The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE

Wednesday 4 December 2013

Session 4

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CONTENTS

RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE
36th Meeting 2013, Session 4

CONVENER

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

DEPUTY CONVENER

*Graeme Dey (Angus South) (SNP)

COMMITTEE MEMBERS

*Claudia Beamish (South Scotland) (Lab)
*Nigel Don (Angus North and Mearns) (SNP)
Alex Fergusson (Galloway and West Dumfries) (Con)
*Cara Hilton (Dunfermline) (Lab)
*Jim Hume (South Scotland) (LD)
*Richard Lyle (Central Scotland) (SNP)
*Angus MacDonald (Falkirk East) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

David Balharry (Scottish Government)
Ashleigh Pitcairn (Scottish Government)

CLERK TO THE COMMITTEE

Lynn Tullis

LOCATION

Committee Room 3

Scottish Parliament

Rural Affairs, Climate Change and Environment Committee

Wednesday 4 December 2013

[The Convener *opened the meeting at 10:09*]

Decision on Taking Business in Private

The Convener (Rob Gibson): Good morning and welcome to the 36th meeting of the Rural Affairs, Climate Change and Environment Committee this year. Remember to switch off your mobile phones and so on, as they affect the broadcasting system.

We have received apologies from Alex Fergusson and we expect two other members—Cara Hilton and Claudia Beamish—to arrive late. They have given us good reason for it.

The first agenda item is a decision on taking business in private. The committee is invited to decide whether to take the following two items in private at our next meeting: consideration of our response to the Standards, Procedures and Public Appointments Committee's review of European Union rules; and consideration of our future work programme. Are we agreed?

Members *indicated agreement.*

Subordinate Legislation

Litter (Fixed Penalties) (Scotland) Order 2013 (SSI 2013/315)

Flood Risk Management (Designated Responsible Authorities) (Scotland) Order 2013 (SSI 2013/314)

10:10

The Convener: The second agenda item is subordinate legislation. The committee is invited to consider two negative instruments. Members should note that no motion to annul has been received in relation to the instruments. I refer members to the clerk's paper. Do members have any comments on either of the instruments?

Graeme Dey (Angus South) (SNP): I very much welcome the fixed penalties for littering. As one of a range of measures, they are a welcome step forward in tackling that blight.

Nigel Don (Angus North and Mearns) (SNP): I concur. When I walk around my constituency, the amount of litter that I see that has been thrown on to the verges from passing cars is absolutely appalling. The fixed penalties are not the only part of the process, but anything that helps people to understand that they should not litter is welcome.

Richard Lyle (Central Scotland) (SNP): I concur with my colleagues that the measure is very welcome. I abhor people who throw away litter when all that they need to do is put it in the nearest bin, which is generally only yards away.

Jim Hume (South Scotland) (LD): I, too, concur. Fly tipping is a blight on some very nice parts of the Scottish countryside, and I note that the fly tipping fixed penalty is quadrupling from £50 to £200. That is most welcome.

The Convener: We are agreed that we very much welcome this. The committee might well want to say something about it, given that we are involved in this part of the process. We can think about that later.

We move to agenda item 3, which is the proposed draft Agricultural Holdings (Scotland) Act 2003—

Nigel Don: Convener, have we dealt with the Flood Risk Management (Designated Responsible Authorities) (Scotland) Order 2013?

The Convener: We have covered both orders.

Proposed Agricultural Holdings (Scotland) Act 2003 Remedial Order 2014

10:12

The Convener: The third and final agenda item for today, but the major one, is consideration of the proposed Agricultural Holdings (Scotland) Act 2003 Remedial Order 2014. We welcome the Government officials who are handling the order. Good morning to David Balharry, the project team leader for the European convention on human rights compliance order, and Ashleigh Pitcairn, solicitor in the Scottish Government's legal services directorate. I refer members to their papers. We will not have any opening remarks but will go straight to questions.

What other actions were considered in deciding how to rectify the legal defect, and what are the compelling reasons for making a remedial order rather than taking any other action?

David Balharry (Scottish Government): Is that question about legal process or about the options that are contained in the order? Do you mean the practical aspects or the legal aspects?

The Convener: I mean the background to why the order is framed as it is. Why did you decide that this was the route to travel?

David Balharry: I will try to cover both questions in the shortest summary possible. The Supreme Court ruling requires that landlords be allowed a clear route to vacant possession. The process of getting from where we are to vacant possession should be an orderly transition—that was key in our considerations. We should take account of the interests of both tenants and landlords and we need to be consistent. As we go into the detail, we will see that people or farms have ended up in different situations depending on the individual circumstances, and we needed to treat those groups as consistently as possible. The option that we went for was informed by detailed discussion with stakeholders. Those are the key bits of background information.

10:15

We looked at an option to go from where we are now and put in place legislation to allow for instant vacant possession. There were policy concerns about how fair that would be, so we have opted not to go for instant vacant possession, but for it to take place over a period.

Regarding the legal options for achieving that, we felt that the mechanism that allows for the use of a convention compliance order was the most appropriate in the circumstances. The reasons for going down that road were that the alternatives were either emergency legislation or a bill. When we looked at the legislative timetable there did not seem to be enough time to put through a bill. In its ruling, the Supreme Court had suspended its judgment for 12 months to allow for a remedial order to be put in place, so the end date was set. We had the opportunity to apply for an extension if we felt it necessary, but there was no guarantee that we would get it.

When we took all those factors into account, we felt that the remedial order, following the superaffirmative process, which allows two periods for parliamentary scrutiny—one of 60 days and one of 40—was the best option.

The Convener: That gets us into it.

Graeme Dey: What tests have been applied or what legal advice has been taken to ensure that the remedy is compatible with the ECHR?

David Balharry: We have taken legal advice. The Scottish Government's position is that the remedy is ECHR compliant.

Ashleigh Pitcairn (Scottish Government): ECHR concerns were raised in the court case that has led to this order being necessary. There were considerations about a landlord's right, under protocol 1 of article 1, to enjoyment of their possessions. It is a question of proportionality, among other things, and whether the aim that is ultimately sought is legitimate and proportionate.

I do not know whether it would be helpful to go through what that aim is and the proportionality concerns in relation to the landlord and the tenants.

Graeme Dey: It would be helpful to have that on record.

David Balharry: If you go right back, you see that the two parties—the tenant and the landlord—entered into an understanding in which the tenant could enjoy the use of the farm and the landlord could, by bringing the partnership to an end, recover vacant possession.

The problem was that part of the defective legislation provided a route through which the tenant could end up with a full tenancy under the Agricultural Holdings (Scotland) Act 1991. That part was perceived as being against the landlord's ECHR rights, because he was unable to recover vacant possession. The order seeks to remedy that.

I am not sure that I understand the question.

Graeme Dey: We are trying to get to the bottom of exactly how confident you can be that the steps that you propose to take will be compatible with the ECHR.

David Balharry: A problem is that, in so far as we have evidence before us, we believe that the proposed order deals with the defect in an ECHR-compliant way. An advantage of the superaffirmative process is that the 60-day consultation period may flush out or bring to light new evidence. If new evidence did come to light, we would have to look in detail at how it would affect any ECHR issues.

Graeme Dey: Have you taken specific advice from people who are experts on the ECHR and will you have such people standing by as we go through the 60-day process, to ensure that what we end up with is as cast-iron compliant with the ECHR as it can be?

Ashleigh Pitcairn: It is difficult to go into too much detail, because we are mindful of the ministerial code on underlying legal advice that is tendered. We can say that the Scottish Government's position is that the proposed order is ECHR compliant.

One of the points in the judgment was that there was an arbitrary date and that people were being treated differently depending on when they had served their dissolution notice. People who served their dissolution between 16 September 2002 and 30 June 2003 were in a worse position than those who served it after 30 June 2003.

Part of the core of the Supreme Court judgment was that that arbitrary treatment was not fair. In the new order, that time period and the different treatment of those people have gone away and there is a consistent approach. That is what the order was drawn up to do and that is the policy objective. In terms of further detail on underlying legal advice, that is probably all that we can say at this stage, but we think that the order is compliant with the ECHR.

Graeme Dey: Thank you.

Nigel Don: Forgive me if this point might come up later, but if I have picked up the process correctly, we deem that it is the rights of the landlord that have been infringed and that therefore the default position is that the land should go back to the landlord, which I understand. Has anybody seriously explored whether there might be circumstances under which, despite what is in the order, the tenant's rights to the land might be stronger in ECHR terms but perhaps not so on the paperwork? Has anybody looked at whether there are situations in which the tenant might be the one whose rights have been more greatly infringed?

David Balharry: I am sure that we have looked at that in the process that we have gone through. Perhaps at the outset I should have set a context for Mr Dey's question; it might also help later on. The order seeks to remedy the legal relationship between the tenant and landlord and to remove from the legislation those parts that resulted in an unlawful outcome so that we get lawful outcomes. It is recognised that that is not to say that harm has not been caused to people who thought that they had full 1991 tenancies. However, what the Supreme Court asked us to do was to rectify the legal defect, which is what the order seeks to do.

There is another question about what route to just satisfaction such tenants take where they feel that harm has been caused to their interest. For tenants in that situation, the issue would be that they would have to make the details of their circumstances known and make a claim against the Government for compensation. However, what the Government cannot do is make any promises or accept any liability for harm caused without knowing the facts of cases.

Nigel Don: I understand that, and obviously compensation is something that we will come back to. However, has anybody conceived of any circumstances—I do not know what they might be—in which it might be more right that the tenant keeps his 1991 agreement? If that is what he has finished up with, then that might be the right thing to do under all the circumstances of the case.

David Balharry: The Supreme Court judgment was very clear that it is an unlawful outcome for the tenant, through the defect in the legislation—section 72(10) of the Agricultural Holdings (Scotland) Act 2003—to end up with a full 1991 tenancy. The judgment was very clear on that, so that is what we have sought to address.

Nigel Don: Thank you.

The Convener: That is fine.

Jim Hume: The Supreme Court allowed the Lord Advocate to apply for more time to remedy the defect, but the Scottish Government has chosen not to apply for more time to allow for a greater level of consultation. Why is that?

David Balharry: I am not sure that it is fair to say that we have chosen not to apply. In approaching the problem, we were aware that those people who are directly affected would themselves like to bring an end to the uncertainty and that there was a time period that the Supreme Court had said at the start was deemed a reasonable one within which to find a solution. As I said earlier, we hold in reserve that if issues are raised that present legal complications or that require more scrutiny, we still have an option to go back and ask for an extension, should it be necessary. As things stand at the moment, having gone through the stakeholder consultation and having drafted the order, we have not felt it necessary—we have not had a reason—to ask for that extension.

Jim Hume: Thank you. What are your views on time barring? At the moment if people are looking for remedies and so on, they may have a time bar of a year or five years. Has the Government looked into that?

Ashleigh Pitcairn: I am sorry to give a slightly bland response, but again the Scottish Government view on that point is that it is not a difficulty and is not an issue that would present itself. It may be that on further reflection I would be able to give further detail on that. I could do that in writing if needed but it may suffice for now to say that the Scottish Government view is that there is not a difficulty on that front.

Jim Hume: If on reflection you think differently, it would be quite useful if you could let us know.

Ashleigh Pitcairn: Yes.

Angus MacDonald (Falkirk East) (SNP): You mentioned the stakeholder consultation, which we are aware included the Scottish Tenant Farmers Association, NFU Scotland, the Royal Institute of Chartered Surveyors, Scottish Land & Estates and the Scottish Agricultural Arbiters and Valuers Association in the process of coming up with a solution to the legal defect. Given the responses that you have received to date, are all those bodies satisfied that the proposed order is the appropriate way to fix the problem?

David Balharry: I will pick up on the word "satisfied". What is recognised and what came out strongly from our consultations with the stakeholder bodies is that there is an understanding of the law and of the legal process that is required to remedy the defect. Distinct from that, there is also recognition that harm has been caused. Nobody is challenging the need for a legal solution—nobody is challenging the method. What has been discussed is not whether the landlord should get vacant possession, but how to do that in a way that allows for an orderly transition.

However, that does not mean that the bodies that represent tenants' rights are not disappointed or concerned for their members' interests; they recognise that their members felt for years that they had full 1991 tenancies. It will be very disappointing for them and they will be asking the Government to look closely at those cases to see whether any better outcomes could be considered. That is partly why, as regards the proposed draft order, there is not only the cooling-off period but the extension of an offer from the Government to provide mediation, in order to look in detail at the specific circumstances and what the options might be.

Angus MacDonald: Thanks. Clearly, the need for mediation is not ideal, if it comes to that and clearly, some of the stakeholders who have responded to the consultation have a vested interest in seeking a particular outcome or this particular remedy. Have you taken that into account when analysing the responses?

David Balharry: I would say so, yes. To a large extent, the remedy that we have come forward with fits the general direction of travel of all our discussions with stakeholders. On the legal side, the question mark is around what can be done in relation to compensation for those people to whom harm may have been caused or who feel that they have been harmed. Again, as I said earlier, the Scottish Government cannot accept any liability for that because each of the cases is very complex and very different and each case needs to stand on its own merit. We need to understand more about the specific circumstances before trying to move forward with any of those situations.

Jim Hume: It is clear that you have consulted some well-recognised bodies that have a lot of experience and members who have been affected, but not all the individuals who are affected will be members of those bodies. Did the consultation go wider than those stakeholders?

10:30

David Balharry: We are aware that some people who are affected are not members of any of the bodies that we consulted. To get around that problem, we put out a letter in the press to announce publicly what the problem was and what we were doing to fix it, and to invite people who were affected to get in contact through a website.

That has happened, and through that back channel a number of people have alerted us to the fact that they are not directly a member of one of those organisations. They have been sent the documents and the consultation directly as a result of coming to us.

When we are aware of anybody who is affected, whether they are a member of one of those stakeholder bodies or not, we send them the consultation pack and keep them informed of what we are doing.

Jim Hume: To be clear, did you say that there were quite a few responses from individuals?

David Balharry: There were a number, not quite a few. It could be counted on one hand.

Nigel Don: You have identified the five groups; other members may want to ask you why you have done that, and I am sure that you will have an answer. I want to pick up on a couple of those in group 5, for which—as I understand it—you do not now need to account.

First, I want to ask about the general principle of people having made agreements, perhaps part way through a legal process. They will have done

so on the basis of their understanding of their legal rights at the time. If those legal rights and positions are now plainly very different from what they believed them to be, should any bilateral agreement that they would have reached be revisited—or at least revisitable?

David Balharry: I understand the point. We have considered the issue, and again I say that our starting point in drafting the order was the Supreme Court judgment itself. The judgment said that we needed to rectify an unlawful outcome, which was a full 1991 act tenancy resulting from section 72(10) of the 2003 act. The bilateral agreements do not fall within the scope of that decision.

The Supreme Court judgment went further and said that we should not extend the solution further than is necessary and that accrued rights, which are not affected by the incompatibility, should not be interfered with. Our interpretation is that, to a certain extent, those words and the scope of the decision put the bilateral agreements outwith what we should be doing to remedy the problem.

To offer a different analysis, the bilateral agreements were entered into by the parties involved. Whether those are good or bad agreements will depend on the nature of the negotiations that led up to them. I am not denying the point that Nigel Don makes that the agreements were influenced by a belief about what the legislation was at the time, but they were entered into and the quality of the agreement that was reached was achieved by the parties themselves.

Whether harm was caused through those agreements is a different matter. We spoke about harm and how it can be addressed, but there is no need to remedy the legal relationship because all the bilateral agreements of which we are aware are lawful in their own right as they currently stand.

Nigel Don: So you are worried about the lawfulness of the agreements and the consistency with the Supreme Court judgment, not whether pounds, shillings and pence should be changing hands. Some of those numbers might be very big.

David Balharry: Yes.

Nigel Don: Okay. Are there any cases in which the Land Court would have made a judgment based on its perception of the legal rights of individuals, which may now have been overturned by the Supreme Court? I am referring to group 5 again.

David Balharry: The interlocutory orders issued by the Land Court that gave effect to bilateral agreements were a mechanism that allowed the parties to take their proceedings out of the court. The court did not make a decision on the details of the case; it just said that it accepted that the parties making the application had come to an agreement and that it could give effect to that agreement by issuing an interlocutory order that would allow the proceedings to go out of the court process.

Nigel Don: There were no judgments as such.

David Balharry: Not on the specific merits of the case in detail.

Nigel Don: Right. So there is nothing to overturn.

David Balharry: That is right.

Nigel Don: That is helpful—thank you.

Jim Hume: There are five groups, and it is believed that 20 persons are affected in groups 1, 2 and 3, but we do not have numbers for groups 4 and 5. Sorry—I see that you want to interject already.

David Balharry: I just want to clarify something. Looking over the paperwork, I realised that I used the wrong word. The reference to 20 persons would be better rendered as 20 farms—it gets confused in terms of whether it is tenant farmers and so on.

Jim Hume: Yes, and there may be many partners in one farming partnership.

Can you update us on the number of farms that are affected in the different groups, including those in groups 1, 2 and 3 whose circumstances are addressed by the order and those in groups 4 and 5, whose circumstances are not?

David Balharry: I can do so in broad terms. I preface all my remarks by saying that there is no official record of who is affected and who is in each group, so we rely entirely on the information coming to us. The information we have received to date sometimes does not allow for correct allocation, given the circumstances, to one or other of the categories; there is dubiety around it.

The figures are ballpark figures. The number of farms that are affected by the order—in groups 1, 2 and 3—is at present sitting below 20. The number of situations of which we are aware in which dissolution notices were served during the period is the big figure—it is about 50. Those are not final figures, but that is the best information that we have at present.

Jim Hume: To be clear, I know that your letter went out a month or two ago, but if there are other individuals, organisations or farming partnerships that are affected, can they still make themselves known to the Government?

David Balharry: Yes, that would be very helpful.

The Convener: What evidence do you have that section 73 of the 2003 act is currently working effectively in the circumstances in which it applies?

David Balharry: That is a good question. To be honest, in the absence of information the best answer that I can offer is that I am not aware of concerns beyond the fact that the process is quite complex. Beyond that, there are no fundamental concerns with the way in which it is operating. The Supreme Court judgment did not comment negatively on the section 73 process.

The Convener: Are landlords and tenants both happy with how the process currently operates, and happy that it provides an appropriate balance between the two interests?

David Balharry: I have not been presented with any information to the contrary.

Cara Hilton (Dunfermline) (Lab): The cabinet secretary, in his letter to the stakeholders, talked about "limited exceptions". Can you tell me what those are? How do you propose that such cases are dealt with?

David Balharry: I do not have a copy of the letter in front of me—is it possible to have a look?

The Convener: We can provide you with it just now; that was a direct quote.

David Balharry: It is just to get the context.

The Convener: In the letter to the stakeholders, the cabinet secretary stated:

"Subject to certain limited exceptions, to be in the affected group you would need either to have served or received a dissolution notice for a Limited Partnership between 16 September 2002 and 30 June 2003."

David Balharry: Do you have a copy of the letter in front of you so that I can have a look at it?

The Convener: No, but we have a copy of that quotation, which we think is the relevant quotation. We can follow up with the letter.

David Balharry: It is quite a complex area of agricultural law, and I would like to see the context around the quotation before answering.

The Convener: That is not a problem. If you could write to us about it, that would be helpful.

Claudia Beamish (South Scotland) (Lab): For the people in group 2, the order provides that the landlord has an option, though not an obligation, of engaging the section 73 process—the route, as I understand it, to vacant possession after the double notice period—by serving notice to that effect during a 12-month period starting on 28 November 2014, to allow a cooling-off period.

As you have already highlighted, the Scottish Government is offering to assist with mediation in those cases if required. Can you explain in more detail the purpose of the cooling-off period and say what you anticipate will happen during that period and what support could be offered to those who are cooling off?

David Balharry: Mediation is an option only if both parties agree. If either party does not agree to mediation, the landlord's route to recover vacant possession is fairly clear. He serves his application notice and then goes into the section 73 double notice period that you mentioned.

The ideal outcome from the mediation is that both parties agree to enter it without commitment to any outcome and to consider during it what their ideal outcome would be. In some situations that we are aware of, it could be the case that, for those who have full 1991 act tenancies, an ideal outcome may not necessarily be a full 1991 act tenancy but a longer period that would allow them to wind down the farm business.

There will be issues about investments that have been made on farms. Associated with those investments is something called waygo—the moneys that the landlord has to pay—and that will have to be looked at. The ideal is that the landlord and the tenant enter mediation to find out what their ideal outcome is and what the barriers are to achieving that. Then, if necessary, they could involve the Scottish Government during the mediation process, explaining the issues that prevent them from reaching an ideal outcome and asking to what extent the Government is willing to engage to help them resolve the situation.

The mediation process is open-ended and the parties can take it where they want, but that is what we hope will happen. Does that answer your question?

Claudia Beamish: Yes, I think so. A small number of the tenant farmers whom I represent have highlighted their concerns about what they see as their own human rights. I appreciate that the order does not encompass that, and I believe that other colleagues are going to ask about compensation, but I wanted to highlight that issue and ask whether you have any remarks to make about it.

10:45

David Balharry: That was touched on earlier. The issue is the extent to which tenants' rights fall into the property rights in article 1 of the first protocol, or whether it is a matter of seeking restitution for harm because expectations were raised and then taken away, as it were. That is where the debate moves away from the legal remedy into the area of compensation.

Richard Lyle: Do you think that we have got ourselves into a real fix over this? Ten years ago, the then Scottish Executive introduced a bill that was not fit for purpose. The Supreme Court has called it an unlawful outcome.

You touched on compensation. Farmers are trying to go through the law courts to remedy the situation. They have had a lot of hassle and stress and their families have suffered. The Scottish Tenant Farmers Association rightly says that

"tenants who have been undergoing legal battles to retain their farms must be compensated not only for the legal expenses ... but also for the time and stress tenants and their families have suffered, and for the loss of their expected livelihoods."

What would you say to the STFA?

David Balharry: There is no doubt that, whatever side of the debate you stand on, the situation is really unfortunate. As a result of a defect that went through the Scottish Parliament, harm has been caused. Tenant farmers and their families, and landlords, have all been put into a situation of uncertainty and stress. That has come through clearly in the consultation.

The order seeks to begin the process of untangling that situation, which is not easy. First, we have to sort out the legal position. There is then the next part, which is the part to which your question refers.

One reason why the order does not put in place generic compensation, as was discussed with stakeholders, is that the specific circumstances of the relatively small number of cases that are involved—this is below the figure of 20 I referred to earlier—are very complex. They are so different that they need to be looked at in detail, and the Scottish Government's position is that it would like to do that. We have put in place a process of mediation to allow the details to come to the fore. Once we have those details, we can reflect further on what the best solution is.

Ashleigh Pitcairn: Just to be clear, mediation and compensation are separate issues. Mediation is about trying to resolve the issue. For anything else, the Government could not accept liability for anything about which it does not know the details. Each case will vary widely depending on the facts and circumstances.

Richard Lyle: That really is no answer at all. Mediation is fine, but we know that, because of an act that the Scottish Parliament wrongly passed 10 years ago, people have been through stress and legal situations. With the greatest respect to the profession, lawyers do not cost very little; they cost a lot.

At the end of the day, the Scottish Parliament caused the situation for both parties—tenants and landlords. Banks caused the payment protection insurance siltation and are now making restitution to people of millions of pounds. What restitution are we going to make? Are we just going to fix the order, walk away and say, "We'll mediate for you but we're not going to give you any money"? Are we basically saying that we are not going to compensate?

David Balharry: No. I do not think that that is fair. The Government is in a difficult position. It cannot take on liabilities for situations that it does not know the details of.

There is a clear distinction in terms of how this work has been taken forward, in that there is a group for which we are proposing to provide mediation to help the parties begin the process. We have been absolutely clear to everybody all along that, if they feel that harm has been caused to them, they can make claims against the Scottish Government. Those claims will be looked at in the context of the merits of each claim.

There is an awareness of the issue, but there is a great difficulty in generically accepting liability.

The Convener: We have to be careful about this area; we have explored it considerably.

Richard Lyle: Are we prepared to look at any claims sympathetically? That is all I want to know.

David Balharry: To avoid sounding totally inhuman, I think that they have to be looked at against the facts and the merits of the case. That is what matters.

Graeme Dey: I recognise that this is a very difficult question to answer, given what we have just discussed, but do you have any estimate of the potential scale of compensation that might be required? I accept that that might be impossible to answer.

David Balharry: Just for the record, it is impossible to answer. We might have an insight into one case and we could extrapolate on that basis, but it would be very dangerous to do that and I do not think that it would help to take the debate forward. If you do not mind, I will just say that we have to look at each case on its merits.

Graeme Dey: That is understandable.

The Convener: Indeed. I thank the officials for giving us the background to the order. We will explore the issue with stakeholders and the minister in due course. We must consider their views, and then we will be able to put together a report that I hope helps the process. We recognise that you have been put in a position to solve an extremely difficult legal anomaly. There are all sorts of circumstances around it that are not measurable at this time. We would be pleased if you could write to us on the point that we asked

about earlier. Thank you for your contribution today.

At the next meeting we will hear from the minister on the draft Land Reform (Scotland) Act 2003 (Modification) Order 2013 and its accompanying statutory guidance. The committee will also consider the Standards, Procedures and Public Appointments Committee review of European Union rules, and its future work programme.

Meeting closed at 10:52.

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