on what information should go into the register, whether it should be voluntary and who should keep it.

We have received information that a survey of NFU Scotland members revealed strong support for a register. In addition, it is possible that the Land and Buildings Transaction Tax (Scotland) Act 2013 might require such information to be recorded anyway. How can the Scottish Government take forward the establishing of a register of information about farm tenancies and rents to resolve what is an important issue? Will the issue be included in the review that you mentioned in your opening statement?

**Richard Lochhead:** You are referring to a recommendation of the rent review group that has not been taken forward at the same pace as the other recommendations. That is because the industry felt that it was not best placed to set up the register. Therefore, the Government has been working to identify a more impartial, neutral body that could host the register. That is what we are actively doing at the moment. For example, we are speaking to Registers of Scotland about whether it would be an appropriate host for such a voluntary register. We hope to have a resolution of that very soon, which will enable the register to be set up and to get going.

**Richard Lyle:** Do you think that the register should be voluntary, or should we make it mandatory?

**Richard Lochhead:** My understanding—I will ask Fiona Leslie to correct me if I am wrong—is that the rent review group's recommendation was that it should be a voluntary register, so I would have to canvass views from the industry on whether there is a demand for it to be compulsory. If it were compulsory, we would be placing an obligation on thousands of businesses to register their rents when what we want to do is to have some comparators. Having a voluntary register would at least give us some comparators. That would mean that when rent interviews take place, reference could be made to the register. It is not necessarily the case that it has to be compulsory for every rent to be registered; we just need some examples to which others can refer. That is why,

at the moment, we are not minded to go down the compulsory route and will just adhere to the recommendation that a voluntary approach be followed.

**Richard Lyle:** But do you not agree that if it is voluntary, no one would need to give that information?

**Richard Lochhead:** The rent review group considered those issues and made its recommendation. I guess that there is nothing to prevent people from putting alternative views to the review once it is under way.

**The Convener:** I think that we have covered the next point, but Alex Fergusson wants to take up some issues with you.

**Alex Fergusson:** In your opening remarks, you mentioned that the number of tenanted holdings has dropped by about 11 per cent since 2005. In evidence to us, Phil Thomas suggested that, although he did not have the full details available, some of that drop could be attributable to tenanted holdings amalgamating—what Jim Hume, I think, has referred to as marriage units or something like that.

**Jim Hume:** It is known as marriage value.

**Alex Fergusson:** Can you give us any information about the amount of land that is still tenanted as opposed to the number of tenanted agricultural holdings?

**Richard Lochhead:** Yes. There are figures for the amount of land that is under tenancy. At the moment, 25 per cent of agricultural land in Scotland—1.4 million hectares—is rented out under tenancies of more than one year. The figure was 40 per cent back in 1982, which gives you an indication of the reduction in the number of tenancies between 1982 and recent times. There is a variety of reasons for that and, as part of the debate, we must get a better understanding of those reasons. It is hoped that the survey of farmers will identify some of them.

There is a range of reasons for that reduction, including the amalgamation of tenancies and tenancies that have no successor in place when the sitting tenant dies, in which case the land will be taken back in hand by the estate or landowner. There is no clear-cut explanation why there has been a decline in the number of tenancies. If we want a vibrant tenanted sector in Scotland, we must look at the issue seriously and ensure that opportunities are available for aspiring tenant farmers.

**Alex Fergusson:** Several times, you have used the phrase “a viable tenanted sector”. I am on record, over the years, as saying that it is in everybody’s interest to have a viable and healthy tenanted sector. I cannot disagree with that at all.

What is your definition of a healthy tenanted sector?

**Richard Lochhead:** My definition of a healthy tenanted sector is one in which there are good, positive relationships between tenants and their landlords; in which a number of tenancies are coming on stream, providing opportunities for aspiring tenant farmers; and in which there is an environment of productivity on farms that attracts investment. I hope that that is a good formula for a vibrant tenanted sector in Scotland. That may already be the case in some parts of Scotland, but it is certainly not the case in all parts.

**Alex Fergusson:** I am delighted to say that, for once, I agree with you 100 per cent on that definition.

**Richard Lochhead:** That worries me—maybe I have got that wrong. [*Laughter.*]

**Alex Fergusson:** No. Occasionally, one is allowed to agree on things.

Do you agree that the achievement of that viability in the sector is dependent on an element of trust between all parties involved that, for some reason, has been lost over the years? I am sure that that is the case—there must be trust between both parties if the sector is to be revived. How, through the review process, can we go about restoring that trust, an awful lot of which has been lost over the past decade?

**Richard Lochhead:** One of the reasons why I am keen on the review and want it to be significant is that it is now time to clear the air and have a full, frank debate. That will help the whole debate, including the relationships, and will help everyone to understand what the key issues are. The sector can then, I hope, move forward after the review is complete and the necessary changes have been made, if we get them right. The best way to achieve what you refer to as trust is to pin down the key issues, clear the air, address the issues and move on.

**Alex Fergusson:** Do you see the end product of the review as our being able to draw a line under the tensions of the past and say, “This is how we will move forward,” so that people on both sides of the tenancy equation can move forward without envisaging any further changes?

**Richard Lochhead:** I hope that everyone will know where they stand once the review is complete and any changes to legislation have been made. Of course, I cannot guarantee to remove tension between landlords and tenants, which is part and parcel of land ownership patterns and tenure in Scotland. It would be naive of me to say that all tensions will be addressed by a review of agricultural holdings legislation. We have lots of historical baggage in this country. We

have concentrated patterns of land ownership and we therefore have landlord-tenant relationships. If I were able to address issues such as absentee landlordism overnight, I would do that. I have no doubt that those issues will be discussed and addressed as part of the wider land reform agenda. As long as there are issues such as absentee landlordism, which is not a problem that we can fix overnight, tensions will exist. I have experience in my constituency of landlords who live outside Scotland and take not the least bit of interest in the tenant farmers on their estates. That issue will not be solved overnight, but we have to address it if we can. Those tensions will not disappear.

**The Convener:** Three members have supplementary questions. Jim Hume will go first.

**Jim Hume:** I am alarmed that we have gone from 40 per cent of Scotland's farmed land being tenanted in 1982 to 25 per cent now. That is quite a dramatic drop. There has been land reform and quite a lot of concern has been drummed up by certain factors about the absolute right to buy extending into limited duration tenancies. You rightly said that it would be restricted to 1991 tenancies, if it happened at all. Alex Fergusson has mentioned trust. Have you had much feedback that one reason for the drop in the number of tenanted farms has been a fear that landlords will lose their land, whatever the type of tenure, as a result of the absolute right to buy?

**Richard Lochhead:** All that I have heard over the past few months is one or two anecdotal examples. When we have investigated those, we have discovered that there are many other business reasons for plans having been changed. I think that a lot of scaremongering is being done by opponents of the absolute right to buy, who say that, as long as the proposal is part of any debate, they will not put land to let on the market. However, when you investigate, you find that they are waiting for the outcome of the common agricultural policy negotiations to find out what that will mean for the economics of the farming business and so on, or their other business plans have changed. Nevertheless, if they are opposed to the absolute right to buy being considered, it is convenient for them to put the view that you have outlined into the public domain.

I regret scaremongering by any estates across the country. The issue of uncertainty has been raised for as long as I have been involved in politics, so it is not new. It is a kite that has been flown by certain individuals across Scotland for many years. Therefore, although we have to pay attention to these claims, we must move on with the debate.

**Claudia Beamish:** There has been a wide-ranging discussion, and we heard your helpful

remarks at the beginning about the review. In view of some comments that have been made to me, I am reassured to hear that the issues will be looked at, even if there is not consensus on them.

As you know, there was some disappointment that the land reform review group would not examine the absolute right to buy for tenant farmers. Was it your intention all along that ARTB would be considered as part of the review? If not, what led you to change your mind? How did that development happen?

10:15

**Richard Lochhead:** As you know, the Land Reform (Scotland) Act 2003 has been one of the Scottish Parliament's flagship pieces of legislation. For a long time, Scotland wanted its national Parliament to be restored to address long-standing problems in society; one of those problems was the pattern of land ownership in this country, for which there are historical reasons. Diverse land ownership is one way of empowering communities and individuals and of opening the door to better rural development.

There has always been a debate over whether the absolute right to buy is part of the debate about the future of tenant farming and agriculture, or should be left in a silo of debate about land reform. I do not think that the two issues can be separated; after all, some tenant farmers on secure tenancies have been arguing for the right to buy their tenancies because the land in question has been in the family for generations and they intend to be there for generations to come. However, they want to be able to invest in their own enterprises and have more control over their destiny. That is clearly related to agriculture and the future of tenancies, and I believe that the review is an appropriate vehicle for taking forward that debate. The issue featured in the debate that Parliament had back in 2003, so there is precedent for ARTB to feature in the future of the agricultural holdings legislation.

The timing is good because a wider land reform debate is taking place and the land reform review group is examining a range of issues. Given that we were in any case already committed to the review, and given the precedent that I have just mentioned, it made sense for us to include the absolute right to buy in the review.

**Claudia Beamish:** In your opening remarks, you said that there will be a gathering of facts and figures for the review. Can you tell us about that process and how it will inform the review?

**Richard Lochhead:** In the next month or so, I will announce the review's timetable and remit. At the same time, we will be commissioning the research and surveys that I mentioned earlier, and

that work will take place over the coming months and in parallel with the review group's work. Of course, as the review group makes progress, its work will be further informed by the outcome of the surveys and the research.

As Alex Fergusson has pointed out, there are various reasons for the decline in the amount of agricultural land under tenancy in Scotland. It is difficult to get official statistics for the myriad reasons for that decline, so we will simply have to carry out the research and surveys to get a better understanding of the situation. As I have said, that information will be important for the review group's work.

**Jim Hume:** You seem to be very much guided by the rent review group. Did that group recommend the absolute right to buy for tenancies under the 1991 act?

**Richard Lochhead:** I am sorry—are you talking about the rent review group that reported just a few months ago?

**Jim Hume:** Yes. Did your focus on the absolute right to buy for 1991 act tenancies come about as a result of its recommendations?

**Richard Lochhead:** No; that was not part of the group's remit.

**The Convener:** On that subject, I am very pleased by your announcement this morning that you are going to look at right-to-buy issues for 1991 act tenancies. I assume, therefore, that other kinds of tenancies will continue and that, unless they become 1991 act tenancies, they will not come under the right to buy. Others might argue that landlords will not let land—and, indeed, are not letting land—because of that very fear, but Andy Wightman has suggested that once the right to buy has been dealt with, landlords will want to rent land to get income. Might tenancies that are let in such circumstances never come under the right to buy?

**Richard Lochhead:** I agree that the right-to-buy debate needs to focus on secure tenancies, but we are also arguing for a vibrant tenancy sector and therefore want land to let to come on to the market. There are various options with regard to the timescale and nature of tenancies—there are, for example, limited duration tenancies—so we have to strike a balance between creating an environment in which tenancies are available and having the debate about the right to buy for secure tenancies under the 1991 act. That is why I am saying today that the debate about right to buy applies to 1991 act tenancies, but that we must also consider a wide range of issues for improving other tenancies to make them more attractive for letting and to make them work better.

**The Convener:** As a parallel, we now have crofting legislation under which new tenanted crofts without any right to buy can be created. As a result, landlords have an incentive to make new crofts because they know that they will not lose that land. Might that provide something for your review to think about when considering how other tenancies might be viewed in the future?

**Richard Lochhead:** Yes, it will. There is a debate about how the right to buy relates to other tenancies. In other words, if you reach a view on the right to buy, that will free up the ability to think outside the box about how other tenancies operate and what kind of tenancies could be created in the future. The review group should certainly look at that.

**The Convener:** I believe that Claudia Beamish wants to come back in.

**Claudia Beamish:** No, convener.

**The Convener:** You were just nodding. That is good—I am glad that we agree.

In that case, we move on to the next question, which I think Alex Fergusson is going to lead on.

**Alex Fergusson:** Is he? I do not think he is, convener. [*Laughter.*]

**The Convener:** In that case, Graeme Dey will lead on it.

**Graeme Dey:** I wonder whether we can consider the environment in which the review will take place. In the latest edition of the Scottish Tenant Farmers Association newsletter, its chair Christopher Nicholson expresses the hope that the review will attract “some rational discussion” on the future of land tenure. I am sure that we agree with that sentiment but, given Scottish Land & Estates's intransigence over land reform, as articulated by its chief executive Doug McAdam in a recent edition of *Scottish Field*, is that a realistic prospect? If we cannot have a rational discussion, how can we make progress?

**Richard Lochhead:** The obvious response is that I would like to encourage rational discussion. The subject is very emotive; in the case of the absolute right to buy, it is about land ownership, the pattern of ownership in Scotland and a range of important issues about the kind of country that we want to live in. I appeal to all sides to work towards our shared objectives of what is best for farming businesses, for the relationship between landlord and tenant and for wider agriculture and land use as well as land ownership. As in so many other walks of life, I can point to very good and not-so-good landlords; I am sure that the same is true of tenants. I cannot order people to have a rational debate, but the more rational we are and the fewer wild accusations are made the better the environment will be for a good, sensible, intelligent

debate to identify what is best for the tenanted sector, Scotland's lands and wider agriculture and land use.

**Graeme Dey:** On the point about good ideas, some people have expressed concern about the absolute right to buy's possible negative impact on new entrants.

In the STFA newsletter, Gilbert Bannerman suggests the setting up of a land commission, with a view to farms that are bought under absolute right to buy and which subsequently come on the market being sold to that commission, which would in turn sell to a suitable new entrant. Alternatively, the proposed land commission would, through a share farming system, marry up a new entrant with a farmer who is willing to go down that route. I know that something like that was suggested many years ago; is it worthy of consideration?

**Richard Lochhead:** I have read Gilbert Bannerman's article and I find it encouraging that young farmers such as Gilbert are thinking about how we can open up opportunities for new entrants to farming. A lot of imaginative solutions are being suggested by a range of people. All I can say at this stage is that we have to think outside the box and use our imaginations and creativity to find ways of opening up opportunities for the next generation of farmers. Therefore, I welcome that contribution to the debate, although I do not know whether it is the answer.

As I said, others are proposing solutions. We are at a stage in the debate at which we need radical solutions. As you know, we have been using some creativity in the Government to use publicly owned land to create new starter units on the forestry estate. We are looking at how to expand that.

The land reform review group is talking about creating a land agency. If that were to be one of the review group's final recommendations, the Government would have to consider the role of a land agency in the wider debate—not only in encouraging community ownership of land, but in opening up opportunities for new entrants to agriculture.

I am quite excited about the debate at the moment. I am also excited about the fact that there are lots of really good proposals for solutions and thinking about how we could address the problem.

**The Convener:** I think that we have a question related to new entrants and the Forestry Commission. Am I correct, Alex?

**Alex Fergusson:** If I may, I want to raise a completely different subject from the one that we have just been talking about.

The cabinet secretary will be aware of a situation that arose in Upper Nithsdale, in what was previously my constituency, but is now Elaine Murray's constituency. A new entrant in a forestry-created farm has recently hit the headlines for all the wrong reasons as a result of what was termed "the dumping of human sludge"

on the land in fairly copious quantities in a way that appears not to have followed all the guidelines that are meant to be followed when human sludge is applied to agricultural land.

One of the interesting things that came out of that is that when the licence was applied for, one of the reasons that were given for using the material was restoration of the land to fertility following opencast mining. For the 22 years since it was an opencast coal mine that land has been farmed very happily, so there are issues there.

I want to bring the matter up because I wonder whether, given that example, which involves Scottish Water, the Forestry Commission and the Scottish Environment Protection Agency, all of which come under your remit, you would consider a review of the entire issue of human sludge, which, if it is applied inappropriately, clearly has enormous hazards in many different directions.

**Richard Lochhead:** I am aware of the issue—it was brought to my attention a week or two ago. I treat it seriously and I am investigating it. Of course, throughout the country it is not unusual for treated sludge to be used on farmland; it is perfectly normal. It can improve land and is a convenient way to do that, which farmers use in many circumstances.

The case that Alex Fergusson raised is being investigated as we speak. What is being investigated by SEPA is the extent to which the regulations were adhered to. I will have to wait for the outcome of that investigation before I decide whether change is required. I am paying attention to the issue and am aware of that case.

**Alex Fergusson:** The situation is being investigated as we speak.

**Richard Lochhead:** Yes.

**The Convener:** We have spread the discussion rather further and wider than I expected.

We need to spread more information about new entrants. What information do we have about the number of farmers who have successors in place?

**Richard Lochhead:** I expect that we do not have that information, which is why we have to carry out the survey. There are myriad situations out there and there is no formal way of recording whether existing tenants have successors in place; indeed, the question would be a general one about owner-occupiers as well. We do not

have a system that identifies that, but because the debate over new entrants is becoming so pertinent, we must understand those issues better.

10:30

**The Convener:** Following on from that, not as many new entrants have taken up Scotland rural development programme opportunities as had been hoped. Do you have any comments on that?

**Richard Lochhead:** I will say only that we are paying attention to what opportunities there should be in the new rural development programme for new entrants, and that we put the first-ever support for new entrants into the current SRDP. A number of farmers have benefited from that support, which is good news. Perhaps not as many farmers have benefited as we would have liked, but there are other obstacles that face people who are trying to get into agriculture—including access to tenancies or to land, in the first place. It is not simply about getting financial support through the rural development programme. We are keen to ensure that the new rural development programme supports new entrants.

**The Convener:** Okay. That is good. We know that the review will reveal a lot more information, so we look forward to quizzing you on that when the time comes.

Moving on to the *Salvesen v Riddell* case, do you wish to make some remarks on that?

**Richard Lochhead:** I am happy to make a few remarks about the *Salvesen v Riddell* case.

The committee will be aware that for some time in agricultural tenancies, limited partnerships became widely used as a means of letting farms, because they allowed a clear route for the landlords to recover vacant possession. The Agricultural Holdings (Scotland) Act 2003 introduced measures to provide tenants with a period of notice when bringing limited partnerships to an end.

Section 72 of the 2003 act allowed the tenant to claim the tenancy having been served a dissolution notice and provided for the landlord to challenge at the Land Court. In the test case, that section was challenged through the courts. The Supreme Court passed a judgment in April 2013 indicating that section 72 of the 2003 act failed to comply with European convention on human rights legislation. Helpfully, the Supreme Court suspended its judgment until 23 April 2014 to allow the Scottish Government time to consult the industry and address how best to provide a solution to persons whose rights had been breached.

To provide a legal remedy, I have agreed with the law officers to use a European Court of Human Rights compliance order. The processing of the order will follow a super-affirmative parliamentary procedure, which provides for a public consultation of 60 days before the final order is laid before Parliament.

We have been consulting stakeholders to identify the number of individuals who may have been affected by the Supreme Court's decision. The people who are, potentially, affected by the judgment are those who served or received dissolution notices for limited partnerships between 16 September 2002 and 30 June 2003.

Unfortunately, there are no relevant official records, so there is uncertainty about the number of people who are affected. However, discussions with stakeholders lead us to believe that there may be just over 100 affected farms. That estimate is much lower than was originally feared. In a significant number of the estimated 100 cases, the tenants and the landlords have reached mutual agreements and have moved beyond the need for a legal remedy. Consequently, the number of farms that are affected by the legal remedy is likely to be well below 100.

The nature of the legal remedy that is required by the Supreme Court judgment is to have a route in law to enable the landlord to recover vacant possession. The specific details of the legal remedy are currently being worked on by officials, with stakeholders.

As the committee will no doubt be aware, this is quite a difficult and sensitive issue, especially for tenant farmers whose livelihoods and homes may be affected, so we want to continue to work closely with stakeholders to devise solutions that are as fair as possible to all who are affected.

That is where we are at present.

**The Convener:** Thank you for that. We understand that we are going to have a briefing from you and your officials later in the year, once we have some idea about what you are going to do. At this early stage, there are one or two questions that people want to ask. The first question is from Jim Hume.

**Jim Hume:** Any member with a rural constituency or region will know of quite a few people who have been affected by the legislation. The cabinet secretary said that he is aware of 100 or so cases. However, some of my constituents might not have made themselves known to the Government. Who should they make themselves known to? Should they contact their local agriculture department or should they contact the Government directly? What information would be required from them? For example, would it be what their legal costs have been over the years

and what their on-going legal costs are? I know of some quite horrific on-going legal costs in cases in which a landlord and tenant have got into a situation in which, if either backs down now, they might be liable for the other's legal costs, so there is a horrible stalemate. I am interested, too, in your views on whether the Government will be liable for compensation for some of the tenants who have been affected.

**Richard Lochhead:** I hope that you will understand that, for legal reasons, I cannot answer all the questions that you have just posed. In general, we have worked from a position of having no information about the number of people who are affected, so we have had to work closely with stakeholders to try to identify cases in which a dissolution notice was served on limited partnerships that were then converted to secure tenancies. The situation that arose in 2003 was that dissolution notices were served by landlords who were afraid of the potential implications of the legislation at the time and wanted to escape them. As you will know, the Supreme Court found that the Government at the time stepped over the mark and breached the landowners' rights.

In effect, we have narrowed down the number of cases to about 100 farms or individuals who have been affected. As I said, our understanding is that some of those 100-odd cases are at a stage at which they would not need any legal remedy that would affect them directly. There could be a variety of situations in which there has been mutual agreement between landlord and tenant about how to move forward in their particular circumstances, or where perhaps whoever owns a farm or whatever has simply moved on and no legal remedy is required.

Our understanding of exactly how many farmers are affected is a bit sketchy at the moment. When the case was originally decided on by the courts, we feared that a lot of people would be affected. At the moment, however, the evidence appears to suggest that not that many people are affected.

**Jim Hume:** But some people might not have made themselves known to your department. Who would I put my constituents who have been affected in touch with? Would it be directly to you or would they go through the Scottish Government rural payments and inspections directorate? What information should they give?

**Richard Lochhead:** We will write in the next few days to the farmers whom we believe are affected.

**Jim Hume:** Sorry, but I am concerned about the ones whom we do not know of, who perhaps have not made themselves known to Government departments.

**Richard Lochhead:** David Balharry will provide information on arrangements that have been put in place with stakeholders to try to identify the people you refer to and give them information about whom they can contact.

**David Balharry (Scottish Government):** We recognise that we do not know who those people are. However, we have been working with the representative bodies in the tenant farming forum, which believe that they can help us identify the individuals involved. They have agreed to help us send a letter to those who are affected.

**Jim Hume:** Okay. With the forum, we are talking about the STFA and the NFUS, but not all farmers are members of those organisations. Do we tell individual farmers out there in our constituencies or regions who have not made themselves known to write directly to Mr Lochhead?

**Richard Lochhead:** For people who want to self-identify, we will put information on the web shortly about whom to contact in the Scottish Government. I will ensure that that information also goes out to members so that you can pass it on to your constituents. The information will have a contact name and number.

**Jim Hume:** Okay. That is exactly what I meant. It will be good for the committee to have that information, too.

**Richard Lochhead:** I take your point.

**Claudia Beamish:** Cabinet secretary, I am concerned that the few tenant farmers who have achieved full 1991 tenancies might lose their security of tenure. Can you reassure me that every effort will be made to allow them to carry on their secure tenancies? I know of two families where the sons have come back to farm because of what they thought was the situation. I wonder whether you will be able to safeguard the futures of the tenant farmers whose lives and businesses are likely to be disrupted in the next year or so.

**Richard Lochhead:** We certainly recognise that that is a real concern, so we are working hard on it. We want to minimise the disruption for farmers who are affected by the court judgment. That is the objective, and we will get down to look at each individual circumstance to see how we can do our best to safeguard the interests of the farmers who are affected. A Scottish Government team is working on that and we are putting resource into it. As I said, we will look on a case-by-case basis to see how we can minimise the disruption if that is at all possible, but of course we have the obligation to fix the law as well.

**Claudia Beamish:** Thank you.

**Alex Fergusson:** I have a question on the timescale. I think that I am right to say that a draft



order is meant to be laid by the end of November, unless the Government applies for an extension. Given that we are already halfway through September, I assume—perhaps wrongly—that an extension might be required. Can you give us an idea of the likely timescale?

**Richard Lochhead:** As things stand, our timetable is to lay the draft order and start the public consultation, which as you know requires 60 days, in late November.

**Alex Fergusson:** So that is still on the cards.

**Richard Lochhead:** Yes.

**The Convener:** We expect to have a briefing from you around that time on your final proposals in the consultation.

**Richard Lochhead:** Sure.

**The Convener:** Good—thank you for that.

The minister's officials will now change and we will bring in Drew Sloan for the next part. I invite the cabinet secretary to update us on the common agricultural policy implementation.

**Richard Lochhead:** We move on from the simple and clear-cut issue of tenancies in Scotland to the equally simple and clear-cut issue of the reform of the common agricultural policy. *[Laughter.]*

With the committee's patience, I will make a few comments to bring you up to date on the matter, given that, because of the summer recess, it is a few months since I had an opportunity to update you on where we have reached.

My objective with the reform of the common agricultural policy is to ensure that we can continue to support active and productive agriculture in Scotland, that the nation can continue to produce food and that we can meet our environmental obligations at the same time. Throughout the negotiations, the Scottish Government has been aiming for the new CAP to be fairer and sufficiently flexible to meet Scotland's needs. It must also reward active farming and put an end to what we refer to as slipper farming.

The CAP reform is reaching the end of the negotiating phase, but there is still some way to go. First, we need Europe to finish off the main CAP regulations. The agreements that were reached in June nearly achieved that, but there were some issues linked to the multi-annual financial framework that the European Parliament would not agree to at that stage, including the flexibility to move funds between pillars, and so-called degressivity—the system for reducing or capping big farm payments.

The new Lithuanian presidency is meeting the European Parliament this week. Next week, the

presidency will report back to the Council of Ministers in Brussels, and I will be there for that meeting. We hope that the Parliament will vote on the final deal on 18 and 19 November and that the Council will adopt it soon afterwards. There is a similar timetable for the transitional regulation covering the CAP in the interim year of 2014. We are inching our way towards final European agreement on the main regulations by the end of the year.

10:45

Now, we urgently need the Commission to begin the negotiations on the detailed implementation rules, which are extremely important, and we need to finalise the carve-up of the UK's CAP budget allocation. Unfortunately, that is an area in which the United Kingdom Government could have done much more for Scotland. On pillar 1 direct payments, Scotland is now third from the bottom with only 48 per cent of the European Union average rate. On pillar 2, it looks as if Scotland will again have the lowest allocation per hectare in Europe. By way of comparison, the Irish negotiated a €2 billion allocation for pillar 2 rural development. That is a country the same size as Scotland securing the equivalent of 85 per cent of the allocation of the whole UK. Other small nations achieved similar outcomes.

Against that disappointing background, I am determined to ensure that Scotland's farmers get a fair deal from the UK's CAP allocation. Just last week, I wrote to Owen Paterson to set out Scotland's demands for a fairer share of the budget, including from the so-called external convergence mechanism. If it was not for Scotland, the UK would be a net contributor under that mechanism rather than a beneficiary. The only fair outcome is therefore that the full convergence allocation, which is around €11 million in 2014, rising to €60 million by 2019, must come to Scotland. In other words, if Scotland was not part of the UK, the UK would not get that uplift, so the whole uplift should come to Scotland.

Some important details about the new CAP remain to be clarified. Nonetheless, we are already working hard on how we will implement it. I will highlight some of the key issues for implementation. One is how to divide Scotland into what are referred to as payment regions for the new CAP. We have already done a significant amount of modelling with the James Hutton Institute, and have worked with stakeholders to narrow down the options. In fact, Scottish farmers have probably been given more analysis and modelling than any other farmers in Europe. We will not take final decisions until after a full public consultation later this year. However, based on the work so far, it seems to me that we should look at

a maximum of two or three payment regions for Scotland.

Another key issue is the move from historic to area-based payments. Here, the options are: to go immediately to area payments on day 1; to move more slowly and phase in area payments by the 2019 scheme year; or to stop short of full area-based payments, which is referred to as the Irish tunnel model. Historic payments have served their purpose. Moving to area-based payments will remove the anomalies that completely exclude new entrants and deer farmers, for instance.

Understandably, farmers who do well under the historic system are concerned about the impact on their businesses of moving so quickly to area-based payments. That point was made to me last week by a group of concerned beef producers, although it is important to bear in mind that, even in the beef sector, moving to area-based payments will bring winners and losers. On the whole, I am attracted to moving to area payments by 2019, but at this stage we need to do more on the tunnel option to understand how it could work in Scotland and to see how it would look compared to moving straight to area payments.

One answer to the beef sector's concerns might lie in voluntary coupled support. As members know, I find it extremely frustrating that we did not secure a level playing field across Europe in that area. It is iniquitous that some countries can continue at a higher rate of coupled payments while Scotland has a lower limit despite year after year of data showing a decline in our livestock numbers. In my letter to Owen Paterson on the budget, I have therefore sought clarity on the possibility of using the wider UK ceiling for coupled support. Initially, we were told by the UK farming minister, David Heath, that that might be possible but, when I spoke to Owen Paterson a few months ago, he ruled it out. We are getting mixed messages from the UK Government, but the latest position is that we cannot use the UK ceiling, although I am seeking final clarity on that from the UK Government.

If we have to live within 8 per cent of Scotland's allocation, one option would be to use that full amount for the beef sector. Some sheep producers might be disappointed to hear me say that, but there are mixed views even within the sheep sector and many sheep farmers stand to gain under the move to area payments.

Those are just some of the key issues about direct payments and how to implement them in Scotland. There are, of course, other issues such as how to implement greening, what minimum activity levels we should impose, and what to do about big payments. We should give serious consideration to the arguments for and against capping individual payments.

In planning carefully for pillar 1, we must not forget the importance of pillar 2 and the Scotland rural development programme. The SRDP supports our priorities on rural communities, less favoured areas, new entrants, climate change, the environment and food and drink, among other issues of importance to our rural communities and industries.

In the next programme, we will have to be clever to get the balance of funding right within a constrained budget. We have already been working with stakeholders for over 18 months on our plans for the next SRDP. We held a first consultation on those plans during the summer, and stakeholders generally supported our proposals. There will be a second consultation this autumn, on which we will give more detail as we move forward. At the heart of the work is simplification and focus—simplification of the guidance and the whole approval process, and a clear focus on delivering our key priorities for Scotland. The second consultation will close early next year. We will then submit the new programme to Brussels in the spring of 2014, with approval from Brussels coming in the autumn of 2014—although, as we know, these timescales are often up in the air.

The European timetable has, unfortunately, made it impossible to avoid a gap between programmes in 2014. The Commission has finally acknowledged that and has produced a draft transitional regulation. As drafted, that will allow us to continue with some key elements of the programme during the gap year and to start using the new budget. I know that stakeholders are keen to hear our full transition plans, and I intend to make an announcement on that in the next week or two. I remain disappointed that the transitional regulation does not cover the whole programme, and I will continue to push for that next week. What I can say is that our transition plans will deliver vital continuity in priority areas such as the less favoured area support scheme, agri-environment payments and woodland creation.

It is timely to discuss the CAP reform today. The negotiating phase is nearly over, and we will hold further consultations on pillar 1 and pillar 2. We have to notify Europe of our decision on pillar 1 by the main deadline of August next year. We want to get the new SRDP up and running as soon as possible and we want to minimise disruption through the gap year of 2014.

That is a whole lot of issues that I am sure the committee will want to discuss. I hope that that gives you a quick outline of where we are at this important stage.

**The Convener:** I remind members that, once we get a clearer picture of what the Government will consult on, we will take further evidence from

the cabinet secretary. However, we have some initial questions.

**Graeme Dey:** What is the rationale behind going for a maximum of two to three regions? How might those look geographically?

**Richard Lochhead:** Because Scotland is a diverse country, the support mechanism that we want to deliver in the future as we move from historic payments to area-based payments, which will lead to change, will be different in different parts of the country and for different farming enterprises. The support that we might decide to deliver to an upland farm on the island of Mull would be different from the support for an intensive beef farm in north-east or south-west Scotland. The flexibility of the CAP agreement allows us to deliver different levels of support to different parts of the country or different types of farming enterprises. It is up to us to decide how we want to use that flexibility.

We could have several payment regions or we could have one or two. If we tried to cater for every circumstance on every Scottish farm, there would be lots of payment rates and payment regions, which would be unbelievably complex and lead to all kinds of unintended consequences. We have discussed with stakeholders how many payment regions we should have and, as I said in my opening remarks, we have narrowed that down to two or three. The payments that go to certain farms at the moment on a historic basis will be different from what they will get through area-based payments. As we move to area-based payments, we must work out the extent to which we want the changes to take place in the transition period, and we might want to give different levels of payments to extensive farming and intensive farming. That is why we want different payment regions.

We want different payment regions, and we are having a debate about how many we should have to allow us to cater for different circumstances. At the moment, the consensus appears to be that there should be no more than three, although we need at least two.

**Alex Fergusson:** I would like to get some clarity on that issue before I come to the question that I want to ask. As I understand it, you are suggesting two or three geographic regions within which there will be varying rates for different types of farming. In a nutshell, is that what you are looking at?

**Richard Lochhead:** What I perhaps did not address in my previous answer is the definition of payment region. We have the option to make that geographical or based on land quality or whatever. We are looking at modelling it on existing criteria for land quality so that we avoid the situation of having a crude geographical split.

Even one part of Scotland will have within it a diverse range of land quality and farming types. For example, there could be a good-quality farm next to a poor-quality farm—I am talking about the land—even in certain parts of Scotland where you might not expect to find much good-quality land. It would be unfair to give the same rate of payment to farms with different land quality. We are therefore looking at Scotland on the basis of land quality, as opposed to geographical area.

**Alex Fergusson:** So the region will almost certainly not be a geographical area; it is more likely to be a land type.

**Richard Lochhead:** Yes, that is where we are going now with our options.

**Alex Fergusson:** That clarifies the point. I think that I heard you say that, in the transitional arrangements, funding would still be in place for woodland creation. My understanding was that it would not be possible to make woodland planting grants over the transition period. Can you clarify the situation for us?

**Richard Lochhead:** I will bring in David Barnes, who is involved minute by minute, hour by hour, day by day, in sorting out the transition of current rural development programmes to the new rural development programme.

Effectively, under the transition regulation, we are not allowed to fund capital projects, which means that we are unable to plug the food grants and various other capital projects for the transitional year. In terms of woodlands, help for new entrants and the LFAS scheme, we are trying to get to a position where we can continue the schemes for the gap year.

I ask David to come in on the specific points.

**David Barnes (Scottish Government):** Mr Fergusson is quite right. As the cabinet secretary says, this is one area where the transition regulation leaves a gap, so we will not be able formally to process and approve applications during that gap. Therefore, the transition plan on which we have been working very closely with Forestry Commission Scotland colleagues and the woodland sector is to make it feel to the practitioners on the ground as if there is not a gap, even though in strict legal terms there is a gap.

The mechanisms for doing that will be, first, to accelerate the processing of applications during these last months of the existing programme because, although the current programme terminates at the end of 2013, we can approve projects before then for which the work will take place at later dates. As we speak, Forestry Commission Scotland is granting approvals for projects that will take place during the gap year.

Secondly, Forestry Commission Scotland colleagues are planning during the gap to work on an informal basis on applications and to work closely with the applicants so that they can bring their projects during the gap to the very brink of formal approval. Once the new programme is approved and in place, they will be able to give the formal approvals pretty much immediately.

The aim is that it will feel to the practitioners on the ground as if there is no gap, even though one exists in strict legal terms. A year ago we identified particular priority areas to maintain continuity. In the forestry sector, nurseries obviously have to plan years ahead for the supply of young trees, so for a long time Forestry Commission colleagues have been working with the industry on its options, and that is the transition plan they have come up with.

**Alex Fergusson:** Thank you for that. It all makes total sense, but I presume that there will be some impact on the number of hectares being planted against the planting target for 2014.

**David Barnes:** The intention of our Forestry Commission colleagues is to minimise and, if at all possible, avoid any such impact.

**Alex Fergusson:** Diplomatically put.

11:00

**The Convener:** Can I just probe that a bit? Given the time that it takes to make an application and for it to be dealt with, is it the case that the process could last for more than a year?

**Richard Lochhead:** Yes. There is a danger of the European timetable slipping. Earlier, I outlined some timetables that Europe has given us with regard to when we can expect it to give us the go-ahead for the next rural development programme. However, we know from bitter experience that the last time around—just after I came into office—there was a significant delay in Europe giving the go-ahead to Scotland's programme.

We hope that Europe will stick to its timetable and avoid that delay. However, if we take into account the time until the new scheme is open, the time until the applications go in, the time until the applications are seen to be successful or not and the time it takes for the payments to be made, it will be 2014 or 2015, so the gap in that context will be longer than a year.

**The Convener:** I was thinking about your experience in the current SRDP, when people put forward projects for approval. I welcome what you said, but I meant that, as the application process could take quite a number of months or perhaps even over a year, any suggestion that the change affects rural business confidence is misplaced. People who make applications of this sort know

that the process takes a number of months anyway. Is it the case that, in any case, some of the applications will take more than a year from application to approval?

**Richard Lochhead:** It is worth bearing in mind the fact that we introduced a continuous application process in the existing SRDP to avoid big delays—for forestry in particular, I think—and that, as part of the new rural development programme, we are considering whether we can extend that continuous application process to other schemes, depending on what schemes we choose to include in the programme. We are trying to avoid long delays in the application process.

**The Convener:** That is good.

**Richard Lyle:** Cabinet secretary, you said that Scotland is third bottom in pillar 1 and the lowest in pillar 2. How much money are we going to lose, and how much money would we have extra if this country were independent?

**Richard Lochhead:** That is an important question, because we are one year away from the referendum on independence and, if you are a member state in Europe, you have many more advantages than you have if you are a sub-nation within a member state, as we currently are.

As part of the current CAP reform, a formula has been adopted for the member states to calculate the level of support that they get through the CAP budget. Europe decided to raise the amount that is received by those countries that currently get well below the average of existing payments. By 2019, they should get €296 per hectare. That formula applies only to member states. Scotland is well below the average at the moment. If we were a member state, we would qualify for up to €1 billion extra by 2019, on top of our single farm payments just now, but we will not get that because it is the UK that is taken into account as the member state.

There will be a small uplift for the whole of the UK and, as I said in my opening remarks, we think that, because we ensure that the UK qualifies for uplift, all of that money should come to Scotland. At the moment, we get a pitifully low allocation of single farm payments. We are a large rural country with many farming enterprises, and we face additional challenges given our climate and topography. We deserve a much greater share of the CAP budget but, because we are not a state, we are not getting it. As you said, in terms of our share of the budget, we are currently one of the lowest-ranking countries: if we were a member state with the current figures, we would be fourth lowest in the whole of Europe.

When I spoke to representatives from the Baltic states a few months ago, they explained to me that they were working together to improve their allocations. We have not yet seen the final league

table for the new CAP, but it may well be that, as well as Scotland going into the negotiations with the lowest pillar 2 allocation and the fourth-lowest pillar 1 allocation in the whole of Europe, if the Baltic states have managed to get a good deal and leap-frog us in the league table, we could come out in an even worse position. The UK's decision not to lift a finger to get a better budget for Scotland, despite the unfairness and injustice of the current situation, will cost us dear.

**Richard Lyle:** That will also cost many of our farmers dear.

**Richard Lochhead:** This is about the future of our farming businesses. In addition, pillar 2 funding applies to the wider rural economy, including village halls, renewable energy schemes, environment schemes, new entrant schemes, woodland creation and so on. We will lose hundreds of millions of euros from not getting an uplift in our pillar 2 allocation, notwithstanding the €1 billion that we are losing from not getting an uplift in our pillar 1 allocation.

Of the 27 member states, 16 negotiated a special uplift in their pillar 2 allocations. Those countries were already way ahead of Scotland in the league table, but they negotiated a further uplift just by getting in behind closed doors and negotiating with the European Commission. We did not negotiate even a fairer share for our existing pillar 2 allocation, never mind an extra uplift, so those countries will be even further ahead of Scotland.

As I said in my opening remarks, because Ireland managed to negotiate an uplift in its pillar 2 allocations, Ireland will receive 85 per cent of what the UK gets. Whereas other agriculture ministers across Europe are working out which sectors should benefit from the extra resource and investment coming in, here in Scotland I will need to discuss how to deal with real-terms cuts. We are losing out on real businesses and real jobs.

**Jim Hume:** I am interested in the two transition models that seem to be in play. One of those involves transitioning from historical payments to geographically based payments by 2019, and there is another model that has been referred to as the Irish tunnel. Can you foresee how that would look in Scotland? Will there be a gradual change to 2019, or will there be a sudden change in 2019? What are your views on the Irish tunnel model to which you referred?

**Richard Lochhead:** As I have said all along in the CAP negotiations, the pace of transition and the end-point that we want to get to in 2019 will be determined by the extent to which those who are frozen out under the historical system—that is, new entrants—are fully integrated into the new CAP system. Clearly, new entrants do not benefit

from historical payments and many of them do not get any payments whatsoever. We want to bring new entrants on to a level playing field with existing active farmers as quickly as possible, so we are calculating where new entrants will sit under each of the different scenarios.

We were successful in negotiating for the ability to bring new entrants on to a level playing field, but I still need to understand properly whether that is compromised by decisions on the transition to 2019. If we do not move to purely area-based payments by 2019 and there is an historical element left within the system, will that mean that there is less resource under area payments to help new entrants? If I want them to have a level playing field, that might influence the extent to which I go down the Irish tunnel route.

I hope that that makes sense. The matter is complicated, but I am just trying to explain how going in one direction might have implications for other objectives.

**Jim Hume:** That makes sense and I am happy with that.

Have you thought about keeping a national reserve open during every year of CAP? Is that still in the melting pot?

**Richard Lochhead:** Yes, we will implement a national reserve, as that is the route to help future new entrants.

As you know, we put a lot of effort into negotiating the ability to use the national reserve and ensuring that it was available for Scotland so that we would not have a repeat of what we have had with the current common agricultural policy, in which new entrants have been frozen out. We want to ensure that there is the ability to help to ensure that anyone who is genuinely active in agriculture and producing goods for the nation gets the relevant support from the common agricultural policy.

**Jim Hume:** A national reserve can be implemented at the beginning and then closed, and that will be that. To be clear, are you talking more about a national reserve that would be open in every year of the CAP?

**Richard Lochhead:** I will ask David Barnes to address the technicalities of the national reserve. We sought to ensure not only that it would be available to help new entrants to be part of the new CAP, but that there would be the ability to ensure that future new entrants are part of the new CAP.

**Jim Hume:** Yes. That is the point.

**Richard Lochhead:** David, do you want to refer to the technical aspects of how that will work?

**David Barnes:** The European Commission's original vision was that the national reserve would be a one-off exercise at the start of the process and that it would not be needed subsequently. To be fair to the Commission, its expectation was that, across most of Europe, all the land or virtually all the land that was likely to be eligible would come into the system on day 1 and receive entitlements.

The Commission did not envisage the scenario in which a new entrant would get access to a farm and land but not to the entitlements with them because the outgoing farmer would have no incentive to hang on to the entitlements. For that reason, it envisaged that there would not be a need for an on-going national reserve. However, Scotland and one or two other member states made it clear to the Commission that, in some parts of Europe, there will be more land than the land that is given entitlements on day 1.

The scenario in which a future new entrant could get access to land but would not automatically get entitlements to go with it is a real one in Scotland and other parts of Europe, so we negotiated for and achieved the insertion of wording that will allow us after the one-off national reserve exercise at the beginning to have repeated small top slices, if the reserve is exhausted and it is necessary, to create entitlements on an on-going basis for new entrants right up to 2020.

**Jim Hume:** Good. I think that that will be very useful. Thank you.

**The Convener:** That could play into the idea that more land could be let by landowners, and therefore new entrants could come in and get some entitlement.

**Richard Lochhead:** It will certainly help the financial viability of new entrants in the future.

**Claudia Beamish:** Cabinet secretary, I want to take you back to the points that you made about the allocation within the UK for this round of CAP. I was quite concerned that, when Owen Paterson came before us, he highlighted that he was being approached by farmers, the NFU and other different groups from throughout the UK, who said, "This would be a fair allocation," and he had a lot to weigh up. He does have a lot to weigh up, of course, but it seemed to me then and it still seems to me that, in view of what you have highlighted, Scotland has a strong factual case in this round. To what extent are you making progress on that with Owen Paterson?

**Richard Lochhead:** In my view, the least that we can expect from the current negotiation is the securing of 100 per cent of the UK's uplift in CAP funding. As I said before, the UK qualifies for that

only because of Scotland. It would be a travesty of justice if we did not secure that uplift.

There is, of course, a wider debate about the fact that we are starting from such a low share of the CAP budget in Scotland that we would welcome any more support that the UK would be willing to offer to bring us up closer to the European average. After all, if Europe has taken the decision, which the UK has signed up to, that payments in countries should be up to €196 by 2019-20, why should that not apply to Scotland?

What will the UK do to deliver that? It would require a lot more than the UK's uplift coming to Scotland; it would require a renegotiation of the baseline budget within the UK. I am not particularly optimistic that that will be Owen Paterson's approach, so I expect the negotiations to be about getting the UK's uplift of up to €60 million to come to Scotland by 2019-20.

11:15

Owen Paterson's tactics so far have been pretty outrageous. We have a ludicrous situation in which he has invented a new formula to justify not giving Scotland the UK's uplift. The European Union has decided on a formula for member state allocations—that is how the UK got its allocation in the first place—but Owen Paterson is suggesting that he may support a different formula for distributing the funding within the UK. That is moving the goalposts to justify Scotland not getting the uplift that we allowed the UK to qualify for in the first place.

The negotiation is going on just now. You will have come across Owen Paterson making the argument in public that under different formulas there are different figures for what farms get throughout Scotland and the rest of the UK, notwithstanding the fact that he is including horse paddocks in the English statistics to bring down the average farm payment in England. We do not include those in the figures for our farm payments in Scotland, so our average is higher. All kinds of tactics are going on behind the scenes, as you can imagine, which he has referred to publicly as well.

I think that we have a robust case for, at the very least, ensuring that the additional €60 million that will come to the UK from Europe by 2019 comes to Scotland. If the vote goes the right way next year, we will not have to bother with payments from the UK beyond 2016 because we will get our own allocation, which we hope will be much higher. However, in the short term, between now and 2016, we deserve that uplift—it belongs to Scotland and it should come to Scotland. The UK Government should not be allowed to steal it.

**Claudia Beamish:** For the record, I was asking specifically about the current round in relation to Owen Paterson.

My other question is about what I believe is called modulation from pillar 1 to pillar 2. I am an advocate—I understand that you may be, too, cabinet secretary, but I am not trying to put words in your mouth—of as near to 15 per cent as possible being transferred in view of the fact that there are a lot of rural businesses and of the wider issues around landscape and support for communities that are undertaking a whole range of projects. Can you reassure us that that is your position on the transfer?

**Richard Lochhead:** Because of our pitifully low pillar 2 allocation for rural development funding, we will transfer some funding from pillar 1 to pillar 2. As I said, there is no case for transferring from pillar 2 to pillar 1 because of the poor allocation of pillar 2. We will consult on the extent to which we should transfer from pillar 1 to pillar 2, and the debate will be influenced by whether we secure the uplift that we want from the UK, which will influence the pillar 1 budget. We must iron out that budget negotiation with the UK before we can make final decisions about the extent to which we will transfer from pillar 1 to pillar 2.

**Claudia Beamish:** I have a very brief question about individual farms and the capping process. How many farms would be affected if we went down the road of capping payments to individual farms?

**Richard Lochhead:** At the moment, I have an open mind on the capping of payments. We are still waiting for the final rules to be agreed by Europe concerning what is mandatory and voluntary and what the scales would be. Therefore, we are still some way from making a final decision. I would also want to take into account how easy it would be to implement a capping policy. It could be horrendously bureaucratic to implement.

How many individual farms would be affected? That would depend on the stage at which we chose to implement the cap. The position that is on the table at the moment from the European Parliament and the European Commission is to have degressivity, which is the progressive reduction of payments over a certain number of payments. However, we are waiting to hear what the final percentages will be and whether the process will be mandatory. Under most of the capping scenarios that we have considered, very few farms in Scotland would be affected, although capping could still raise a few million pounds to be transferred into pillar 2—which is why I have not ruled it out at the moment.

**The Convener:** There are no other questions. We have had a good update on where we are and this has been a fairly long session. I thank the cabinet secretary and his officials for providing a stimulating and useful set of answers.

The dynamics of what happens next have been made clear today. We will want to keep a close eye on the issues and get you back for another update as soon as we get some clarity on the negotiations in Britain and a clarification of the rules from Europe.

Thank you, cabinet secretary, for this welcome visit to our committee.

11:21

*Meeting suspended.*

11:32

*On resuming—*

## **Sporting Rights (Raasay)**

**The Convener:** The final item on the agenda is an evidence-taking session on the Raasay sporting rights lease with the Minister for Environment and Climate Change, Paul Wheelhouse. I welcome the minister. With him are Drew Sloan, who is the chief agricultural officer, and Jonathan Pryce, the director of agriculture, food and rural communities in the Scottish Government.

Do you wish to make an opening statement, minister?

**The Minister for Environment and Climate Change (Paul Wheelhouse):** I do, convener. I thank the committee for inviting me to give an update on the situation relating to the sporting rights on Raasay.

To go back to the start, as the committee knows, a mistake was made earlier this year to assign the sporting rights on Raasay to the highest bidder without sufficient consideration of the wider implications for the community on the island. That could have been avoided had ministers been consulted prior to the decision to tender or to award the lease to a successful bidder.

The decision to relet the sporting rights on Raasay was driven by the expiry of the existing lease. Although, originally, sporting rights were leased to a private landowner, the lease was subsequently assigned to the Highlands and Islands Development Board in November 1981 for the remaining period of 31 years and then reassigned to the Raasay Crofters Association in 1995. Ultimately, it was due to expire in November 2012.

On 1 November 2011, anticipating the end of the original lease, the Scottish Government rural payments and inspections division wrote to the RCA giving it notice that the lease would come to an end.

The normal practice in inviting tenders for assets that are held by the Scottish ministers is that officials advertise, assess and award bids in line with value-for-money principles as laid out in the Scottish public finance manual. In line with our practice, the lease was advertised on the open market during the weeks commencing 19 and 26 November 2012, with advertisements being placed in the *West Highland Free Press* and the *Shooting Times & Country Magazine*.

A closing date for bids of 14 December 2012 was set, and five offers were submitted by the closing date. Unfortunately, the lowest offer was,

as reported following the decision, from the RCA. Two of the offers that were received—bidding for a higher amount than the RCA—originated from the Isle of Skye. Civil servants accepted South Ayrshire Stalking's offer on the basis that it was the highest offer for the sporting rights and in line with the Scottish public finance manual best-value principles but clearly without giving sufficient weight to the wider community benefits and without consultation with the Scottish ministers.

When, regrettably, the issue was first raised with me by the local MSP, Dave Thompson, and subsequently by regional MSPs and the local MP reflecting the concerns that the RCA had expressed, I took immediate action to help to resolve the situation. Initially, we explored the opportunity to modify the terms of the lease to maximise the community engagement in its operation to mitigate the loss of sporting rights to the RCA. When it became clear that that would be insufficient to address community concerns, discussions entered a new phase.

As the First Minister announced during First Minister's questions on 28 February, having fully considered the impacts of the RCA losing the lease, we had successfully negotiated with South Ayrshire Stalking voluntary exit from the contract. The cost to the Scottish Government was £9,000, which covered costs incurred by South Ayrshire Stalking. I should stress that they were only part of those already incurred.

My thanks go to Chris Dalton and South Ayrshire Stalking for their understanding and agreement to withdraw from the contract. As I said at the time, from Mr Dalton's perspective, he won the lease fairly and, therefore, acted very honourably by withdrawing from it when he realised the upset caused to the community of Raasay.

Additionally, and as a result of representations made, ministers will now be involved in a manner consistent with the Scottish public finance manual in any decision that would result in a local community failing to secure a lease of which it had been, until the time of renewal, the tenant.

I met the RCA and the community on Raasay on 1 March and we discussed the background to the original decision and possible approaches to addressing the problem. Given the need to demonstrate a justification for varying from normal best-value approaches, to make decisions about the future of the Raasay sporting rights and to allow the views of the community to be heard and considered in the making of those decisions, a consultation was launched on 24 April and ran until 7 June.

Three options were presented to the community. The first was a long-term lease of up to 175 years



granted to a local community group, which could be the RCA or another community group that could also involve the RCA. The second option was the lease being put on the open market with the winning bidder needing to demonstrate optimal community benefit. The third option would have been a right to buy being exercised over the land, which would include rights over the lease.

A buyout of the sporting rights only, which some have proposed, is impossible under Scots law, so we could not consider that as an option on this occasion.

We received 74 responses to the consultation, or a response rate of 51 per cent. The responses showed that there were various and diverging views on the solution and the way forward, with no clear majority in favour of any of the three options, although the option to let the lease to the RCA was recognised as the community's lead preference. The options of the lease being extended on long-term let and of a community buyout were supported by only a small number of respondents.

A key theme running through the consultation responses was a need for greater transparency and community benefit than had been delivered under the existing lease. To that end, I will ensure that community benefits are delivered to assist the community, which is fragile. Those benefits could include local employment, supply of venison butchered and packed on the island, greater promotion of tourism through the sporting rights, making better use of the fishing rights and greater community involvement and support of local businesses. I will also ensure proper transparency of the operation and finances of the sporting rights to ensure that the lease costs and community benefit are clear and sustainable.

Therefore, and on the basis of the views that were outlined in the consultation responses, I have decided that the lease should be offered to the RCA for five years. As the lease is being offered to the RCA without competition, we will be required to demonstrate value for money in line with the Scottish public finance manual. My aim is to demonstrate economy, efficiency and effectiveness, as well as value for money to the taxpayer, and that that will be provided through the community benefit that will be delivered as part of a condition of the lease to such a fragile economy. Subject to the conditions being met, there will be the option of an automatic renewal of five more years. We will, of course, negotiate the fine detail of the proposals with the RCA, and my officials will meet its members soon to discuss the way forward.

I am very aware that Raasay is a fragile island community and I fully recognise the importance of the sporting rights to the islanders. I aim to work

closely with the RCA and the wider Raasay community to ensure that the best solution for everyone is achieved.

The proposed approach offers a good solution. It respects the wishes of the majority of the community respondents that the RCA should have the sporting rights and ensures that we have the opportunity to maximise the community benefit for the island and its economy.

**The Convener:** I thank the minister for that statement. I am just sorry that the local member cannot be present, because he is unwell. Had he not been, I am sure that he would have been here to welcome the minister's decision to put the community at the heart of matters.

Do you have a rough idea of the lease's value to the community year on year? What is it worth in terms of income on the balance sheet?

**Paul Wheelhouse:** I imagine that the community priced that into its original bid, based on the existing activity. As I said, it was the lowest of the five bids and it was some way off what South Ayrshire Stalking offered. We are talking about very small amounts, even in the case of South Ayrshire Stalking. The lease was not necessarily being run in such a way as to maximise the economic return to the island, so its value to the community and the Raasay Crofters Association was not necessarily high.

I invite Jonathan Pryce to address that issue.

**Jonathan Pryce (Scottish Government):** I do not think that we have any more detailed information on the accounts of the Raasay Crofters Association so, as the minister said, taking account of what the association was prepared to offer was a fair way to make that assessment.

**Paul Wheelhouse:** It is worth saying that one of the reasons why we are looking at changing the terms of the lease is to have greater transparency and a better understanding of how the lease can benefit the economy. That will give confidence to everyone who is involved that the opportunity that it presents to the island is being maximised.

**The Convener:** You talk about making arrangements to do with economy, efficiency and effectiveness. Does that include the offer of training for local people?

**Paul Wheelhouse:** Yes, indeed. With all sporting rights that are leased by the Scottish Government, there is a requirement that those who take out such leases move to train staff. In this case, it is proposed that sufficient time be allowed for members of the community to be trained to deer stalking certificate level 2, which is an advanced level qualification for deer management, to demonstrate good practice and to

ensure that conservation interests are well looked after in the management of the island's sporting rights.

**The Convener:** This is a slight divergence, but sporting rights include shooting and fishing rights. Has there ever been any discussion about the development of fishing rights on the island?

**Paul Wheelhouse:** You are right to raise that issue. It is one of the community benefit issues. We feel that there might be more scope for looking after the fishing rights on Raasay, and we will discuss with the community how best we can maximise the return to the island from sustainable management of the fishing rights.

**Richard Lyle:** Good morning, minister. I welcome the comments that you have made.

Out of curiosity, as I am not from the area—my region is quite a bit away from it—what were the highest and lowest bids, originally?

**Paul Wheelhouse:** I do not know whether we have the figures to hand. The highest was South Ayrshire Stalking's bid, which was £3,000, and the lowest was the RCA's, which was about £1,000. Up to the point at which the lease ended, £650 per year in rent had been paid for the sporting rights. The RCA increased its offer to £1,000, but South Ayrshire Stalking's bid was much higher.

**Drew Sloan (Scottish Government):** Just for the record, the RCA's bid was £1,150; I was rounding the figure.

**Richard Lyle:** Thanks for that.

I am surprised that only a five-year lease has been offered. I know from previous experience that companies have looked at giving local organisations longer leases in order to foment good will. You said that the lease could be extended automatically, but why did you decide on a period of just five years?

**Paul Wheelhouse:** The indication that we received was that, at this stage, there is not a desire for a lease of longer than 10 years. We had discussed the potential of a lease of up to 175 years with the community, but there had not been strong support for that.

Given the particular concerns to ensure that transparency and community benefit had been demonstrated, we plan to have a regular meeting with the RCA to discuss what has happened in the previous year and update what has happened on community benefit management of the deer stalking and fishing rights and other issues to assure ourselves that the terms of the lease are being delivered.

That arrangement will provide an automatic break clause in case things are not working well, although we have no reason to believe that there

will be a problem. The community on the island, through the RCA, has been managing the estate on a broadly satisfactory basis for some time. We fully expect that, with the training going to DSC level 2, the sporting rights will be managed in a sustainable way.

11:45

As I said, I do not expect any problems, but our arrangements will protect the public and community interest, given the concerns that were raised about ensuring that transparency and community benefit were demonstrated better than they had been in the past. I discussed the proposal with Anne Gillies today and explained to her that we do not expect any problems. However, there is an option for an automatic extension of the lease to 10 years, which we understand is the length that the RCA was looking for.

**Richard Lyle:** I realise that the decision in question was taken by an official, without your knowledge, and that some decisions in other places are delegated. I take it that decisions of that type are now not delegated and that they will automatically come in front of ministers on every occasion.

**Paul Wheelhouse:** You are quite right. Having explored as far back as we can in terms of the knowledge of the people who work in the Scottish Government—that is about 11 years for senior managers and about 30 years for those on the administration side—we can find no example of such a matter going to a minister for a decision. It is worth putting on record that that was established practice under previous Administrations, which we carried forward.

We will ensure that in any circumstance in which a community is at risk of losing its sporting rights, ministers will be involved at some point in the process. We must do that in a way that is consistent with the Scottish public finance manual, which means that I will probably not take the actual decision. However, I can be involved in steering the criteria on which the tender is offered, if there is a tender.

Our intention regarding how to proceed in the future will obviously apply to the situation of the Raasay crofters. Assuming that they take up our lease offer, at the end of the 10 years a notice to quit will be served; that would be normal for any lease that the Government offered. We will then enter into discussions with the crofters, as we would with any crofters or community in any other location, on whether they want to continue the lease. We will also discuss what criteria we might require for any subsequent contract.

We are therefore changing the procedures. We recognise that there was an issue of insufficient

consideration being given to the community and the wider community interests. We have rectified that and in future we will involve Scottish ministers in a way that is consistent with the requirements of the public finance manual. We will ensure that there is probity from my and my successors' point of view and that we will have an input into any similar decisions.

**Jim Hume:** I think that the Raasay Crofters Association will be very happy with your intervention. Your positive conversations with South Ayrshire Stalking got us to where we are now. My question is on similar lines to that of Richard Lyle. You said that officials made decisions without reference to ministers. Of course, being the captain of the ship, you are responsible for the crew. I think that it is even against the code of conduct for ministers to blame officials, so there is a very thin line.

To what other areas should we extend the due diligence process that you have described? We want to ensure that decisions on matters that are ultimately ministers' responsibility—albeit that the decisions are made without their knowledge, as you have admitted happened in this case—are secure and that we have no repeat in other situations of what happened in this sporting rights situation, with decisions being made without ministers' knowledge on matters within their governance.

**Paul Wheelhouse:** On your first point, we must avoid finger-pointing and blaming. I am keen not to do that anyway, and you are quite right to say that it is not appropriate for me to do that. We want to learn from what happened and ensure that, as far as we can, we can prevent a similar situation from arising again. We targeted an approach to procedures for similar situations that might arise within this portfolio and we have done everything that we can to address the procedures to ensure that what happened does not happen again.

It is a fair question. What else do we do? My RPID colleagues Jonathan Pryce and Drew Sloan, who are here with me today, have been looking at the implications. In forming a solution for the problem that has arisen on Raasay, we have to take account of the implications for ending other tenancies and lets elsewhere within Scottish Government estates. We have to do something that is consistent with the public finance manual, and I am sure that members would expect nothing less from me as a minister.

The member makes a legitimate point; I do not know, but perhaps we could come back to the committee about what we are doing more widely. Jonathan Pryce or Drew Sloan might want to comment about the implications that there might be for other parts of the RPID estate and portfolio.

**Jonathan Pryce:** We have been careful to ensure that we get the message out to staff within the directorate, including all the area office staff who work in agricultural areas, that community interests are very much at the top of the ministers' agenda. Members can be pretty well assured that issues of this nature will be escalated and the ministers will be involved, even if it is just to get information and ensure that they are aware in the future.

**Jim Hume:** That is useful; thank you.

**Jayne Baxter (Mid Scotland and Fife) (Lab):** I want to ask about the guidance that officials or ministers use when they are taking decisions. I understand that there is an estate charter that dates back to 1999, which is quite a long time ago. I do not know how such things are kept up to date or kept in people's minds, or whether there is a checklist of documents that are referred to when decisions are being taken, but that estate charter has a commitment to

"take account of local community perspective considering offers for sporting rights on the Scottish ministers' estates."

That was interesting to me. I just wanted to refer the relevant people to that charter as a point of information. Perhaps there are some words or principles in there that can be brought to bear on future decisions.

**Paul Wheelhouse:** That is certainly a fair point. The seventh commitment in the estate charter makes it clear that community interests should be taken into account in the consideration of sporting rights. I hope that what we have done in this particular case will mean that when sporting rights come up and a community interest is involved, that can be addressed formally.

It is standard practice for the principles that lie behind the estate charter to be taken into account in managing the Scottish ministers' estate, alongside other Scottish Government policies and the requirements of the Scottish public finance manual. In the Raasay case, those principles do not seem to have had sufficient weight in the ultimate decision. With the benefit of hindsight, we have recognised that the decision was not correct and we have tried to put it right.

**Claudia Beamish:** Good morning, minister. The estate charter and its 10 points have existed since 1999, which is quite a long time. How does it relate to the public finance manual and your ministerial responsibilities for those estates that lie within your remit? There is an expectation in the public finance manual that we should get best value, but I understand that best value also includes the dreaded sustainable development. How do the two relate?

There are now protocols that have come from the lessons learned—I cannot formally thank you in any way for that, but we are moving forward. How do they fit together with your responsibilities?

**Paul Wheelhouse:** Claudia Beamish is right. There is an issue about what the public finance manual states, which, as she identified, is about best value and sustainable development. If ministers are involved in, or are issuing guidance for, similar situations, we can get the two things to interact by setting the criteria under which the tender is issued to make it explicit that all such bids have to demonstrate community benefit. Best value will then be assessed on the basis of the tender criteria that have been established. Best-value principles will still apply, but the criteria will have been established prior to the tendering exercise. Everyone will be treated fairly and will have an opportunity to bid in the expectation that they will be asked to answer to what community benefit they will deliver in their tender. There is a bit of a gap between the two, and that is probably the way in which we can bridge it.

As I have outlined, in managing the estates we take into account the estate charter. In this example, though, there was a bit of a disconnect in respect of the ultimate result. We are trying to ensure that procedures address that. In future, in a manner consistent with the public finance manual, I feel that I—or my successors—could be involved in setting the tender criteria where we feel that it is important to demonstrate community benefit and to have a level playing field.

**Claudia Beamish:** Might it be helpful at this stage if clear guidance was publicly available on how the charter works with the public finance manual?

**Paul Wheelhouse:** We have explained to the staff involved that there is scope for flexibility in the public finance manual. There is room for adapting tender criteria as long as, from that point on, everyone has an equal chance in the tender exercise, we demonstrate best value and the competitive tendering process is fair and open, based on the criteria that have been set. I am willing to look at what we can do to make the process more explicit so that people understand it. On a tender by tender basis, that would be the case. I do not know whether Jonathan Pryce has any advice about what we can do to have general, overarching guidance on that.

**Jonathan Pryce:** I was going to draw attention to the fact that the definition of best value in the public finance manual speaks about maintaining an appropriate balance between quality and cost. Essentially, I would see the estate charter as being the definition of quality in this kind of transaction. That was what was not given sufficient credence at the time of this decision. It is

a relatively simple thing to make those dots join up.

**Claudia Beamish:** How many estates are there in your remit, minister?

**Paul Wheelhouse:** It is easier to say how many there are that are exactly the same as this one, or similar to it—

**Claudia Beamish:** I just want to get a feel for what we are talking about.

**Paul Wheelhouse:** Sure. The Scottish Government currently lets 30 sporting leases, with leases generally running for about 10 years—that is on a similar basis to the one on Raasay. Raasay is a relatively unusual instance in that the lease had been held by the local crofting association for a very long time. Four similar sporting leases are due for renewal in the next 12 months and eight in total are due for renewal in the next two years. We have already taken steps to give an extension in the case of the Newton shootings in the Western Isles while we wait to see what lessons might be learned from the consultation. We will take forward the principles that we have established in dealing with Raasay in our subsequent handling of Newton.

**Claudia Beamish:** Thank you. Just for information, I see that it was at Newton that the charter was originally launched.

**Paul Wheelhouse:** Indeed.

**The Convener:** The discussion about the charter is interesting. In my experience on the Environment and Rural Development Committee between 2003 and 2007, we heard nothing about the charter. Its application has only now emerged from the cupboard. Since the charter was launched, there have been a lot of developments in land reform and in the communities aspect of Government policy. Is there some means of reviewing what the estate charter says and considering how it could be worded in a fashion that fits the relationship with the public finance manual and how this Government might respond to that in future?

12:00

**Paul Wheelhouse:** I have to be honest and say that we have neither looked at nor planned for such a proposal. However, if you want us to address the matter, I am certainly happy to come back to the committee with how we might do that.

As I have explained, the estate charter is still being applied—albeit in this case not with the outcome that the community or indeed I would have wanted—and is still being used to inform our estates management. It might therefore be

appropriate to refresh it and look at how it applies currently.

**The Convener:** I think that that would be appropriate, given that the charter has been raised again after a long period in which it has not been discussed—or has even, one might say, lain dormant.

**Paul Wheelhouse:** It is worth stating for the record that the Scottish Government very much believes in empowering communities and, indeed, the current land reform legislation seeks to promote greater community ownership. As a result, the suggestion fits with our aspiration to take community interests into account.

**The Convener:** A question has just occurred to me as we have been talking. Is the Raasay Crofters Association made up purely of Raasay crofters or are other residents on the island members of it?

**Paul Wheelhouse:** I have not looked in detail at the association's membership. Some demonstration of a linkage to crofting is implied in the name, but I am happy to look at that issue. The RCA's composition has not been formally raised in the consultation, but I can say that the responses that we received indicated a desire for as much transparency and openness as possible about the operation and management of the sporting rights and no desire to interfere with the RCA's operation and on-going activities.

**The Convener:** I was not suggesting for one minute that we should interfere in the association's activities, but it would be interesting to find out who the members are. Perhaps you can let us know in writing. After all, the future of what you have described as a fragile community will depend on bringing together as many people as possible who can help to build the economy there.

**Paul Wheelhouse:** I suppose that a dimension of the transparency that we are looking for is to allow people to understand who benefits from the sporting rights and how much the wider benefit goes to the community. We can address that matter in the lease.

**Richard Lyle:** You have said that several other leases are going to come up for renewal in the next couple of years. Will you be carrying out any local consultation before you or your officials make a decision on any of those leases and will you keep the local constituency and regional MSPs in the loop to ensure that there are no upsets in the future?

**Paul Wheelhouse:** The suggestion of keeping members informed is a constructive and helpful one. In this case, of course, it was not just local members but me who was caught out by the news of what happened, and there should be a

procedure for ensuring that members are aware of and can engage in the situation. We must ensure that the community engages with us at appropriate times so that, if a notice to quit is served, we can enlist the essential support of Scottish Parliament members, MPs and others to ensure that the community responds either positively or negatively on whether they want to continue with the sporting rights or whether they are interested in changing the terms of the lease. Such responses can then be taken into account in framing the subsequent discussions.

I am not being critical in any way, but it is worth pointing out as a matter of fact that, after the notice to quit was served in November 2011—I was not minister at the time, but this is my understanding—there was very little contact from the RCA before the lease came on to the market. In fact, the only contact that we had was a request for an indication of the value, and clearly our officials could not give out that information as it would have interfered with the tendering process. Had there been more contact and had we been made aware of the strength of feeling in the association and the wider community, alarm bells might have started ringing and the situation might have been brought to a happier ending.

You are quite right, Mr Lyle. Engaging with local members on the ground who know the circumstances might assist us in addressing these problems in future.

**The Convener:** As there are no other questions, I thank the minister and his team for that forthright discussion and the welcome news about the lease for the Raasay Crofters Association. No doubt we will hear more about the subject in due course, but we hope that the news will be happy rather than about a crisis. Again, I thank the minister for bringing the matter and the various details to our attention.

At our next meeting, there will be a round-table evidence session on climate change behaviour change and consideration of an approach paper on climate change adaptation. That should show the breadth of what we do on this committee.

*Meeting closed at 12:05.*



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