



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE

Wednesday 25 March 2015

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CONTENTS

| | |
|-----------------------------------------------------------------------|-------------|
| | Col. |
| SCOTTISH GOVERNMENT'S BIODIVERSITY STRATEGY | 1 |
| REVIEW OF AGRICULTURAL HOLDINGS LEGISLATION FINAL REPORT | 25 |

RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE
12th Meeting 2015, Session 4

CONVENER

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

DEPUTY CONVENER

Graeme Dey (Angus South) (SNP)

COMMITTEE MEMBERS

*Claudia Beamish (South Scotland) (Lab)

*Sarah Boyack (Lothian) (Lab)

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

*Jim Hume (South Scotland) (LD)

*Angus MacDonald (Falkirk East) (SNP)

*Michael Russell (Argyll and Bute) (SNP)

*Dave Thompson (Skye, Lochaber and Badenoch) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Christian Allard (North East Scotland) (SNP) (Committee Substitute)

Ken Bowlit (Royal Institution of Chartered Surveyors)

Keith Connal (Scottish Government)

Mike Gascoigne (Law Society of Scotland)

Martin Hall (Scottish Agricultural Arbiters and Valuers Association)

Aileen McLeod (Minister for Environment, Climate Change and Land Reform)

Christopher Nicholson (Scottish Tenant Farmers Association)

Sally Thomas (Scottish Government)

Professor Des Thompson (Scottish Natural Heritage)

Scott Walker (NFU Scotland)

Stuart Young (Scottish Land & Estates)

CLERK TO THE COMMITTEE

Lynn Tullis

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament

Rural Affairs, Climate Change and Environment Committee

Wednesday 25 March 2015

[The Convener opened the meeting at 09:34]

Scottish Government's Biodiversity Strategy

The Convener (Rob Gibson): Good morning and welcome to the Rural Affairs, Climate Change and Environment Committee's 12th meeting in 2015. I remind everyone that their mobile phones should be switched to silent at least, as they can affect the broadcasting system, and that some committee members will use tablets to access the committee papers in digital format.

We have apologies from Graeme Dey and we welcome Christian Allard in his place.

Agenda item 1 concerns the Scottish Government's biodiversity strategy. We will take evidence from the Minister for Environment, Climate Change and Land Reform and her officials. I welcome the minister, Aileen McLeod, and those who are with her: Keith Connal, the deputy director of natural resources at the Scottish Government; Sally Thomas, the land use and biodiversity team leader at the Scottish Government; and Professor Des Thompson, the principal adviser on biodiversity to Scottish Natural Heritage.

Do you wish to make opening remarks, minister?

The Minister for Environment, Climate Change and Land Reform (Aileen McLeod): I do, convener. I thank you for the invitation to discuss Scotland's biodiversity and for the opportunity to make brief opening remarks. I welcome the committee's continuing interest in Scotland's biodiversity, which everyone acknowledges presents opportunities and challenges.

Since the committee last met to consider the subject, we have published the "2020 Challenge for Scotland's Biodiversity", which updates and complements Scotland's biodiversity strategy, published in 2004. We are close to publishing "Scotland's Biodiversity—a Route Map to 2020". I am delighted to have been able to share with the committee a final pre-publication draft of the route map, on which I would be extremely happy to receive the committee's thoughts prior to its publication next month. As you know, convener, I

am always keen to hear the committee's views and have its input, especially on such an issue, given its expertise and knowledge.

The route map sets out six big steps for nature and a number of priority collaborative projects that the Scottish Government and a wide range of partners are undertaking to improve the state of nature in Scotland and help towards meeting the Aichi goals and targets. The six big steps cover issues such as ecosystem restoration, wildlife conservation and the provision of quality green space for health and education.

The route map also recognises the importance of a range of biodiversity-related work that is focused on particular places and areas and which entails working collaboratively at a landscape scale and involving public agencies, local authorities, non-governmental organisations and others. I am aware that the committee heard something about the opportunities of such work at the round-table evidence-taking session with stakeholders and Scottish Government delivery bodies last week.

I acknowledge the substantial contribution of Scottish Natural Heritage as lead author of the route map and thank the many organisations that have been involved in its preparation—in particular, those that are represented on the delivery and monitoring group, which reports to the Scottish biodiversity committee, which I chair.

As we all know, biodiversity is a key component to our lives. It underpins our health and wellbeing and contributes significantly to our prosperity. That was set out in the "2020 Challenge for Scotland's Biodiversity" and in the Scottish Government's latest economic strategy, which highlighted that

"Protecting and enhancing"

our

"stock of natural capital ... is fundamental to a healthy and resilient economy"

and

"supports sectors such as agriculture, forestry, fisheries, tourism and renewables."

I am delighted to appear before the committee and I look forward to answering your questions.

The Convener: Thank you. It is important for us to get a fix on where the route map hopes to take us by 2020. Do you have a concise vision of what Scotland's biodiversity should look like in 2020?

Aileen McLeod: By 2020, I want the importance of biodiversity to be widely appreciated for its own sake and because it underpins our economy and wellbeing. We need to focus on delivery. That is why the biodiversity route map has a strong emphasis on the practical work that is delivering benefits on the ground. We have the governance

arrangements as well, which support all that work and are equally important. They include the delivery and monitoring group, whose role is to drive forward our delivery and to report to the Scottish biodiversity committee, which I chair.

The Convener: I am glad that you mentioned delivery rather than process. I am sure that members will ask questions on the detail in the route map. At the moment, the question is whether it is likely to inspire people as a vision. It is highly detailed, and you are dealing with a diverse audience. It strikes me that the people who are already active in dealing with biodiversity are not just those in large organisations but a welter of people at all levels across civil society and government. Will the route map inspire people as a vision that allows them to feel, “Yes, we have something that we can achieve,” and “Yes, by 2020 we will have achieved it”?

Aileen McLeod: I think that it will. We have the biodiversity strategy and the route map, and we cannot see either in isolation. Our 2020 challenge also adopts an ecosystems approach, which focuses on the need to protect our ecosystems in order to support our nature, wellbeing and a thriving economy.

The route map draws an excellent picture of the contribution that I set out of big steps and priority projects that are being taken forward on a partnership or collaborative basis and of what they will do towards meeting the 2020 targets. The route map is not intended to revisit the 2020 challenge, but the introduction in it seeks to capture the sense of ambition and our commitment to working with partners to improve the state of nature in Scotland.

Michael Russell (Argyll and Bute) (SNP): I will build on the point that the convener raised. There is an issue with the detail of the plan. It is extraordinarily detailed, and a lot in it builds on a great deal of work that has gone before. That may be a problem as well as an advantage. There are many trees in this wood, but seeing the way through the wood could be an issue, particularly for what might be called the Twitter generation. Those people have a limited attention span and want to find one thing to do that will make a difference, but that is not in there. They would have to spend an enormous amount of time looking at the detail and would have to know rather a lot about it.

That point does not devalue the plan, but it asks where the plan fits into a wider strategy of getting across the simple message that biodiversity is extremely important for the future of not just Scotland but the planet and of letting people know how they can do things themselves to secure biodiversity—and not just by voting for the right people, supporting the right policies or

volunteering for a variety of environmental agencies. How can you emphasise that to the people who will never read the plan?

Aileen McLeod: The key to that question is that the route map sets out clearly the six big steps for nature. It is very clear about the 12 priority collaborative projects that we are taking forward. There is a lot in it about the good work that we are doing on peatland restoration and the conservation of species, for example.

We have made it clear that the route map is an initial document and that more versions will follow, in which we will write in more detail about the pressures on biodiversity, what further action is needed to address them—notably in relation to land use change and pollution—and further refinement of the indicators that are being developed, so that we can be more precise about what is changing and why. There will also be more detail on who is leading the work, which is shared across our agencies, non-governmental organisations and estates. The route map is primarily for our agencies and NGOs, which are working collaboratively with their partners to deliver it.

Michael Russell: What about the people who want less detail rather than more detail—who just want to be told one thing or inspired to do something? Where does that fit into the plan?

09:45

Keith Connal (Scottish Government): That is a good question. If we had distilled this into one thing, I think that we would have been criticised for omitting many aspects. I say as an aside that one of our NGO partners commented that the document was perhaps overly thorough, so how do we take that—is it damning with faint praise?

The document is intentionally thorough; it is structured in a way that we think is understandable to those we work with. We do not really make any apology for the fact that it is quite detailed and thorough. I will not attempt to identify the single word that would inspire people.

Michael Russell: I am not asking anybody to apologise for the document, which I think is very good. I am slightly resistant to documents having three or four colours on every page, but I am just raising the question—I understand your concern about it. The issue needs to be part of the strategy, and I think that the committee would want to know that the strategy includes that type of direct and simple approach—a greener Scotland approach to biodiversity that draws people in to do things. The agencies are paid to do such things; they are full of enthusiasts. It is that simple point that I am looking for.

Keith Connal: In the structures that the minister referred to, there is a communications group that is looking at how best to communicate simple messages. One example that it is looking at is about drawing attention to the relevance of a healthy environment to people's wellbeing and to the health agenda. In that sort of area, there are often simple messages that resonate with people.

Sarah Boyack (Lothian) (Lab): There have been one or two criticisms from stakeholders about the extent to which the route map has a strategic vision—that picks up on the point that Mike Russell just made—and the extent to which people will buy into what is in it, if they do not see themselves as the people who will implement it.

We had representations that land managers do not see the relevance to their day-to-day work spelled out. We also heard the criticism that the route map does not add value to what is already being done—it lists what is being done but adds nothing new. Will you respond to those criticisms about the route map not necessarily leading to any new action when one of the key things that came out in last week's evidence was that we are failing to meet our targets, so everything needs to be stepped up?

Aileen McLeod: The vision is set out in the strategy and in "2020 Challenge for Scotland's Biodiversity". The route map primarily sets out the detail of how we will deliver that vision—it is about what is deliverable on the ground and is still ambitious.

I know that there have been concerns that the route map shows a lack of strategic thinking. We do not accept that. The 2020 challenge sets out the strategic challenge, and it has been widely praised. The route map sets out some of the work that is under way or planned to meet the 2020 challenge. For example, the wildlife estates Scotland initiative, which is in the route map, adds value and shows where there is hard evidence as well.

Sarah Boyack: I am quoting back to you the comments that we received about the route map from key stakeholders. One of the clear comments from Scottish Land & Estates was that it did not feel that land managers appeared to be

"at the very heart of the Route Map or Strategy. There is reference to using policy tools and developing initiatives that will influence land managers, but this is not the same as putting land managers at the heart of the strategy".

There is that comment from land managers, and another point that came out last week was about the impact on farming and the extent to which a farmer will be obliged or feel willing to implement what is in the route map. That is about the connection between aspiration and delivery on the ground.

Aileen McLeod: Land managers are, along with others, at the heart of the route map, and they will deliver eight of the priority projects in it, along with some of the health ones.

Professor Des Thompson (Scottish Natural Heritage): Throughout the route map, reference is made to a welter of activities that are on-going or planned. Priority project 11, which concerns sustainable land management, involves considerable ambition and joint working with the farming and land management community. The minister mentioned the wildlife estates initiative, which is an ambitious project to improve and widen the benefits of certain forms of land management.

Sarah Boyack: Are we just too early in the process? People clearly do not see themselves as being at the heart of the document, even though that is your intention. How will you turn that round?

Aileen McLeod: As I said, we are doing a number of things on sustainable land management. The document mentions the ecological focus areas and the common agricultural policy greening requirement, as well as increased protection for our hedgerows and watercourses. There is the wildlife estates Scotland initiative, which is all about encouraging best practice. We also have demonstration farms, including the LEAF—Linking Environment and Farming—farms and climate change focus farms. There is a lot of detail in the route map on the on-going work.

We have also set out the planned work. For example, we are doing a lot of work to provide support for landscape-scale agri-environment management under the new Scotland rural development programme environmental co-operation action fund, and we are promoting agri-environment and sustainable farming practices through the SRDP farm advisory service and the Scottish rural network.

Sarah Boyack: My other point was about new projects. There has been criticism that much of the route map is about existing projects. Given the gap in meeting our targets, we need to have new projects that will make a difference.

Professor Thompson: There is considerable ambition on new projects. To see that, we need only look at what is going on in relation to habitats and species. The species that are mentioned include curlew, corn bunting and some bee species, as well as raptors such as hen harriers and golden eagles. We have a project to reinforce the golden eagle population in the south of Scotland, where there are only two to four nesting pairs at present but where we could have 14 to 16 pairs. We have a terrific partnership in place that involves RSPB Scotland, Scottish Land & Estates,

the Game and Wildlife Conservation Trust, Scottish Natural Heritage and other bodies. They are willing the reinforcement of that population. To me, that is ambitious. A lot of work is going on behind the scenes to ensure that habitat and other conditions are in place. There are many other examples.

Perhaps the issue comes back to the point that Mr Russell made about communicating the ambition. We have put a lot of effort into producing the route map, which outlines many projects. Perhaps when it is published, that will be the time to develop the communication plan, as the minister outlined.

Aileen McLeod: I will go back to a point that Sarah Boyack made. We are certainly keen to encourage partners that want to be involved in the wildlife estates initiative. Scottish Land & Estates sits on the Scottish biodiversity committee and is going to produce an annual report on wildlife estates Scotland. We very much look forward to seeing that and finding out about the work that it has been involved in.

The Convener: We have two supplementaries, from Alex Fergusson and Claudia Beamish.

Alex Fergusson (Galloway and West Dumfries) (Con): This part of the discussion is incredibly important because, if the aims of the strategy, plan or route map, or whatever we want to call it, are to be achieved, we need buy-in from not just the various agencies and partners that are involved but the people of Scotland—frankly, from the man in the street. At last week's meeting, I highlighted an email that I received from an individual who had been at an environmental conference one day and at a farming seminar the next day. He described it as like being in two parallel universes, because of the language that was being used. I am glad that Professor Thompson mentioned communication, because that is terribly important. If I may say so, I think that we have become too highfalutin about all of this. The phraseology and terminology that are used are incredibly complex and complicated.

When we discussed this in 2013, I suggested that we stop talking about biodiversity and start talking about the balance of nature. People understand the balance of nature; they do not necessarily understand a strategic plan for biodiversity with a route map to 2020. I wonder whether you would acknowledge that to communicate the plan properly—because it must be properly communicated if it is to be successful—we need to simplify the language to make it understandable. To go back to where Mike Russell started, it is so that a layman can approach the plan and say, "That's a good idea. I can do something about that."

Aileen McLeod: Yes. I would be very happy to do so. I am all for simplification of language and trying to keep things as simple as possible. I had the opportunity last weekend to go to the environment fair organised by Dumfries and Galloway Council, which was attended by a number of environmental partners and non-governmental organisations. There were children there, engaging with environmental projects. I would agree that we need to keep the language about what the plan means for nature and the environment as simple as we can.

Claudia Beamish (South Scotland) (Lab): Good morning, minister. I want to follow on from Sarah Boyack's remarks about our evidence session last week and the written evidence that we have had about new projects that fit into the biodiversity route map. As has been highlighted this morning, some concern has been expressed about a lack of new projects. Will you comment specifically on three issues? One is the degree to which the national ecological network will be taken forward, building on the work of the central Scotland green network. Another is curlews, which Des Thompson has already mentioned. In its written evidence, RSPB Scotland stressed that there is concern about curlews, which are being looked at internationally. The curlew population in Scotland has declined by 55 per cent since 1995. Those are two examples, one of which is quite broad and one of which is specific. Where are we seeing new things coming into the route map?

I also have a question about marine issues, but perhaps I could come back to that in a minute.

Professor Thompson: The curlew is a good example because we have named it in the route map. We are very fortunate because RSPB Scotland has been leading a European effort to restore curlew populations. We know that we have globally important populations and massive decline. Considerable research is being led by the RSPB to try to identify the causes of the decline in curlews and therefore the work that is needed. That is just the sort of work that is being captured within the route map. As further versions of the route map are published, we will set out in greater detail the sort of work that is being undertaken.

Aileen McLeod: Claudia Beamish referred to the central Scotland green network, which I recently visited across in Shotts. In the route map, under "Planned work", we say that we will

"Develop a national ecological network to enable characterisation of the nature of Scotland, and to help with the identification of priority areas for action on habitat restoration, creation and protection."

Claudia Beamish: Thank you. That is encouraging.

I turn our minds to marine biodiversity, which, as you will know, is big step 6. Concern has been expressed by some stakeholders about marine protected areas, for example that only parts of marine protected areas are being designated as no-take areas. There is also the broader issue that RSPB Scotland has raised, which is the concern that there are few new projects in relation to marine biodiversity.

Aileen McLeod: On biodiversity in marine areas, we will be

“Developing the evidence base through setting and delivering surveillance/monitoring strategy that will allow authoritative reporting of state and progress.”

We will also be

“Completing the suite of MPAs (including the additional NATURA sites) and agreeing and delivering measures for their effective management”,

as well as

“Putting in place Regional Marine Plans that incorporate provision for decision making that promotes ecological coherence between protected areas and safeguards priority marine features.”

10:00

The Convener: We move on to mainstreaming and biodiversity duty reporting.

Angus MacDonald (Falkirk East) (SNP): Good morning, minister. Claudia Beamish made a point about a lack of new projects. I am pleased to say that I have a copy of Falkirk Council’s biodiversity duty report for the period 2011 to 2014. As well as highlighting some excellent work that has been carried out to date, it highlights a number of projects that are under way, including the inner Forth landscape initiative, which will combine more than 30 projects between now and 2019, so a high number of new projects are going ahead in my area.

The Scottish Parliament information centre was told by the Scottish Government that it had received 25 biodiversity duty reports from local authorities and 11 from other public bodies. However, it appears that some local authorities and the vast majority of public bodies have not informed the Scottish Government that they have published a biodiversity duty report.

Are you aware of whether all the organisations and public bodies that should have produced biodiversity duty reports have done so?

Aileen McLeod: To date, the Scottish Government has been informed of the publication of 34 reports. As a Government, we encourage our public bodies to inform us of the publication of reports on the biodiversity duty, but they are not required to do so. Therefore, the list that is available on the biodiversity Scotland website

might not be comprehensive. No sanctions are available under the Wildlife and Natural Environment (Scotland) Act 2011 for use against those public bodies that fail to report, but we will revise the guidance to public bodies to make reporting easier in the next round. We will shortly commission a research project to evaluate the compliance and the quality of the biodiversity duty reports—that project will begin later this year.

Angus MacDonald: Is the use of sanctions an option that you will consider?

Aileen McLeod: We certainly want to review the guidance, and we will see where we are once we have done that. I am keen to make sure that our public bodies report to us on their work on biodiversity.

Angus MacDonald: What use will be made of the reports that you have received to date?

Aileen McLeod: We will use the reports that we receive to get a sense of what is happening in our different agencies and local authorities, and we will take it from there.

Professor Thompson: A lot of very important regional and local activities and projects are under way, and we would like to reflect that in future versions of the route map.

Aileen McLeod: We have written to all our public bodies to remind them of their obligation to report on the biodiversity duty and we have provided detailed guidance, but I do not think that the duty is specifically mentioned in the grant-in-aid letters, because it has not been the Scottish Government’s practice to seek to list all the statutory duties that apply to public bodies. However, I will be happy to look at that again.

Sarah Boyack: Do you have any sense of why organisations are not putting together biodiversity duty reports? Is it because of a lack of expertise? Is it not a high enough priority? Do some organisations not see the biodiversity duty as being relevant to them? Last week, it was reported that 25 out of the 32 local authorities had produced biodiversity action plans. Do we know why not all local authorities have produced such plans?

Professor Thompson: It is partly to do with resourcing; it takes time and effort to produce a biodiversity duty report. All that I can say is that the reports that we have seen have been excellent. We must try to share that experience.

Claudia Beamish: Could I come back on that point? I recall that, in years past, some local authorities had a dedicated biodiversity officer, and I wonder whether there is any information on how many local authorities now have one, or at least someone who has biodiversity as part of their remit. If there is no one specifically focusing on

biodiversity, that might explain why seven local authorities may have reported but have not informed the Scottish Government that they have reported.

Professor Thompson: Where we have local biodiversity officers, it makes a huge difference in marshalling all the activities and projects that are being carried out. There are some exceptional individuals out there doing fantastic things for nature.

The Convener: Maybe you could write to us about that.

Aileen McLeod: Claudia Beamish makes a good point. We would be quite happy to come back to the committee on that.

The Convener: We move on to non-native invasive species.

Michael Russell: The evidence that the committee heard last week indicated that some organisations remain committed to the eradication of non-native invasive species and believe that that should be a priority in their biodiversity plans. Others are less convinced that that is now a priority, and the evidence that we heard—from example, from Sue Marrs of SNH—was that there is no point in one individual doing it with enthusiasm if their next-door neighbour is not doing it at all, by definition. I would be interested to know what priority the Government now gives to that; whether it recognises that, worthy and important as eradication may be in certain circumstances, there are some circumstances in which it is no longer possible to fight the fight; and how those decisions are made.

Aileen McLeod: The spread of invasive non-native species and wildlife diseases is one of the key pressures on biodiversity. Our water environments and islands are particularly vulnerable to invasive non-native species, and our woodlands are also threatened by various tree diseases. The invasive species are now the single-biggest negative pressure on protected nature sites, and it is clearly important that action against non-native species is carefully assessed and prioritised at national level, to ensure that expensive commitments deliver value for money and can be sustained.

One of the most important jobs at national level is to prevent new species from becoming established, by identifying and addressing pathways and ensuring that we have good biosecurity measures in place. For example, new legislation will be introduced to ban the sale or keeping of highly invasive aquatic plants commonly used in aquaria, but that is the job of the non-native species action group.

We had a project that sought to remove non-native hedgehogs from the Uists to protect nesting seabirds, and we have a project to save Scotland's red squirrels. Such projects are carried out at a landscape level, and they need to be carefully co-ordinated and monitored to avoid any fragmentation and any wasted or duplicated effort. At local level, we seek to encourage partnerships between landowners, SNH, the Scottish Environment Protection Agency, NGOs and volunteers.

Michael Russell: You have given some interesting examples. I am old enough to remember the individual who brought the first hedgehog to Uist. I shall not name him, although I think that Des Thompson knows who I am talking about. It was done with the best of intentions but the worst of results. A distinction needs to be made between that type of action, which can be prevented, and, for example, the spread of *Phytophthora ramorum*, a disease for which there is as yet, as far as we are aware, no effective means of treatment apart from radical action within forests. What relative priority do you give to prevention, eradication and disease control? Given that such efforts will absorb more and more of the resources that exist in the state, is it really a sustainable activity, or will you have to prioritise in a different way?

Aileen McLeod: On prevention, we have wide-ranging legislation that takes a general no-release approach to the introduction of non-native species. Where exceptions are needed, they are provided through secondary legislation or under licence from SNH. In terms of early detection and rapid eradication, our top priorities are to identify how those species invade and to act quickly to prevent their establishment and spread.

Early detection and reporting are encouraged through our monitoring programmes and through citizen science initiatives such as the PlantTracker app. Part of the agencies' responsibility with regard to non-native invasive species is to assess risks as they arise and to develop appropriate responses. Recent successes have included action to prevent the establishment of the zebra mussel, raccoon, marbled crayfish and black-tailed prairie dog.

Michael Russell: There must come a moment—rhododendron is a classic example—when something is no longer a non-native invasive species but has in fact become part of the landscape and requires eradication or careful control. Bracken, for example, is rampant in parts of Scotland and requires control. How do we address that situation, given that it becomes a land management problem more than a simple biodiversity problem? The resources that are applied to land management by the Forestry

Commission and others become important at that point.

Professor Thompson: Yes—the case is made extremely well in respect of bracken and rhododendron, but that surely reinforces the importance of the huge effort that we are making to prevent invasion in the first place. As the minister highlighted, there are some exemplary cases such as American mink, hedgehogs, rhododendron control and river-bank vegetation. In Britain—indeed, in Europe—we are leading the way in tackling non-native invasives.

The key message, as the minister has just reinforced, is the need for prevention. We need to get across the message not only about the huge risks to nature but about the economic cost of ensuring control.

Alex Fergusson: I want to put three words to you, minister, and I suspect that you could put money on what they are: American signal crayfish. I listened carefully to your reply and I cannot argue with any of it, but everything that you have said is just about blown apart by the situation with the American signal crayfish in Loch Ken in my constituency.

Frankly, the measures that have been taken there to try to stop the crayfish spreading have not worked. The crayfish are spreading—I do not know whether they might have spread faster if the measures had not been taken. I simply put it to you that, as Michael Russell said, there will come a time when these species can no longer be looked on as invasive, as they will be part of our everyday scenery.

Somewhere along the line, with something like rhododendron or American signal crayfish, we have to accept that, unless we are going to press the nuclear button and really do something serious about them, they are here to stay. When that becomes the case, a different approach must be taken. I put that to you as a general thought.

Aileen McLeod: As Mr Fergusson well knows, I recognise the local concerns and the long-standing serious issue of American signal crayfish in Loch Ken. I am very keen to try to find a way to resolve the issue, and I would be very happy to meet Mr Fergusson to discuss the crayfish in Loch Ken and consider what other options can be explored.

I am conscious that my predecessor, Paul Wheelhouse, held a meeting in New Galloway last July to which a number of interested parties were invited. There is no easy solution, but I am happy to meet Mr Fergusson to try to fathom a way through the situation.

Alex Fergusson: I will take the minister up on that invitation—thank you, minister.

The Convener: Is there no natural predator for the signal crayfish?

Aileen McLeod: No.

Alex Fergusson: Man.

The Convener: In that case, we will look forward to what the conversation produces.

Jim Hume (South Scotland) (LD): We have discussed the issue of woodland being threatened by imported diseases such as Chalara, or ash dieback as it is known. As has been said, control is fine but prevention is far more important. What work has the Government been doing on importation of specific arboreal diseases? Has any thought been given to encouraging more local nurseries rather than, as happens at the moment, nurseries being allowed to get larger and more centralised, which leads to diseases such as ash dieback spreading faster across large areas of the United Kingdom, Scotland and Europe?

10:15

Professor Thompson: We are extremely fortunate in Scotland because a huge amount of research has been done by the Forestry Commission's forest research agency and the plant health centre of expertise, which are examining a range of ways of making trees and woodland ecosystems more disease resistant. Jim Hume mentioned the use of nurseries, which is clearly very important in terms of developing resistant strains. This is one area in which we are fortunate to have a strong research base. We have responded well to the pressures; indeed, some of the pressures were anticipated some time ago. We are therefore well ahead of the game in trying to find solutions. Jim Hume has set out a very challenging problem.

Aileen McLeod: We are developing a Scottish plant health strategy. We recognise the number of plant health threats that are arising and that the spread of pests has increased due to climate change and globalisation of trade. The plant health strategy will set out measures to safeguard Scottish agriculture, horticulture, forestry and the wider environment from pests and disease, and it will be consistent with the ambitions of the United Kingdom plant biosecurity strategy. A UK chief plant health officer has been appointed; the Scottish Government has also committed to the appointment of a Scottish chief plant health officer. That post will complement the work of the UK officer.

The Convener: We will move on to the natural capital agenda and the natural capital asset index.

Jim Hume: Big step 2 is on investment in natural capital. Two years ago, the committee wrote to the then minister asking for more detail on

how that can be translated into action. Scottish Land and Estates says that the natural capital agenda shows promise and notes that the Woodland Carbon Code is a step in the right direction, but says that the agenda is not yet tangible. What can we do to make the national capital asset index more tangible, so that land managers can more meaningfully buy into the biodiversity agenda?

Aileen McLeod: A number of steps are being taken to make the concept of natural capital relevant to biodiversity and to the Scottish Government's wider strategy and policy. I draw the committee's attention to the "2020 Challenge for Scotland's Biodiversity", chapter 2 of which is about natural capital and not only captures the role that natural capital plays in underpinning our economy and wellbeing but sets out some practical, on-the-ground examples of nature services and their value.

The work by the Scottish Government and a number of partners on peatland restoration is a practical example. We are also supporting people who are developing the concept of natural capital; I am delighted that the Scottish Government is helping to fund the work of the Scottish forum on natural capital. Two of our senior staff, including the chief economist, sit on the forum's steering group. Also, we supported the inaugural world forum on natural capital that was held in Edinburgh in 2013.

As Jim Hume will probably be aware, natural capital was also referred to in "Scotland's Economic Strategy", which we published recently. That was welcomed by Jon Hughes, who is the joint chair of the Scottish forum on natural capital.

The Convener: When we talk about land managers, we have in mind hill farmers and crofters as much as estate managers. How is the question of natural capital being addressed with regard to those small land managers?

Professor Thompson: Thinking of crofters and your constituency, convener, I say that such land managers probably understand natural capital more readily than many other people who are thinking about it. Think of the vast peatland ecosystem, with which the convener will be familiar: those land managers have been treating peatlands as natural capital for centuries, so they have no difficulty in thinking of the value of peat in terms of the carbon store, what it does for clean water, wildlife, and reinforcing the cultural identity of the area. That is all part of the natural capital of the area.

It is reassuring that many of the organisations say that they understand natural capital and have been ahead of the boffins and others who are articulating it.

The Convener: That is one side of it, but unless the people in those areas have economic support, they will not be able to address natural capital.

I am very worried by the RSPB Scotland submission, which suggests that somehow or other we are spending only 27 per cent of the SRDP on agri-environment measures, whereas in England they are spending more than 60 per cent of the equivalent budget on such measures. That does not take into account the less favoured areas where we have to support the very people you have just said are more alert to biodiversity. I find the comparison of apples with pears that RSPB Scotland has made completely unhelpful when we are considering how we can apply the moneys that we have.

Professor Thompson: The challenge is partly in converting the habitat that is being improved into a measure of natural capital. Perhaps some organisations have been better at doing that than others. The natural capital of some RSPB landholdings—the Insh marshes and some of the areas in the flow country, for instance—is very considerable and benefits greatly from various grants and other support that are provided.

The Convener: I do not deny that the RSPB has good examples. However, I started by talking about crofters and hill farmers who are clearly the key people who are supported by the less favoured areas support scheme, which the RSPB does not like.

Aileen McLeod: You mentioned the agri-environment measures, convener; the cabinet secretary has ensured an increase in that budget of more than £10 million per year.

The Convener: Let us move on to question 7, which relates to data.

Claudia Beamish: Last week, as you will know, minister, there was a broad-ranging discussion on monitoring research and biodiversity indicators. I want to highlight one or two remarks that were made in evidence. James Davidson of Aberdeenshire Council said that, based on his experience of the land use strategy pilot project, more local data and indicators are needed, whereas Simon Jones from the Scottish Wildlife Trust said that we should not let lack of data prevent us from doing work now.

As you will know, minister, the "State of Nature: Scotland" report, which was launched last year in Edinburgh states:

"we simply do not have sufficient knowledge to make a robust quantitative assessment of the state of nature in Scotland."

There is a conflict between a lack of evidence in some areas and the need to act. The committee wonders how the monitoring of biodiversity and

provision of data and research to support action on the ground can be progressed to ensure that local data is available in order that resources can be targeted at smaller projects.

Aileen McLeod: The main priority at the moment is our ecosystem health indicators. It is intended that the set of indicators will be presented nationally, but will be scaleable to finer resolution, which will help us to understand the status of Scotland's ecosystems over time and to make priorities for restoration, to inform action that is taken and to assess progress.

Much of that work is being taken forward by a subgroup of the science and technical group, membership of which has been drawn from the James Hutton Institute, Marine Scotland, Scotland's Rural College, RSPB Scotland and the centre for ecology and hydrology. We need to continue to deepen our understanding and evidence base, and we need both because one supports the other and we need to be clearer about what needs to be done to improve our ecosystems' health.

Claudia Beamish: What will the process be for local people to work with NGOs and local authorities? We have talked about the North American signal crayfish and we took evidence on invasive species and ash dieback from the previous minister. How will the issues and the continuing research be fed to the people who matter on the ground?

Aileen McLeod: They will be set out in the annual report.

Professor Thompson: As the minister has rightly said, at the tail-end of the route map, we will produce an annual state of nature report that will draw on the many indicators that we have. Bear in mind that those indicators have contributions from thousands of people working across Scotland on a wide range of taxonomic groups.

We need to turn this around. We have a phenomenal resource in people—citizen scientists—who are collecting an amazing amount of data. We are fortunate to be able to capture that, report on what is happening, and understand the underlying causes of change.

Claudia Beamish: I understand that process, but I am really asking about taking it further and how the information will be fed back to people who are responsible for citizen science or local authority biodiversity, or who are working in NGOs. That process must be robust if we are going to meet our 2020 targets.

Professor Thompson: It must and, as you highlighted earlier, one of the great ways of doing that is through the local biodiversity officers, who are supremely well equipped to do that and to

redirect the efforts of local people who are working on the ground.

Claudia Beamish: On monitoring, assessment and indicators, how do the biodiversity targets fit with the national performance framework targets? The Cabinet Secretary for Finance, Constitution and Economy is obviously keen that those NPF targets are taken forward and considered by committee. I am talking about terrestrial birds or other areas related to biodiversity.

Aileen McLeod: The targets contribute directly to the NPF.

The Convener: We will move on to the role of education.

Dave Thompson (Skye, Lochaber and Badenoch) (SNP): Last week I picked up on a point about education. In big step 3 and priority project 6, on taking learning outdoors, the aim is to increase secondary and primary schools' access to green spaces and nature for outdoor learning. There is a good example of an outdoor learning venture in my constituency—Lochaber Rural Education Trust, which is run by Isabel and Linda Campbell, whom I first met a number of years ago. We have been helping them to get funding to keep that fantastic little project on the road, but we have had great difficulty. When the previous First Minister was with the Cabinet in Lochaber, he went along to have a look at it and thought that it was fantastic, but there is no funding for it.

We have something that is working really well and is giving schoolchildren the chance to learn a lot of useful things about the environment, animals and growing things, but we cannot seem to find a regular source of funding to keep it going. It is run by volunteers, in the main. There are also problems with the schools running out of funds for buses to take their children there. In a constituency like mine, people have massive distances to travel and they need to travel to such projects because they cannot be in every single place.

What cross-departmental work is being done to ensure that there are proper funding streams for excellent projects such as that one? It has made a few successful short-term funding proposals, but if it does not get proper funding soon, it will close. Where does it leave us if we do not have a separate, identifiable funding stream that such folk can bid into?

10:30

Aileen McLeod: I agree about some of the fantastic projects that exist for our schools. A few weeks ago, I had the opportunity to meet some of our local biodiversity action plan officers and hear about a north-east Scotland camera trap project,

which is absolutely fantastic. It was set up to gather information on some of the more secretive mammal species that live in our woodlands across the north-east. To be honest, it captured me because there were thousands of videos and images that revealed the movement of a range of species, including our wood mice, red squirrels, badgers, otters and pine martens. That has all been done with the help of local volunteers and through our schools and Aberdeen City Council, Aberdeenshire Council and Moray Council. The project received LEADER funding and funding from the Forestry Commission Scotland to work with a number of schools.

Officials may want to comment.

Professor Thompson: I will add two things to the wonderful example that the minister gave. A huge amount is being done through the curriculum to improve awareness educationally. We are also doing a lot of work with Young Scot to promote the wider links between education and appreciating and caring for nature.

There are a lot of examples across the board.

Dave Thompson: That is all great; it is fantastic and it is good to hear it. However, when the previous First Minister visited the project that I described about four years ago, he mentioned LEADER and nothing came of it. The project has struggled on ever since. It is a great project. Funding streams such as LEADER do not seem to be working effectively.

Why have a priority project 6 to

"Increase Secondary and Primary schools' access"

when we already have people volunteering and running projects that need a relatively small amount of regular income? Why not help them? They are already doing valuable work. If we lose that, we will go backwards, not forwards. Although there are things happening in the schools and other things going on, why are we not considering supporting such work?

I invite the minister and her officials to come up to see that little project—I would be more than happy for them to do that and I am sure that the people at the project would be really pleased to see them—so that they can assess for themselves its value. It is in a very rural area. It is just below the ski slopes at Aonach Mòr, so the minister could go up in the gondolas when she comes out, which would also be an interesting experience. That project is working but is in danger of folding. The minister should identify some kind of funding stream that such projects can deal with. It is about thinking across departments.

Aileen McLeod: I would be more than happy to accept Dave Thompson's invitation to go and see the project. I would also be more than happy for

him to write to me about that case setting out all the details. That would be helpful for us and we will look to see how we can take the matter forward.

The Convener: It is a Cook's tour beyond our ken. It would certainly be valuable to see some of those things over the summer.

We probably need to ask the education minister about how the focus on eco-schools might be looked at and reviewed, because that might help with biodiversity education and so on. I will mention one or two other things about that in a minute—as well as other issues that we need to raise with you, minister. First, we have Mike Russell.

Michael Russell: It would be remiss of me not to mention two other developments that tie in with that. Perhaps the problem is that there are so many different developments in the area that cohesion is required.

The first is forest schools, which is a Forestry Commission initiative. That initiative is extremely important and offers some of the best outdoor education. The other is the growing development of outdoor nurseries. Indeed, in Dave Thompson's constituency, Stramash, which is an Argyll-based provider of outdoor education, is about to start its third outdoor nursery. The children are outdoors for almost the entire time; the only shelter on the site is a large yurt, which they eat in from time to time.

There are many initiatives; the question is, how are they drawn together? Perhaps the minister would care to co-operate with her education counterparts to see whether the committee can be informed about how the initiatives are drawn together, where the budget lines are and how they tie together.

Aileen McLeod: I would be very happy to do that, including on the health side. I know that Forestry Commission Scotland is taking forward a number of very good green health projects with the NHS.

Michael Russell: It would be useful to have a Government briefing on what those projects are and how they all tie together. I think that we would find out quite a lot from that.

Aileen McLeod: I would be happy to provide that to the committee.

Sarah Boyack: I have a follow-up education question about access to skills and ensuring that biodiversity is embedded in the school curriculum, which Dave Thompson asked about. We need to move on further and get young people to consider taxonomy or work in biodiversity as a potential career opportunity. There are a whole load of

careers out there, but to what extent does biodiversity follow through the school system?

At last week's committee, the lack of skilled taxonomists and the fact that we are not recruiting new people in that area were raised as key issues. Having a positive approach to biodiversity would fit with a range of environmental and land management careers and would be a useful building block towards such careers.

Professor Thompson: I noted with interest what was said last week. NGOs such as the Scottish Wildlife Trust, Plantlife and RSPB Scotland have done a fantastic job in nurturing that expertise and encouraging specialisms in different taxonomic disciplines.

SNH employs a number of graduates each year to develop their skills, which is terrific for their employability. We also fund a PhD scheme, which develops skills at the highest level. SEPA is no different: it is actively involved in a number of PhD schemes.

We are acutely aware of the issue, but we should not lose sight of the importance of reaching the youngest people. If we can reach the kids at the early primary school stage and through the nurseries that we have heard about, we can have a lasting impact on their appreciation of the environment and how they care for it.

Aileen McLeod: I echo those comments. There has been continuing investment by the Scottish Government, via rural affairs, food and environment research, in the Royal Botanic Garden Edinburgh—that provides support to what is a world-leading taxonomic institution.

The Royal Botanic Garden Edinburgh provides specialised programmes, including at PhD level. We are delivering, in partnership with the James Hutton Institute and the University of Aberdeen, the first PhD in lichen taxonomy in the UK in more than 30 years.

Sarah Boyack: That was a very different answer from the one that was given to us last week.

The Convener: We will reflect on that when we are thinking about our next moves.

Before, we move to the final point, we have a question about big step 6 and marine and coastal ecosystems.

Christian Allard (North East Scotland) (SNP): Yes—I want to come back to big step 6, and the marine ecosystem in particular. We have heard this morning that farmers, land managers and crofters need to be at the heart of the strategy. We have also heard that there is a gulf between land managers and conservationists, and that natural capital may be able to address that.

The same gulf exists in the marine environment, between the people who harvest our seas and the NGOs. How will the strategy address that particular gulf?

Professor Thompson: Just to be clear, is your question about what we are doing in relation to the coastal environment and coastal restoration?

Christian Allard: Yes—it is on the marine environment and ecosystem, and the strategy for our seas. The fishermen and the people who harvest our seas have been very proactive, and I do not want them to feel, as the land managers, farmers and crofters feel, that they are not involved in the strategy. I do not see a lot on that issue in big step 6.

Professor Thompson: As the minister set out earlier, priority project 12, which is part of what we are doing in relation to the seas, involves gathering a significant amount of evidence to enable us to understand the wealth of nature that we have and the work that we need to do in that respect.

At present, SNH has a specialist seconded to the Scottish Government to develop our understanding of coastal erosion and coastal processes so that we ensure that those areas are much more robust in relation to change.

Christian Allard: I want to ensure that the strategy is targeted not only at the NGOs, but for the benefit of the coastal communities that harvest our seas.

Professor Thompson: Yes, of course—we are working to take the strategy forward with a variety of coastal fora, ranging from the Forth and Clyde coastal fora to other, more regional fora. It is incredibly important that we do that. The coastal fora are so effective because they operate across the marine and land environments.

Aileen McLeod: We are happy to come back to the committee to set out the approach that Marine Scotland has adopted—I am conscious that the area also falls under the cabinet secretary's portfolio—and the ways in which it works with environmental groups and the fishing sector. Christian Allard spoke about conflicts, so we would be happy to set out that work for the committee if members would find it helpful.

Dave Thompson: I have a couple of quick points, minister, on your department's involvement with transport and infrastructure. The A9 is about to be dualled, and all the preparatory work is being done. Under priority project 5, your planned work includes

"Delivering the National Walking and Cycling Network and promoting its use by the public."

I have been pressing very hard for a proper route all the way up the A9. I am not necessarily talking about just a cycleway: as you know, we are going to spend £3,000 million on that road, and we need to ensure that there is a proper people-way for bikes, walkers, people in disability buggies—

The Convener: I wonder what that point has to do with the biodiversity strategy.

Dave Thompson: It is to do with priority project 5 and the proposal on

“Delivering the National Walking and Cycling Network”.

I want to ascertain whether the departments work together in relation to the strategy and whether there has been input from various departments. Are we going to get a proper cycleway/walkway alongside the A9 when we improve it?

My second point—which is very much to do with biodiversity, convener—is whether we are going to have green bridges. If we are not, we will be creating a barrier over which wildlife will have great difficulty in moving, whereas green bridges give wildlife a green way of getting from one side of the road to the other.

Those things will all add cost, but we need to look at them. In a project of the size of the A9 project, we need to get everything right. I wonder how much involvement your department has had in the project. If you have been involved, that is great, but if you have not, I think that you should be.

10:45

Aileen McLeod: Those are all areas that we are considering right now. We are delivering the national walking and cycling network, and promoting its use by the public. We are also looking at how we can improve the provision of green space in many of our disadvantaged areas in urban Scotland. We are doing that work through a number of our green infrastructure projects, which will be funded through Scotland’s 2014 to 2020 structural funds programme.

Sally Thomas (Scottish Government): We have been meeting at official level with Transport Scotland colleagues in relation to the A9 and biodiversity, and there has also been a lot of detailed work and discussion with the Cairngorms National Park Authority, which covers the area through which a significant part of the route runs. There is on-going work at a detailed level to look at individual sites and opportunities along the route, certainly with regard to biodiversity.

Dave Thompson: Thank you for that. The first section, from Kincraig to Dalraddy, is already out for consultation on the detail. I have not had a chance to look at that in detail yet, but I will do,

and I certainly hope that a proper cycleway or walkway and green bridges are being considered.

The Convener: Thank you, minister. There are other things on which you need to update us, because Paul Wheelhouse gave us a lot of information during our session on 18 March 2013. Will you agree to write to us with updates on the national ecological network, a small part of which we have just been discussing; on the strategic programme for re-establishing species driven to local and national extinction; on progress on the work that is being undertaken to restore degraded ecosystems; and on progress on tackling marine biodiversity? The previous minister touched on all those points, and it would be valuable for our consideration to get an update.

Aileen McLeod: I am happy to do so, convener.

The Convener: I thank you and your officials for a wide-ranging session. It was slightly longer than we had expected, but that is good, as it shows that you are doing your job and that we are doing ours. We are pleased that we have had that discussion.

We will now have a short suspension to allow for a change of witnesses.

10:47

Meeting suspended.

10:54

On resuming—

Review of Agricultural Holdings Legislation Final Report

The Convener: Item 2 is evidence on the final report of the review of agricultural holdings legislation. We are joined by a panel of stakeholders, whom I welcome to the meeting. We have Scott Walker, chief executive of NFU Scotland; Stuart Young, chair of the Scottish Land & Estates agricultural holdings strategy group and representative of Dunecht Estates; Ken Bowlt from the Royal Institution of Chartered Surveyors; Martin Hall of the Scottish Agricultural Arbiters and Valuers Association, who is a former SAAVA president and a representative of the tenant farming forum; Mike Gascoigne, convener of the rural affairs committee of the Law Society of Scotland; and Christopher Nicholson, chairman of the Scottish Tenant Farmers Association.

I will kick off with a question about the idea of establishing the post of tenant farming commissioner. Do you agree with the proposed role for the commissioner, which would be to investigate and solve complaints using a number of codes of practice? Should the codes be statutory? What remedies should be available to such a commissioner?

Scott Walker (NFU Scotland): To answer that, it is worth briefly going back over a bit of the history. Many disputes arise between landlords and tenants. Although there is recourse to the Scottish Land Court to solve disputes, that is problematic in terms of cost, time and the atmosphere that it generally creates in the industry. NFU Scotland has long advocated a post along the lines of a commissioner or adjudicator. That would be somebody who could be proactive in relation to disputes and who could intervene. For the want of a better description, they could act as an arbiter in certain circumstances. Often, what is needed is simply someone to bring both sides together to talk and someone to enforce a set of conditions and ensure that the individuals involved adhere to them.

Given that background, the basic principle of the review group's proposal is sound. Statutory codes need to be put in place, and whoever is the adjudicator or commissioner needs strong powers to enforce their decisions. It is vital that the role is proactive. Basically, it would involve the various issues on which there can be disputes, such as rent reviews and waygo, and the commissioner would signpost individuals to where they can get the best advice.

The Convener: It sounds like a job for the United Nations. Perhaps there would need to be more than one commissioner, if that is what we are talking about.

Are there any other points of view?

Christopher Nicholson (Scottish Tenant Farmers Association): The Scottish Tenant Farmers Association has been an advocate of the creation of a tenant farming commissioner for a long time. We see such a commissioner as vital to the future health of the sector, and we believe that the commissioner would benefit from having statutory powers and statutory codes of conduct. The commissioner should be able to create and implement statutory codes that would act as a guide to how landlords and tenants deal with all the processes such as waygo and rent reviews. Furthermore, it must be possible to audit those processes to ensure that the codes have been followed correctly.

On the wider remit, the tenant farming commissioner should be able to investigate complaints in the sector, monitor what is happening and mediate and act as arbiter not only in individual situations but in situations involving the stakeholder groups—in particular, the NFUS, SLE and the STFA. There are many areas where consensus can be reached but, in some areas, consensus will not be reached and there is a role for a tenant farming commissioner to act as mediator or arbiter in those situations.

The Convener: Should the codes be statutory?

11:00

Martin Hall (Scottish Agricultural Arbiters and Valuers Association): SAAVA believes that the codes should be voluntary rather than statutory but that the tenant farming commissioner, whoever that might be, should have teeth to enforce those codes. With a bit of cajoling, there could be a great deal of consensus in the industry on putting in place voluntary codes that cover the areas that need to be covered. In the event that codes cannot be agreed on, the commissioner might need to be able to introduce something that is more statutory, but the emphasis should be on voluntary codes rather than on introducing more layers of legislation that are not needed.

Stuart Young (Scottish Land & Estates): Good morning. Scottish Land & Estates is very supportive of the concept of having a tenant farming commissioner. In fact, we think that we should work with other stakeholders with a view to introducing an interim commissioner, given that it will be some time before any legislation comes into effect. I believe that there has already been dialogue between key stakeholders to that effect.

As to whether the codes of practice should be statutory, our position is that we would prefer them to be non-statutory, but we are very open to looking at existing examples in other sectors and to considering whether we can learn from them and develop our own codes.

Michael Russell: I am a bit surprised by Martin Hall's view that we should have a non-statutory code yet we should give powers to a commissioner. That seems to be an odd direction to go in. If we accept that there should be enforcement of a code, surely we must have a statutory code that allows people on both sides to be very clear what is to take place and what the consequences will be thereafter if that does not happen. In my view, the mixture that Martin Hall proposes seems not only odd but ineffective.

Martin Hall: I do not think that such an arrangement would be ineffective. If there are codes in place that the commissioner has teeth to enforce and powers to make the enforcement meaningful, I have difficulty understanding why we could not operate on the basis of voluntary codes.

Michael Russell: Because, given that we are talking about an attempt to resolve a problem between two parties and this is the only way in which it is likely to be resolved, to do it in a way that is not statutory and puts too much flexibility into the process will not produce any result. I represent tenant farmers who are at the end of their tether because of the situation that they are in with their landlord. To say to them, "By the way, here is a non-statutory code and somebody might be appointed by somebody else—we are not entirely sure who—who will be able to enforce it at some stage in the future," is, frankly, to offer them hope deferred. If we are to take action to resolve issues, we should have the courage to take that action in a clear way that provides accountability. A published code that is on the statute book is an accountable code. A non-statutory code would be subject to the vagaries of interpretation, which has not benefited many of my constituents.

Martin Hall: There are a couple of examples of situations in which a non-statutory approach has been taken. We had the code that the industry developed on the rent review process. Latterly, there was the agreement between the three stakeholders regarding the mechanism for rent reviews to avoid huge increases in rent.

Michael Russell: Those have not worked, which is why we are considering further legislation.

Martin Hall: They have worked in part, but they would work even better with the appointment of a tenant farming commissioner.

Michael Russell: And if they had a clear statutory basis.

The Convener: Do you have anything to add on that, Mr Gascoigne?

Mike Gascoigne (Law Society of Scotland): I simply mention our recommendation that the Private Rented Housing Panel would seem to be a suitable starting point for the kind of operation that the commissioner might be in charge of. It seems to work quite well.

The Convener: Perhaps Mr Bowlt has an interesting view on the matter.

Ken Bowlt (Royal Institution of Chartered Surveyors): The RICS would be supportive of having a commission—possibly a commission or board rather than a commissioner—to deal with process, so that if there is a problem with the way in which people are practising, it can be addressed. That is as opposed to a failure to agree; there is a slight distinction there.

One hears suggestions that there are problems with how people on both sides practise. How does one address that? A commission would help with it if it was a commission of experts who had the necessary skills and was at arm's length from Government, so that it was independent and people could have confidence in it. Confidence is something that the sector struggles with, and confidence is at the heart of many of the problems that we have in improving relationships and making new units available.

The Convener: What remedies should be available to the commission or the commissioner?

Ken Bowlt: What the remedies would be has got to be thought through. I think that we would look at penalties as the last resort.

There are voluntary codes of practice. The code for the rent review process is meant to build a bit more time into the process and force people to get going earlier and be more open and transparent about how they approach rent review. That has been taken on board certainly in my profession. I know that we are using it now and are going out that little bit earlier and giving tenants the chance to come back.

The problem is not one-sided; it is not just landlords and their agents who can be criticised for their practice. I can give examples of where we have used the code of practice and not had any response from a tenant. I have seen examples of where landlords have left messages or sent up to 20 pieces of correspondence, looking for a response from tenants. I think that it cuts both ways and that there are issues on both sides. There should be a bit more dialogue on whether there should be penalties and what those should be. At the moment, the Land Court has indicated that, in the event that one party has followed the code of practice and one party has not, regard

might be had to that, so there is an incentive to follow the code of practice.

The Convener: Dave Thompson has a small supplementary question, before we come back to Christian Allard.

Dave Thompson: Ken Bowlt, you are saying that you have evidence that it is not just landowners and their agents but also tenants who have not followed a code of practice. Surely that must lead you to the conclusion that the commissioner and the codes of practice must have a statutory basis, so that all parties must follow them. That is the problem with a voluntary system. People do not need to follow it and it leads to problems on both sides. If there is a commission with clearly set out responsibilities, and if there are codes of practice that are developed through discussion and which the commissioner can apply statutorily, the commissioner has the ability to pull people together.

If, in addition to a legal role, the commissioner had a mediation role—either the commissioner could be the mediator, or he could take on professional mediators, of whom we have many good ones in Scotland—that could get people together to work their way through the statutory codes. We would have a robust system that would be fair to everyone.

Do you agree? Do you accept my logic?

Ken Bowlt: I do not disagree, but I can only speak from my own experience of acting for both landlords and tenants. The vast majority of people are reasonable, but you aye meet one or two who are not. For example, there was the case that I mentioned in which we had used the new code of practice for the rent review and it took about 20 phone calls and letters to the tenant. We persevered. We did not need to go to Land Court. I have been in practice for more than 30 years and I have never ended up having to have a rent dispute settled by arbitration, nor have I ever ended up at the Land Court. I am sure that a lot of people in practice would say the same. In my experience, I have never needed the Land Court. It is sitting out there and everyone knows that, whether you are a landlord or a tenant, if you end up going to the Land Court, it is an expensive business.

Dave Thompson: I do not think that anyone would want to go to the Land Court if they could avoid it. However, from what you are saying, it sounds as though everything is rosy and working really well and we can all just go home now.

Ken Bowlt: Certainly, that is my experience. It is at variance with some others, but that is my experience.

The Convener: I would like to develop this a little bit further and I will bring in Scott Walker in a minute. On the point about the French SAFER system, we have a French national here who may want to comment.

Christian Allard: I was quite intrigued by the STFA submission. Perhaps Christopher Nicholson wants to talk about it. I am a great fan of SAFER. What exactly do you think we should take from SAFER for the commission or for whatever we decide to have? What examples were you thinking of?

Christopher Nicholson: One of the key benefits of having a commissioner or an organisation such as SAFER is that it can ensure that the buying and selling of land and the letting of land is carried out in the public interest and in a manner that would benefit the local community and agriculture in that area.

My understanding of SAFER is that if there is, for example, a land sale, SAFER is required to approve the purchaser and has the power to intervene if it thinks that someone else is more suitable to occupy that land. In the same way, SAFER has a say over approving the tenants of let land. SAFER ensures that land is managed and occupied in the public benefit.

Christian Allard: So SAFER would come in after the event. That may be the safer way to do it.

Christopher Nicholson: Sorry?

Christian Allard: After the event of a tenant acquiring land or whatever—is it better for SAFER to come in after the sale or after the transaction?

Christopher Nicholson: I think that SAFER should approve the transaction.

Christian Allard: I think that the transaction happens and then, afterwards, it has to go through SAFER for it to decide—

Christopher Nicholson: If it is acceptable.

Christian Allard: If it is acceptable or not. Is that what you are looking for here?

Christopher Nicholson: We think that a tenant farming commissioner could have a role like that. There are examples—one of the recommendations in the ag holdings review report is that there will be certain opportunities to assign tenancies outwith tenanted farming families. There is a role for an organisation such as SAFER or for a commissioner to approve who the new assignee is; otherwise there is a danger of the biggest operators taking up all the opportunities.

Christian Allard: Does anyone else want to comment on that?

The Convener: Indeed. We will come on to assignation and so on in more detail later, but Scott Walker may wish to comment on this related point about a commissioner and the SAFER process.

Scott Walker: On the point about a commissioner and statutory codes, the reason why we are here and why we have had the review group is that the current system is not working satisfactorily. I think that everyone agrees that we want to move to a situation where, for existing tenants, things are thought of as being fair; we also want to create an environment where people want to rent land in the future. That is the ultimate aim—that is where we wish to get to.

There are plenty of situations where everyone around the table can say that things are working fine because there are situations where that is the case. However, there are also plenty of situations where there is a dispute and where things are not working. The tenant farming forum, for instance, came up with a very good voluntary code on how to conduct rent reviews and the process that people should go through. I suggest that looking at such codes would be the basis for setting up any new commissioner in the future.

However, the nature of a voluntary code is that, when you have two reasonably parties, they will agree to it and work with it but in situations in which either of the parties is not reasonable or a series of events has occurred beforehand, they do not stick to the code. For that reason, statutory codes that are enforceable by a commissioner are hugely important if we are going to bring confidence back to the sector. For us, it is the fact that a dispute will not have to be settled in the Land Court that will make the commissioner successful. If we have a commissioner but individuals are still required to go to the Land Court, the commissioner will not be effective and the role of the commissioner will not do what it is supposed to do, which is to settle disputes, intervene in cases where there are disputes and bring confidence to the sector.

11:15

Michael Russell: I want to press you on that. You have defined the purposes of the commissioner in a utilitarian manner, saying that it is a way of resolving difficulties between those who cannot resolve them themselves. However, you have not taken the step that Christopher Nicholson has talked about and SAFER has done, which is to have a wider test of community benefit.

It does not seem to me that the state would have a role, per se, in simply making either side in a dispute happier. That is Ken Bowl's job—given that he says that he has never met a difficult

situation, I am going to follow him around the country to see how he does it. However, the concept of the public good is the reason why the state would be involved in appointing a commissioner—I agree that the commission or the commissioner should be at arm's length. It is that issue that land reform—we will come on to the wider issue of land reform—has to address. The relevant issue is the wider public benefit and the use of the resource of land in the interests of the local community and the wider country. That is what we need to start to address, and that needs to be factored into how you see the role of the commissioner.

Scott Walker: In terms of public good and the consideration of where there is market failure, we will talk later about rent reviews, for instance, where there is market failure because there is no clear market for certain forms of tenancies, which is why you need to set up a statutory mechanism to deal with it. That is why we are looking at other aspects of wider legislation that is going through Parliament just now.

One of the presumptions that the NFUS makes is that land should be used for food production. When you consider public good, public benefit and what people are using land for, the driver for us would be that it is being used for agriculture and food production. Those are the reasons why Government intervention and legislation is justified.

Christian Allard: We have talked about ensuring that there is a good partnership between the landlord and the tenants and that the relationship improves. Somebody said earlier that not everything is rosy, but we have to ensure that the implementation of the review's recommendations will involve legislation, followed by a number of initiatives and the development of codes of practice and guidance.

How would the panel members help to shape opinions to improve that relationship between the landlord and the tenants?

Stuart Young: The key stakeholders have a fundamental role to play in working together. They have demonstrated that they can do that, having set up the rent panel last year, which has had some positive effects, as I have seen when using it myself.

I think that good progress could be made by stakeholders getting together, closing the door and working through things together.

Christian Allard: May I introduce the word "trust" into the debate? We need to ensure that everyone has trust in the process and that we keep in mind the common good in terms of what we want to see in the countryside. The tone of the debate and what will follow thereafter will be

based on the trust between your organisations and between landlords and tenants. Does anybody want to comment on that?

Christopher Nicholson: In the last decade, stakeholders got together in what was called the tenant farming forum, which was a large, cumbersome body that did not deal with problems or come up with solutions very satisfactorily. In the last year, three of the main stakeholders—the STFA, the NFUS and SLE—set up the rent panel and the joint initiative. That seems to be working much better.

The debate is about improving relationships between landlords and tenants, and we would like to encourage landlords to become more evident in that debate. Stuart Young is here today, but I feel strongly that a landowner or a landlord should be here to represent landlords, rather than a professional agent. I have no objection to Stuart, but we have to do whatever we can to create greater landlord involvement and ensure that landlords themselves determine what is best in the long-term interests of their estates, rather than being represented through professional advisers.

Christian Allard: That is a good point. I have met Stuart, who is my neighbour, a lot of times, but I have never met the person who employs him.

Claudia Beamish: On the point about intermediaries that has just been raised, I would like to hear the panel's views on the following comment from the review:

"Many submissions have alleged that inexperienced or insensitive intermediaries at times cause a souring of landlord/tenant relationships that is both unhelpful and unnecessary. Others have suggested that there may be what amounts to an excessive use of professional intermediaries to the exclusion of any personal contact between landlord and tenant".

I highlight the next point because it gives me serious cause for concern for the future:

"the number of landlords who have chosen to contribute to the Review itself through a professional intermediary has been notable."

Why has that happened? Is it helpful to the future of relationships?

Scott Walker: I am tempted just to say "yes". I hesitate to speak because I know that someone will lambaste me as a consequence of what I am about to say.

For many landlords and tenants, when the two individuals talk, the relationship is good, they know what they are trying to achieve and what the long-term objective is, and they can come together. There are many situations out there where agents get involved. To a degree, that professionalises the relationship, but in other respects, particularly in recent years, it has often involved conflict and the view that it is intended to escalate rents.

The relationships that have been built are not the same as those that used to exist between the landlord and the tenant. Certain agents have a reputation that goes before them—some people would call them hard negotiators, while other people would say that they sail pretty close to the wind. That does not build up trust and a long-term relationship.

That takes us back to the point about trust, which is not something that can be created overnight; it has to be worked on and built upon. It does not take much to damage trust and, unfortunately, that means that people enter into discussions feeling that neither side is being wholly honest, or that both sides are looking at the situation from slightly different angles. That clouds all the discussions that take place. That is why I say that, for NFU Scotland, it is important that legislation is passed in this parliamentary session, that we get a framework and that everyone knows how they can work with it.

SLE, the STFA and NFU Scotland are of a mind to make this work. All the organisations are of a mind: we need to ensure that there is a fair deal for tenants and landlords and that people are encouraged to consider renting out land, whether that is a traditional estate or an owner-occupied farm.

Why did landlords get agents to respond to the consultation? I will leave Stuart Young to say something about that.

Stuart Young: I say to Christian Allard that the invitation to meet Charles Pearson will be in the post tomorrow.

I am not sure that I understand why there should be a view that there is a difficulty with an agent or intermediary responding to a consultation or inputting to the review group. I like to think that I know how my principal thinks and works. That is what I am employed to do; it is part of my function and role. He has wide and varied business interests that consume his time. That is why I am there. Therefore, I respond, make submissions and, I hope, represent his position accurately.

Claudia Beamish: My purely personal view is that if the matter is important to the future of the relationship between landlords and tenants—which it is—I would have hoped for more direct submissions to the review of landlords of whatever scale. That is the point I am making.

I do not know that intermediaries are necessarily helpful. Let us be realistic: many tenant farmers cannot afford the professional advice of intermediaries in the way that larger landlords can. At the time of the review, the business interests of the landlord should, perhaps, be focused on making a submission. That is just my personal view.

Stuart Young: I am sorry to use myself as an example again, but I do so because we are talking about intermediaries and I am one. Before I submit anything, I run it past my principal, who reads it. He sees exactly what is said to represent his opinion.

Ken Bowlit: The RICS took a keen interest when there was a suggestion in the media—which picked up the points that Claudia Beamish made—that the intermediaries, agents and factors were at the heart of the problem.

Claudia Beamish: For the record, that was not why I asked the question; I want to be clear about that.

The Convener: Other people might feel that way, although it might not be your view.

Claudia Beamish: No, no—I am just saying that I did not raise the issue because of what I read in the media.

The Convener: That is fine.

Ken Bowlit: It did not ring true with my experience, in that the relationship of trust and confidence that Christian Allard talked about is at the heart of working on a rural estate with let land. Most of the people in the profession spend a lot of time investing in the relationship. They do not go in to do a rent review and then disappear for ever; they have a continuing relationship. Some of the relationships have lasted through the generations—for more than 100 years in some cases. It is in everyone's interests that there is a good working relationship. That is absolutely key.

The RICS took an interest in the matter. We had various meetings with all the big players in Scotland—I had never seen them all in one room before—and many of them were seriously offended by what had been suggested because it did not ring true to them. Andrew Thin came along to the meeting because, I think, he was the one who went public with the criticism.

The RICS said, "We have a code of practice. We expect the very highest standards of our members, and if any member steps out of line they will get dragged up by the professional practice section." The RICS is very strict and very worried about the profession's reputation. It has a lot of members in Scotland, and it is important that we retain our reputation. We made it clear that we have not had one single formal complaint. We said, "Give us a complaint and we will investigate it", but there was not a single complaint.

11:30

Some things are easy to say, but if they are not evidenced, a professional body cannot act—it cannot act against its members on the basis of

hearsay; it has to have some representation of the facts, and the RICS has never had the benefit of that. The professional body has made it abundantly clear to the people who may be making such suggestions that they should come forward and the matter will be dealt with. The RICS has not only its own code of practice but a royal charter, so it has a duty to consider the public interest as well. If there is something that is not necessarily against the code of practice but which should be considered in the public interest, it will be prepared to take that up.

The Convener: We have a lot of questions to get through. The tenant farming forum and others have been running through the same issues for the past 10 years—I do not think that we want to spend that much time on them today. It was a fair point, and although Christopher Nicholson has asked to respond to it, we really have to move on. *[Interruption.]* Dave Thompson wants to pursue the issue. Is your question about a particular case or the general principle? The RICS has a code of practice that is not statutory, so how could it ever be enforced? That is the fundamental question.

Dave Thompson: It is about a general principle. However, if Christopher Nicholson wants to come in first, I would be grateful if we could hear him.

Christopher Nicholson: Over the weekend, I read a statistical account of agriculture in south-west Scotland that was written in 1875. The last couple of pages looked at the tenanted sector. The author pointed out an emerging problem, with many landlords handing over responsibility for the management of their estates to outside agents. The suggestion was that that was resulting in short-term policies for the management of the estates that were not only not in the interests of tenant farming and agriculture in general, but not even in the landlords' long-term interests.

That is as true today as it was 140 years ago. If there was more landlord involvement in policy, in how estates were run and in taking a long-term view, we might see landlords putting forward different policies today. We would also have easier resolution of disputes if landlords were more willing to sit down and talk with tenants directly, rather than through intermediaries.

The Convener: There we are. We have heard a range of opinions.

Dave Thompson: Thank you, convener.

I want to comment on what Ken Bowlit said about trust and confidence. Going through the various submissions, I noted with interest that on a number of the issues the RICS takes the diametrically opposed position to that taken by the STFA. Those issues include rent review recommendations, freedom of contract, extension of assignation, conversion of secure tenancies to

limited duration tenancies, the pre-emptive right to buy, the absolute right to buy, the conditional right to enforce sale and the ministerial right to intervene. I just think that it is interesting that the RICS's position is the opposite of that of the STFA, and I do not see any of the effort to be balanced that I might expect of a professional organisation. It is pretty obvious that he who pays the piper is calling the tune in relation to the RICS.

The Convener: That is another point of view. Does the RICS want to come back on that? We will come back to each of the individual issues.

Ken Bowlit: My only point is that RICS members represent both sides. We have tried to put a response together that is based on RICS members' experience. It is probably fair to say that the owner of the land is often better resourced than the tenant—that is a fact of life—and that they probably seek professional advice more frequently. For example, what the RICS is trying to do on rent review, which is a challenging exercise anyway and one that we will probably come back to—

The Convener: We are coming to it straight away.

Ken Bowlit: It is a challenging exercise for anyone, including professionals, but we try our best.

As I said, I have personally never ended up in the Land Court in front of an arbiter. We put a lot of effort into trying to get our rent reviews done as fairly, reasonably and openly as we can. I am not saying that it is a rose garden, because there are difficult characters on both sides. However, we are concerned about the suggested new proposals based on budgets. We like the principle that the rent should be based on the productivity of the farm and—

The Convener: I think that we will come on to the detail of rents, which is what Sarah Boyack is about to lead on, rather than stray into looking at the detail in terms of the principles that Dave Thompson mentioned.

Ken Bowlit: Sorry.

The Convener: I ask Sarah Boyack to please go ahead.

Sarah Boyack: Thank you, convener. I have a series of questions about rent and rent reviews. This is clearly a major issue, as the first few minutes of this evidence session have shown; it is certainly one on which the committee has periodically taken evidence. The review also addressed it as a key issue, and I have some questions about the review's recommendations.

First, I want to pick up on Ken Bowlit's last point, which was about the principles on which the

setting of rents is based. We were just getting into that when we discussed the difference between the suggestion by the NFUS and the STFA, which focuses on productive capacity—the capacity to work the farm and raise revenue from it—and the RICS approach, as I read it, which is about a fair rent that is more commercially driven. I think that the issue goes to the heart of some of the discussions that we have had about whether we regard agricultural tenancies as important and the extent to which we want to attach a priority to them in terms of food production and environmental management.

Another issue is that, if rents get too high because there is competition for them or because they are treated strictly commercially rather than as something that is connected to the farm's capacity to deliver, there is potentially a barrier to tenant farmers, given the capacity to raise money and invest. My first point is therefore about that principle.

My second point is about the setting of rents for long-term, secure tenancies versus the setting of rents for shorter limited duration tenancies. Can the witnesses give their views on whether they think that the process and the principle should be different for the different tenancies?

I will come back with further, detailed questions.

The Convener: Right, who wants to start off? Try to keep your answers short and to the point.

Scott Walker: I will deal with the two extremes. At one extreme are the annual grass lets for which some crazy prices are paid. However, I think that that should be left to the marketplace. There are specific circumstances each year that will affect those rental prices. I hope that, once the CAP beds down, some sense and sensibility will get into the grass let market.

At the other extreme are secure tenancies, and we think that the review group's suggestion of looking at the productive capacity of the land and standardising the costings when setting rents is a sensible way forward. What we really need now is more detail on how that mechanism would actually work and how it would be implemented in practice. However, I think that there is broad consensus in the industry that what the review group suggested on rents for secure tenancies is a sensible progression on what we have at present.

Christopher Nicholson: Given that tenants have argued for the removal of the open market rent test since it was introduced in 1958, we see the recommendation on rents as one of the most significant features of the review's report. It is important that a fair rent is set according to productive capacity, which will allow the landlord to get a fair return on his investment and the

tenant to get a fair return on the fixed equipment that he has provided.

We believe that for any tenancy in which the tenant provides a significant amount of fixed equipment—in other words, secure tenancies and longer-term LDTs—the rent test should be based on productive capacity, given that both the tenant and the landlord are investing capital. Because of the scarcity and distortion aspects of Scotland's land market at the moment, if the rent is based on the open market, rather than productive capacity, the landlord takes away a greater proportion of the rent than he should, and the tenant is left with an insufficient return on his investments. A move from open market rents to rents that are based on productive capacity should ensure a fairer distribution of the divisible surplus to both parties.

Stuart Young: The members of Scottish Land & Estates acknowledge the views put forward by the STFA and the NFUS vis-à-vis the move towards the productive capacity test, and we are prepared to see that worked up. We would need to see some worked examples that show how the flowchart in the review group's report would work in practice, but we are certainly not wedded to the retention of an open market test.

We are of the view that in any new LDT the parties should be free to agree the rent-setting mechanism and that if there is no such agreement they should revert to the default productive capacity position.

Martin Hall: Productive capacity has always been a starting point in setting rents, so there is a strong logic behind the recommendation. SAAVA would certainly like some examples to be worked up but I have to say that, given our involvement in dispute resolution, it looks to us like the move will introduce more capacity for disputes to arise. We would like that not to be the case, but I am just flagging it up as a practical difficulty that we see on the horizon.

Sarah Boyack: Why would that be the case?

Martin Hall: Simply because there are so many more subjective variables in productive capacity than there are in the current system.

Sarah Boyack: People would come to the table with historical information about how well farms have performed, having compared the situation in different parts of the country to reach a view on what it would be reasonable to expect.

Martin Hall: But even within local areas there are huge variations. For example, one piece of grade 3 land might be able to grow 1.5 tonnes of barley while another might be able to grow 3 tonnes, or one acre of land might be able to carry one beast while another might be able to carry

two. As a result, there is the potential for huge variations in rent.

You also have to look at the hypothetical tenant. That approach already exists, but as far as farming systems are concerned, there is the strong possibility that you will upset a tenant farmer if you suggest that he is not farming his land as it could be farmed if he used a different system.

Sarah Boyack: That was useful.

I have a couple of follow-up questions. The first is the extent to which diversification by tenants would be taken on board in rent reviews, and the second relates to spare housing on a holding that, although part of the farm, is not necessarily being used. How should such issues affect valuations for fair rents?

Christopher Nicholson: We welcome the proposals on diversification, which should make it easier for tenants to gain landlords' consent to diversify.

In terms of setting the rents for diversifications, we should be aware that existing diversification rental agreements have already been arrived at and we may not want to override some of those. However, going forward, we agree with the proposal that a landlord should have a return for what he has provided as part of the diversification. For example, if the landlord has contributed to a building, a fair rent should be apportioned to him.

We feel that housing is part of the fixed equipment of the farm and that that was the way the farm was let at the start of the lease. It could be problematic to go down the road of attributing a rental value to surplus housing, which may be used for part-time farm workers, for example.

11:45

The Convener: I will come back to a more general point after Claudia Beamish has asked her question.

Claudia Beamish: I have a quick follow-up to the point that Martin Hall made about productive capacity. I do not want to put words in anyone's mouth, but would it be the case that the move from historic to area-based payments would help with the definitions as cases build up, in view of the fact that there are two definitions of rough grazing and other areas? Surely that would help to simplify the definitions of productive land.

Martin Hall: It would help, but even within those bands there are huge variations in the quality of the land and its productive capacity, particularly in band 1.

Stuart Young: Scottish Land & Estates was supportive of the review group's proposals vis-à-

vis diversification and housing. The issue of surplus housing has been somewhat thorny in rent reviews. The approach that has been suggested is very sensible.

The Convener: We will move on to improvements in a minute or two. Market values first started to be taken into account, as Christopher Nicholson says, under the 1958 Tory Government, and we are now looking at a means to move away from that kind of approach. Would I be right in thinking that the decline in tenancies that has been going on for decades has some of its roots in that move towards free market values in rents? The arguments in more recent decades have further reduced the number of tenancies, but was that one of the starting points for the realities of farming and the market getting completely out of kilter?

Christopher Nicholson: There is a lot of truth in that. The ability of landlords to set a rent that is not viable in the long term is one reason why many tenants have given up. In some extreme examples it is used as a means for a landlord to coerce a tenant to give up, by setting a non-viable rent.

The Convener: Are there any other comments on that?

Ken Bowl: The RICS remains convinced that having a market check on rents is a sound way forward. It is the way that we approach all valuations: we look at what comparables are out there historically. Christopher Nicholson has talked about scarcity in the agricultural scene and how the lack of availability of land results in too many people competing for too few farms and very high rents being tendered. However, it must be acknowledged that we already have a process for people who are looking at comparables. Under the existing arrangements and legislation, we have to extract scarcity, which is not an easy thing to do.

We did that recently for one holding that we put on the open market; we secured a rent and ended up using as a comparable about 50 per cent of what was achieved on the open market. We were not taking a figure that is achieved in the open market and presenting it to sitting tenants and telling them that we have to double their rents, because we realised that if we did that, we would start the next Jacobite revolution. Instead, we consider many other factors and adjust the rent for evidence of scarcity, using a much lower figure. There is already an adjustment for the fact that there are few holdings available and that open market tenders are higher, to ease the negotiations for sitting tenants.

The Convener: We are going to explore all that a good deal further by looking at investment,

improvements, compensation and waygo. Jim Hume will ask the question.

Jim Hume: Access to finance is obviously extremely important for tenants. The review's recommendation 9 is that we should consider allowing tenants to register their tenancy in the land register so that the tenancy could be borrowed against. What are the panel's views on that?

Recommendation 10 is for a three-year amnesty for recording waygo improvements. Many improvements that have been made by tenants have not been registered. What are the panel's views on an amnesty to allow tenants to register their improvements? I am also interested in the panel's views on possible changes to the waygo protocols for the future.

Christopher Nicholson: We are pleased that the review recognised an evolving investment pattern on tenanted farms that means that, in the secure tenanted sector, tenants are having to provide an ever greater amount of capital for fixed equipment. We disagree with the review group's finding that there is no evidence for differences in investment levels between owner-occupied and tenanted farms. We think that there is a huge amount of evidence the length and breadth of Scotland and that the lack of investment in the tenanted sector is a concern for the future health of the sector.

The review group has gone down a certain route to try to give tenant a greater ability to raise capital by recommending that a secure tenancy should be registered with Registers of Scotland so that it could be used for mortgage purposes—that is, so that a lender could grant a standard security on the registered lease. However, as the RICS submission points out, some thinking has perhaps not been joined up here in that that situation is of benefit to a mortgage provider only if the value of the lease is realisable. Because freedom of assignation is restricted on secure tenancies, the value of a registered tenancy would not be realisable because it would not be tradeable. The review group went to stage 1 on the issue but did not complete stage 2.

The alternative that is proposed is that a secure tenancy could be converted into an LDT with a minimum term of 35 years and assigned for value, but we fail to see how an improvement that might have a lifespan of 100 years or more can maintain its value under a lease of only 35 years. Therefore, we question whether that means to realise value will ever realise the true value of improvements and we are also concerned about the possible complexities of going through the conversion process as it leads to quite a few uncertainties. I do not think that a mortgage provider or a bank would be willing to take the risk

of going through a lengthy and uncertain conversion process; it would rather have an easy means of realising value if the worst came to the worst and it had to call in the security.

There needs to be a bit more thought about how tenants go about raising finance for improvements. We must bear it in mind that there is no obligation on the landlord to provide modern improvements; landlords are obliged only to provide what was considered necessary at the start of the lease. In most secure tenancies, the start of the lease predates modern farm improvements.

We feel that the amnesty is of great benefit to the tenanted sector. There are many tenants who have lost their letters of notice or for whom there is uncertainty over who provided an improvement. It is important that all tenants' improvements are covered by the amnesty.

We are in full support of the recommendation, but there are two aspects that we find problematic. First, the recommendation that any tenant's improvement that the tenant does not notify the landlord of during the amnesty period is assumed to revert to the landlord is a plain contravention of the property rights of the tenant. There will no doubt be many tenants who do not take advantage of the amnesty and we do not see why someone who does not take advantage of the amnesty should run the risk of losing his improvements.

Also, we foresee the potential for disputes. There is a role for a commissioner here. There needs to be a form of dispute resolution for the amnesty period and the disputes that may arise from it. At the moment, the Agricultural Holdings (Scotland) Act 1991 prevents disputes over improvements from being referred to alternative dispute resolution: the default is the Land Court and there is no alternative. That could be a major limitation on the amnesty. If tenants do not know that there is an alternative to the Land Court, the proposal may serve little purpose.

The Convener: That has been a long contribution, but it has taken us to the nub of the matter.

Scott Walker: I will address those three points. First, in regard to investment, because of the low profitability in agriculture, investment is difficult for a tenant. One of the advantages that an owner-occupier will always have is the security of land and the appreciation in land values: banks have far greater certainty about lending when it is supported by the underlying asset of the land. Those are the facts of the situation.

The principle of allowing the registration of secure 1991 act tenancies is good, but we doubt whether it will make any big difference to the banks in terms of providing finance to tenants or to the basis on which they provide finance to tenants.

On waygo, we agree with virtually everything that Christopher Nicholson says. The issue is that, over a long period of time, not all improvements have been properly recorded and notified. That can often cause disputes in setting rents and can also cause dispute and uncertainty about what a tenant will get for the purposes of waygo if they are thinking about leaving a holding. We see the amnesty as an opportunity to catch up on all that, starting from the principle that, wherever the tenant has invested in and improved the holding, the presumption should be that that is compensated for at the point of waygo. The amnesty provides the opportunity for that to take place.

If we go forward on that basis, the onus is on the industry to ensure that everyone knows about the amnesty and what they have to do in that time. If it brings all the records of condition up to scratch and brings all the details up to date, it will be a huge benefit for the industry in the future.

To take on the point that Christopher Nicholson made, even once we reach that point, the issue is that individuals still feel uncertain whether they are going to get the full amount of money that they should at the point of leaving the tenancy. In most situations, landlords will pay the amount that the tenant should get, but in certain situations there can be a dispute between the two parties and, with the only recourse being the Land Court and given the length of time and course of action that is associated with the Land Court, we need a far quicker dispute mechanism. Expert determination would be the classic way to intervene and that is something that the commissioner could impose on the two parties if they could not reach a settlement between themselves.

12:00

Stuart Young: I will deal with the issue of the amnesty first. It was a proposal that Scottish Land & Estates originally put forward, and you will find that there was a considerable degree of consensus on it among the STFA, the NFUS and Scottish Land & Estates. I would like to emphasise that we should try to limit the time period over which we record improvements to one year rather than the three years suggested in the review. I think that settling that brings considerable advantage, particularly in the process of rent review, when you want to firmly establish whose fixed equipment is whose. If that could be done sooner rather than later, I would hope that it would prevent disputes arising when it comes to setting rents.

I was going to hold off on talking about conversion and succession at this moment, as I imagine that that is a question that you will come to.

The Convener: Yes, you are right.

Stuart Young: On the point about security and the ability to grant a security on a lease, we have taken some soundings from lenders, and the banks have told us that it is not an issue for them. What they want to know about is the serviceability of the loan. They want to know the track record of the applicant and their overall balance-sheet position. Therefore I am not convinced that security is the factor that is holding back investment in holdings.

Martin Hall: I support the amnesty and the practical benefits that it would bring about for rent reviews and at waygo, because there is a great deal of uncertainty over that. An amnesty would certainly assist in that process if we could bring it into being.

The Convener: Do you think that a year is long enough, given the protracted nature of some of the discussions about who owns what?

Martin Hall: My personal view is that one year is not enough. I think that it is just too tight a time to capture all the improvements.

The Convener: Okay, I just thought that I would mix it a little there.

Jim Hume: We are probably finishing off that question, but I did not hear anybody say that we should not have an amnesty. The recommendation is three years; I think that that is quite encouraging regarding waygo.

There has not been too much talk about waygo protocol, but some of that may come into the discussion of assignation, which we will go on to next.

There is quite a broad consensus that the dispute mechanism that we have at the moment is not correct.

The evidence seems to concur with Christopher Nicholson's view that the amounts of investment that there are when there is an owner-occupier and when there is a tenant are not similar. We have also had evidence in the past, regarding the SRDP, that tenant farmers go for management options and owner-occupiers go for more capital options. I thought that I would finish off on that point before we go into assignation.

Martin Hall: To correct something that has been said, I note that, although the default position is to go to the Land Court for waygo valuations, in practice it is very rare that that happens. In most cases, it is two arbiters and an oversman and that system works very well at present for waygo valuations.

Christopher Nicholson: Sorry, I was referring not to the valuation of an improvement, which comes at waygo, but to the question of whether an

improvement should be recognised as an improvement, which is decided at the period when a tenant serves notice. The dispute over the appropriateness of an improvement cannot be referred to anyone other than the Land Court.

Martin Hall: I agree with Christopher Nicholson on that.

The Convener: We move on to retirement, succession and assignation.

Alex Fergusson: We are coming to the nub of some of the proposals. I have been trying to think of a way to amalgamate all the issues into one question and have failed miserably, so I will have to deal with them in three subsections.

I will base my first two questions on specific recommendations in the review. Recommendation 13 states that the family members to whom a tenancy could be assigned or bequeathed should be widened to include

"any living parent, or any living descendant of a parent, or spouse or civil partner of any living descendant of a parent of the tenant or of the tenant's spouse or civil partner".

To my mind, that widens out the possibility that somebody with absolutely no connection to the holding at all could be bequeathed or assigned the lease. Does the panel think that that is fair, particularly if no fit-and-proper-person test is built in?

An important point that I am not sure has been brought into the discussions is whether the holding is a viable unit. One reason for the reduction in the number of tenants over the past 50 years is that holdings have had to get bigger and bigger in order to be viable, which means that there have been fewer holdings to put on the market. Does the panel feel that the proposal is fair, given that it seems to involve a lack of challenge for the person who is able to let the land?

Christopher Nicholson: You refer to landlords not being able to challenge a possible successor, but we understand that the existing test would remain and that the landlord could object on the basis of the successor's character, farming ability and financial background, which is what the landlord can do at the moment. If I assigned my lease to any next of kin, the landlord could object if the successor was not of fit character or not of fit ability to farm or did not have access to sufficient capital to farm. There is good protection of the landlord's interest.

Alex Fergusson: So you believe that the fit-and-proper-person test is built in already.

Christopher Nicholson: Yes.

Alex Fergusson: In that case, I stand corrected. Does anybody else want to comment?

Stuart Young: I do not think that what Christopher Nicholson described is what the review group recommended.

Christopher Nicholson: I had always assumed that that detail would remain.

Stuart Young: When it comes to succession and conversion, it is important to achieve a balance. Our view is that the proposals that the review group has come up with are not appropriately balanced and represent a substantial erosion of the landlord's rights. As the committee will have seen from our submission, we have taken opinion from senior counsel, and counsel's firm view is that the proposals represent a breach of the European convention on human rights and will ultimately leave the Government with the prospect of a hefty bill of circa £600 million for paying compensation to landlords.

That is pretty blunt and fundamental in terms of the position of Scottish Land & Estates and how we see things. Clearly, we do not want to go into any new legislation that would create a period of conflict and court action that was a repeat of the *Salvesen v Riddell* case. We should see whether there is a better way of going forward.

We have always understood that the particular succession difficulty was associated with successors who are currently excluded under the legislation but who have an attachment to or are working with the holding. We would support succession rights if the successor had an attachment to the holding and was earning a proportion of their income from the holding.

Michael Russell: I want to challenge the assertion about the ECHR. This is always a matter of opinion, and Mr Young has an opinion—but no more than that—on the matter. A different perspective could be taken, which is that the freedom to assign has gradually been eroded since the 1948 legislation, but the pendulum is beginning to swing back to a more reasonable set of arrangements by which assignments should take place in the best interests of the tenant and the landlord, provided that that will lead to the continuing safe and secure operation of the farming business.

Christopher Nicholson's view about ensuring that there is still a test is a good one. However, it is inevitable that the pendulum will continue to swing towards much more free assignation. It would be better to engage with that, which is what communities want—they often feel aggrieved when tenants cannot assign in the way that they wish—and to find a way to make it work for both sides, rather than to bring along the big stick of the ECHR and say, "If you even think of doing this, it will cost the Government a lot of money, so back off." That is not a helpful contribution to the

debate. It would be helpful to find a way in which the approach could be made to work so that tenants feel that their desire for the business to continue in the way that they believe is right for it and for their family is supported by landowners, by negotiation.

Stuart Young: It would be irresponsible of Scottish Land & Estates to have identified the difficulty but not brought it to the attention of the Government and the committee. Some landlords might well share Mike Russell's view, but others might well have a completely different view and feel that their rights would be severely prejudiced, resulting in a loss of value that they wish to pursue.

Michael Russell: I will press the issue. Tenants might feel that their rights were being unfairly restricted. I could take you to see a constituent of mine who believes that his rights were strongly impinged on because, although he wished to succeed his uncle in the tenancy to a farm, he could not do so. There are rights on both sides.

Rights do not accrue only to property; they also exist in individuals and communities. That is why we are holding a seminar next week on human rights and land reform, which you are welcome to attend. I hope that you will attend it, because there is a balance of rights to be struck. Although it is helpful for Scottish Land & Estates to seek counsel's opinion, it might also be helpful to recognise that that is only an opinion and that negotiated discussions might be better.

Scott Walker: When the TFF was up and running, assignation was discussed over many years. It was generally recognised that there is a problem for families, especially when there has been an untimely death, in that nieces and nephews do not have a right to take over a tenancy. It was also generally recognised in the industry that we needed to change the rules. That was as far as it went. There was a bit of dispute about how far the rules should be changed.

What we have in front of us—the idea of going up the family tree and then down again to pass on the tenancy—seems broadly sensible. We still have to keep certain restrictions in place, to ensure that the people who take on the tenancy have the wherewithal to pay the rent and the knowledge to carry out the farming enterprise. In our discussions with the review group, we believed that such protections would remain.

If we consider the wider public interest, as well as the individual business, we want whoever takes on the tenancy to be able to farm the land properly and to contribute to agricultural holdings. The review group's proposal seems broadly sensible.

We leave it to others to determine the issues about lawyers and what it is possible to do under the law.

Dave Thompson: I am struggling to understand what Stuart Young said. If a landowner has a good tenant who is complying with all the conditions that he mentioned for running a farm, and if that tenant wants to assign to another good tenant, who will run the farm really well with all the safeguards and so on, what is the detriment to the landowner? They are just getting a new good tenant in place of an old good tenant.

The only thing that comes to mind is that there has been a steady decline in tenanted farms. Opposing the proposal would lead to a continuing steady decline in such farms. If that is the intention, you should be open about it. If it is not, perhaps you can explain the difference between an old good tenant and a new good tenant.

12:15

Stuart Young: Without the widening of succession and conversion, tenancies would come back to landlords in the normal course of events when there are no successors. With the right climate and environment, landlords would re-let the holdings. They might want to sell a holding because they needed to raise funds for a particular purpose, to plant a holding and change the land use or to re-let it. Having that range of options is valuable to the landlord. I am highlighting the loss in value in relation to the proposals as they stand. A landlord would not necessarily want the perpetuation of the tenancy ad infinitum.

Dave Thompson: It strikes me that you are striking at the heart of the purpose of having secure tenancies, because you are saying that landowners will have their own views about how they want to use the tenanted land and that, if a landlord has an opportunity to get rid of a secure tenant because they are retiring and there is nobody they can assign the land to, the landlord will take it. You are suggesting that landlords would prefer the legislation to be swept away totally so that they have the freedom to do what they want with what they see as their land.

Stuart Young: I do not think that I have suggested that existing succession rights should be swept away. I have indicated the support of Scottish Land & Estates for a widening of succession rights when there is hardship. I just think that, if an opportunity arises, it is of wider benefit that a landlord can reorganise his affairs.

The review group recognised in the report that 1991 act tenancies are perhaps not fit for purpose in the longer term. Since 2003, public policy has

determined that new tenancies should be fixed-duration tenancies.

The Convener: We must come back to Alex Fergusson, but Christopher Nicholson has one more point to make.

Christopher Nicholson: I have two quick points. First, I was genuinely surprised by the opposition from landlords to the widening of family succession. In England, the Department for Environment, Food and Rural Affairs "Future of Farming Review Report" in 2013 made the same recommendation on widening family succession and removing the equivalent of the viable unit test for English tenancies. I never noticed in the press opposition from English landlords to that recommendation.

Secondly, just to reinforce Dave Thompson's point, we think that there is a strong public interest argument for taking every achievable measure to preserve the area of land that is under security of tenure. That security of tenure was introduced in 1948 and it has largely shaped Scottish farming in the intervening years. It is the one measure that has allowed Scottish farming to flourish. It has allowed tenants to make investments under security of tenure and has allowed a lot of tenants to move on to the next stage and buy their farms.

We have a limited history of 20 years of farm business tenancies with short-term leases in England and of limited partnership tenancies in Scotland over the past 30 years. A lot of those short-term tenancies have struggled even to keep the land in good heart, never mind to provide continuing investment in the holdings.

I do not see what is wrong with secure tenancies going forward. If security of tenure is not an option for new blood coming into the industry, I do not see how new blood will come in and establish successful long-term businesses.

Sarah Boyack: I have a quick question from listening to the discussion. I think that we would all accept that family structures have changed. One or two generations ago in my family, there were six or seven brothers and sisters. However, it is pretty normal now for people to have only one or two kids.

The nature of families is changing. Is that not an issue when someone wants to retire and hand on the farm? Stuart Young suggests that the interest in the farm immediately stops if there is not a son, daughter or someone else in the close family who wants to be a tenant farmer. All the time that someone might have spent in their career would just disappear, and there would be no value left to the family, who would have no influence, either.

The Convener: I ask for a brief response. We have made some progress, but we have an awful lot more to get through.

Ken Bowlit: The RICS does not support the extension of assignation. A broader problem concerns farms becoming available to new entrants—which we will discuss later—because the 1991 act tenancies keep rolling on. The RICS believes that anything that does not allow tenancies to come back on to the market is not good.

Something like 80 per cent of the 1.1 million or 1.2 million hectares of let agricultural land is locked into 1991 act tenancies. In the past 10 years, three 1991 act tenancies have become available, and they were all re-let to farming families, because that was what the landlords wanted to do.

I think that extending the breadth of assignees will just mean that fewer farms become available. We need slightly more radical thinking if we are to unlock land, which is what the Government has said that it wants to do.

The Convener: I guess that it is up to us to consider that.

Alex Fergusson has been waiting a long while to come back on his points.

Alex Fergusson: The discussion is interesting and relevant. My question concerned whether this is fair, and I say that because I quite agree with Michael Russell that there needs to be a balance. We have all talked about trust and confidence, and if that is to be put back into the sector, everything that we do has to be fair.

The second recommendation under this heading is that 1991 act tenants should be able to convert their tenancy into a new LDT with a minimum term of 35 years, which could then be assigned on the open market. I want to spend some time on that topic, because some landowners and people who are in the business of letting land have told me that, although they understand where the proposal is coming from, they believe that 35 years—that is a minimum period—is too long. It has been put to me that the measure would be much more acceptable and would receive much more buy-in from the landowning sector—if I can call it that—if the period were reduced to 20 or 25 years. I would like to hear the panel's views on that. People are not against the proposal in principle, but there is a worry about the length of the LDT.

The Convener: Christopher Nicholson has already stated his view clearly, so that is one that you know of.

Scott Walker: We find this to be the most contentious issue out of the proposals. Strong views on it have been expressed to us by tenant

and landowner members of NFU Scotland. It is interesting that, today, I have SLE sitting on one side of me and Chris Nicholson on the other side, because it sometimes seems that, within NFU Scotland, the people they represent are competing against each other.

I will go back to the reason why the change was talked about in the first place. NFU Scotland was looking at the situation of tenants who had a secure tenancy but no one to assign it to, because the rules of succession limited who they could assign it to. Work that the Scottish Government has done shows that up to 70 per cent of secure tenants have somebody to whom their tenancy would be able to succeed, which leaves a group that does not have somebody.

If we widened the rules of succession as proposed, that would give people another option for passing on a secure tenancy. However, it would generally be better financially for those who were left with no one to whom they could pass on their tenancy to stay on the holding for as long as possible. We suggest that that would not necessarily be good for the individual or for the land, if it was being underused.

We came up with the idea of changing the assignation of secure tenancies to give some value back to the tenant and encourage him to move on, and—we hope—to ensure that the land is used more. That is the principle on which NFU Scotland's proposals are based.

To speak to all sides in the argument, I believe that there is—as Alex Fergusson said—broad consensus that the idea of converting a secure tenancy to some kind of fixed-term arrangement is sensible. What we are really debating is the length of the fixed term, but I do not think that the industry will come to a full consensus on what that term should be.

The NFUS originally discussed having a fixed term of 25 years, and assignation being made to new entrants as a vehicle to give people a route into the industry. The review group came up with something slightly different. It has proposed that assignation should be wider, so that anyone—rather than just a new entrant—could be assigned a secure tenancy, and it has suggested 35 years instead of 25 years as a fixed term.

We can accept and go along with those proposals. As I said, however, we originally looked for the assignation to provide some other route for new entrants who are trying to get started in the industry.

The Convener: Do you think for one minute that the large submission that you sent us at the last minute reflects the views of tenants in the NFU, or is it an example of the kind of dichotomy that exists—as you explained to us—and is visible in

the NFU's approach? We received a very large paper at the last minute, and it did not help us with any analysis. It does not sound to me as though the tenants in the NFU had very much say in the matter.

Scott Walker: The point for us, with regard to the paper that we submitted to the review group, is that we see today's meeting as the continuation of the process. We are not coming to the issue afresh today. We submitted a very detailed response to the agricultural holdings legislation review group, and most of what we suggested has appeared in the group's report.

We should probably have made clear to committee members beforehand what we had suggested, and we should have shared with you the fact that virtually everything in the review group's document is NFU Scotland policy. That should all have been explained.

I have tried to explain just now exactly what the position is. NFU Scotland is, in essence, just a smaller profile of the industry as a whole, and the tensions that exist within NFU Scotland on the issue of assignation reflect those that exist in the industry. There is consensus in the sense that people see that the flexibility will provide a mechanism for tenants to be able to move out of their land, and to ensure that the land is used more in the future. We are therefore getting down to the question of what a reasonable term would be, and whether there should be any other restrictions on who should be able to take over the tenancy through assignation.

As I said, we suggested originally that assignation should be limited to new entrants coming into the industry, but we recognise that that did not come out in the review group's recommendations, and we are therefore willing to put it aside.

The Convener: We have to move on—

Dave Thompson: Convener, you stopped me as I was about to make a good point.

The Convener: I am sure that that is true, but—

Alex Fergusson: May I close this section of our questioning by putting a practical suggestion to the panel?

The Convener: Yes, but make sure that it is a practical suggestion. Dave Thompson can make his short point after that.

12:30

Alex Fergusson: I was going to discuss the ECHR implications, but we have been there.

Landlords see the ability to convert to a minimum 35-year LDT, which can then be

assigned on the open market, as a way of preventing them from taking back in hand land that they own. That issue is right up there.

A tenant has a pre-emptive right to buy when a farm is put on the market. Should a landlord or landowner have a pre-emptive right to take on an assignation that is put on the open market? Is there any point in going down that route?

Stuart Young: I will be quick. That would be better than not having it.

Christopher Nicholson: One of the original recommendations in the review group's interim report was the option for assignation of a secure tenancy to continue as a secure tenancy but with a pre-emptive right for the landlord. That right was included to ensure compliance with ECHR. In the case of a conversion to an LDT, inclusion of a landlord's pre-emptive right was possibly not required to be ECHR compliant. There was concern from some areas that landlords would simply exercise the pre-emptive right and take back in hand everything. I do not believe that that would be the case.

A policy that would be in the public interest and fair would be to put back in the original proposal, which allows open assignation of secure tenancies but with a landlord's pre-emptive right to protect their interests.

Alex Fergusson: Thank you very much.

Dave Thompson: My point follows on quite nicely from what Christopher Nicholson has just said. Thank you for letting me back in, convener.

If Christopher Nicholson is suggesting that the STFA wants to see assignations being extended to non-family members, that would deal with Ken Bowl's point about new entrants. If assignation were broadened, that would open it up to new entrants, so I do not understand the RICS point in that regard. That would also mean that there would be less appetite for people to convert to secure LDTs. Would that not resolve the problem, provided that all the safeguards were in place and there was a good tenant?

The Convener: We will come on to the issue of new entrants quite soon, or at least I hope so.

Ken Bowl was mentioned. Would he like to respond?

Ken Bowl: Pass.

The Convener: Okay. Thank you for that.

Dave Thompson: I will take that response as acceptance of the point.

The Convener: Who knows? We move on to the right to buy.

Claudia Beamish: I seek the panel's views on three questions in this section of our deliberations. It may be helpful if I outline the three issues and then get responses to the different aspects on which panel members want to comment.

I am looking for comments on, first, the removal of the requirement to register; secondly, the proposal for a tenant to be able to apply to the Scottish Land Court to force a sale where the landlord is failing to meet their obligations; and, thirdly, ministers' right to intervene to address barriers to local sustainable development and how that might apply in the farming context.

Ken Bowl: The registration process is straightforward. If there are any issues on boundaries and so on, they are dealt with near or at the time of the registration. The RICS thinks that it is unnecessary to change the current arrangements for registration.

Claudia Beamish: What is the Law Society's view on that? In your written submission, you expressed a view on the need to register.

Mike Gascoigne: Yes. First, may I say that the Law Society's role is to look for good law, or to avoid bad law? We do not, by our constitution, apply any thought or comment on policy.

It seems to us that there is no reason why there could not be an open automatic right to buy, avoiding the frequent, but probably nevertheless sporadic, inclination for some sub-tenants not to seek to register an interest because it might sour their relationship with the landlord.

Christopher Nicholson: On the first point, we see no reason for the current requirement to register. Many tenants have been deterred from registering by their landlords or agents, with the result that only about a fifth of tenants in Scotland have registered. We welcome the proposal as making practical and common sense.

Scott Walker: It is in the interests of all tenants to register. I do not think that they should have to go through the process of physically having to register. The proposal seems common sense. Only when the land is being sold would the tenant get first right of refusal, and that seems sensible.

You asked about the Land Court and the use of ministers to force a sale. We have always said that the obligations for the parties must be spelled out clearly. Again, we see this as a role for the proposed commissioner. I am sure that, in most situations, people will adhere to their obligations and responsibilities. If they do not do so, however, the commissioner should intervene, drawing their attention to where those obligations are not being met and setting out a plan and a timescale for the landlord to put things right. Only if there is refusal, clear negligence or a failure to stick to the plan,

should an enforced sale be put in place as a last resort.

We see that as a sanction that would be helpful, although it would be a last resort and hopefully one that would never need to be used, because the threat of it would be enough to ensure that the obligations were met.

Claudia Beamish: That only really answers the second part of my question; the third part was on the right of ministers to intervene to address barriers to local sustainable development, rather than the landlord not meeting the obligation, which is a Land Court issue. It would be helpful to have your comments on that.

Scott Walker: In some ways, I would see that as I see the role of the Competition and Markets Authority. Where there are any restrictions in place that are detrimental to the market and do not fulfil the demands of economic growth, it is quite right that the Government should intervene. Currently, the Government has powers for compulsory purchase through local authorities for certain measures. We would have to see how the provision was drawn up in legislation, but in that sort of scenario, where there is market failure and economic growth is being hindered, the Government should have the authority to do something about it.

Claudia Beamish: Just to be accurate, the phrase is "sustainable development" rather than "economic growth".

Scott Walker: When we say "sustainable development", we recognise that it crosses many different elements, but we would go back to agricultural production being the key aspect.

Stuart Young: On Claudia Beamish's first point, I think that there will be a degree of consensus among stakeholders on the removal of the requirement to register in relation to the pre-emptive right to buy, although the principal concern of the membership of Scottish Land & Estates is about what the trigger points will be and how they will be defined. The review group has not gone into that level of detail. We need to understand that, and we will be willing to engage as the issue is explored further.

The second element of the question was about the ability to apply to the Land Court to force a sale. If the process is fair and appropriate and involves appropriate checks and balances, the reality is that few landlords would ever be forced to sell. Arguably, anyone who put themselves in that position would face the consequences. It is not an issue that Scottish Land & Estates has great concern about.

On the power of ministers to intervene, perhaps not surprisingly we have a fundamental difficulty

with that suggestion in principle. However, it is just a recommendation; we have not seen a detailed, fully developed proposal. The review group suggested that it was an issue for further consideration. We would be delighted to consider it further when there is something to consider.

The Convener: We would have liked to be able to consider in detail your thoughts but, once again, we received your submission very late in the day. That makes it difficult for us to go into great detail.

Michael Russell: I say with respect to Mr Young that I think there is some detail on the proposal on ministerial intervention. The parallel is with the role of communities, which we talked about earlier. Agricultural tenancies are a very important part of some communities, particularly smaller communities and island communities, such as those in my constituency. The difficulty exists when there is a sustainable development and the future of the community is being put at risk by landlords who are not fulfilling their obligations and whose actions are leading to widespread depopulation and the loss of farms. In those circumstances, there is a tangible and clear impact on a community. A community can suffer depopulation and its whole focus can move away from the rural, and none of us wishes to see that.

The parallel here is with other land reform actions that people can take as a community to ensure that the farming nature of that community continues. Individual tenants are being empowered to play a role in that. As the detail of that proposal develops, it will say two things. It will make it clear that the whole process should sit within the land reform legislation, because it is part of land reform. Secondly, it will require us all to look at the balance between individual rights under ECHR and wider community rights to make sure that the two are both given fair treatment.

I think that there is some detail on what is being proposed and I hope that all the organisations will take the issue very seriously, because there are places where communities have been severely damaged by the actions of landlords.

Stuart Young: Michael Russell mentioned situations in which landlords are not fulfilling their obligations. My view is that the power to force a sale would deal with that problem.

Michael Russell: It may, but the interests of the community must also be borne in mind. I can see that a forced sale might be an individual reaction, but when there are a range of tenancies in an estate with which there is a problem and the attitude of the estate is creating a problem, there needs to be a change. I have expressed my view on the matter previously. I think that, although large estates are one of the issues in land reform,

they are not the only one; local authorities are a big issue.

There are specific circumstances in places where the policy of estates has led to depopulation. A range of bodies have presented evidence on that. That is the issue that an attempt is being made to tackle with the power of ministerial intervention. There is a need for a clear, well-defined and proportionate measure that puts the interests of communities alongside the interests of individuals.

12:45

Scott Walker: I am in danger of straying off slightly in response to Michael Russell's point.

We have had quite extensive consultation with our members throughout the country on land reform, the community right to buy and community involvement. For us, the matter goes beyond estates and impacts on landowners of any size. There is a lot of concern in the farming community about the possible impact on individual holdings because, although people want to be supportive of local development, it could have significant impacts on the viability of individual businesses, depending on the farm and what piece of land people want local development to take place on.

Those are the general issues that we would bring up in the context of that wider discussion.

Michael Russell: It is important that we have that conversation with individual farmers—I am doing so in my area—because the overwhelming majority of them have no reason to fear it at all. Indeed, there are advantages for them in ensuring that their role in the community is better defined. I do not think that the difficulty and danger that you mention exist. The issue should be addressed community by community and place by place, and I am playing my role in that. It is important to see it in the context of empowering and enabling communities rather than shutting them out.

Claudia Beamish: I ask for comments on whether the review group came to the right conclusion on an absolute right to buy. Paragraph 208 of the report says:

“the concept of an absolute right to buy, through its potential impact on the supply of tenanted land and on the wider confidence of investors in rural Scotland, is one that the Review Group believes is not and would not be helpful in seeking to further the Scottish Government's vision for tenant farming.”

I invite comments on that in the wider context of land reform.

Christopher Nicholson: Our main criticism of the review group's conclusions on the right to buy is that it appears to have failed to see the benefits to investment that the right would bring. That goes

back to the discussion that we had before. When a tenant buys his farm, he buys only the bit that he has not already paid for; he does not have to pay for his improvements. However, as soon as he has bought the farm, all those improvements become extra collateral that he can use to access finance. All over Scotland, where tenants buy their farms, there is, in general, incredible growth in their businesses in the following decades.

When the review group was going round and meeting in the spring and autumn, it proposed the open assignation of secure tenancies as an alternative to the right to buy. It stated that that would allow the investment that we would get under the right to buy to take place and, therefore, that there was little public-interest argument for a right to buy. However, the review group removed the open assignation option from its final report, which was the single biggest disappointment to our members in the review, and suddenly people are making an argument for the right to buy again.

The ability to buy a farm is a natural aspiration for many tenants. There are many problems with enacting such a measure, which might simply not be possible, but the call for the right to buy is a symptom of what is wrong with the legislation and the sector. Most tenants fail to see how those calls will go away without the gaps that are left in the review by the removal of open assignation being addressed.

The Convener: It is only a report, of course. This discussion is about probing further before we suggest what the minister should do, so this is the next step.

Stuart Young: We agree with the conclusions that are arrived at in paragraph 208 of the report. I also highlight that the position is consistent with the one that was taken by the land reform review group on an absolute right to buy. Two separate pieces of work have come to the same conclusion.

Scott Walker: I agree with Christopher Nicholson's comment that talk about an absolute right to buy is a symptom of what is wrong in the sector. It reflects the fact that some individuals in the sector feel that relationships are so broken or damaged that that is their only recourse. We have had a lot of debate on the issue within NFU Scotland over many years. It is probably the most contentious issue in all the discussions. That is probably because of the issue of trust and confidence, which was talked about earlier.

For many people who wish to let out land, especially on a long-term basis, the discussion about an absolute right to buy has really clouded their sentiment about doing so. Many of our tenants feel that discussions about an absolute right to buy are preventing the letting of land from functioning properly in Scotland. At the same time,

we recognise that there are sub-tenants in NFU Scotland who firmly believe that the only solution to all of this is an absolute right to buy and that everything else that is being talked about is irrelevant, because that is the solution to all of it.

Our view is that, when we weigh everything up, the conclusion in the report—that an absolute right to buy would not deliver what we want, such as fair tenancy agreements for existing tenants and confidence in the sector for the letting of land in the future—is right, and the recommendation to rule out the right to buy is the right thing.

The Convener: We cannot talk about an absolute right to buy any more now, but no doubt we will do so in the future. We have heard a variety of views on it, and Mr Walker mentioned new letting vehicles for the 21st century.

Alex Fergusson: I come back to the aim of all of this, which is to restore an element of confidence and trust between landlord and tenant, basically, as well as trust in the system, so that those who have land to let are more willing to let it than they currently appear to be. That seems to me to be the core of the reinvigorated tenancy sector that I am sure that everybody round the table wishes to see.

There are proposals for new types of tenancy. We have the intriguing possibility of a full repairing LDT, again over 35 years—if I have an issue with that, it is only to do with the proposed length—and various other types of lease have been proposed.

One thing that was rejected was freedom of contract, which has been mentioned. It operates down south—how well or successfully may be open to question, but it seems to have restored a degree of confidence in the system, because people are letting land more than they were before that system came into being. Was the review panel right to rule out freedom of contract?

However, my main question is whether the proposals that have been put forward on types of letting vehicles are enough to restore the confidence that is needed for those who have land to let to do so.

Scott Walker: Restoring confidence is about the entire package and how it is to be delivered. It is not about one specific element of the package; it is about looking at everything.

The new suggestion of a 35-year LDT seems sensible. It seems to be an opportunity. There are land holdings out there that need investment but the landlord is not in a position to make the investment to bring the land up to scratch. For somebody to take on that land with a minimum term of 35 years seems sensible, and it could work for both parties. That is an interesting

development and one that we would like to see worked up in more detail.

Looking in general at short limited duration tenancies and LDTs, it is clear that there is nothing fundamentally wrong with the current letting vehicles. That is the message that I take from the report. The whole issue is one of confidence. Landlords need to feel confident to let on a long-term basis, and tenants need to feel confident that, when they come to the end of their term, they will get another term thereafter.

Where an arrangement is working, it is in the interests of both parties—the landlord and the tenant—to continue working together. Whenever a landlord brings in someone new, there is change and uncertainty. We need to reach a situation where people are encouraged to let—and to continue to let—on a long-term basis.

I will add two brief points. I am a little concerned about the proposed arrangements for dealing with cropping lets, and about how they would be adequately covered. From what I read in the report, it seems that people either go for very short-term lets year by year, which I do not think is satisfactory for any party in allowing them to look to the future, or they have to do a minimum of 10 years, which just does not fit in with some cropping practices.

My second point is on a slightly different situation. We have mentioned limited partnerships, which largely worked for most people for a long period of time. However, we have reached a situation in which limited partnerships have either come to an end or will be coming to an end shortly, and there is now tacit relocation each and every year. The tenant will be rolled on yearly, but that is not particularly good for either party, because no one knows how long the tenant will be rolled on for.

I think that it is the industry's wish—I know that discussions have begun between SLE, STFA and NFUS, albeit that they are at a very early stage—to look at encouraging individuals who are in that situation to sit down and see whether they can come to any sort of sensible working arrangement that suits both parties. That would encourage landlords to put in place longer-term security for those individuals.

Martin Hall: Our concern is a practical one that relates to an issue that Scott Walker touched on—the gap between one-year and 10-year tenancies, particularly for some areas of cropping land. If the proposed requirement is brought in, all that it will do is allow people to look outside the legislation for contract farming agreements or shared farming agreements, or for alternative vehicles. The gap would be a real problem for the industry.

Stuart Young: I concur with much of what Scott Walker and Martin Hall have said, so I will be reasonably brief. It is important for me to say that, in the view of Scottish Land & Estates, some of the proposals that the review group has come up with are very positive. One example is the proposal to introduce a degree of flexibility in relation to the new LDT, although, with regard to the 35-year term for a repairing lease, we would rather leave the parties to reach agreement.

I reiterate the difficulty of not having something to fill the gap between one year and 10 years. I can think of many examples that I have come across in my working life in which people have wanted to let ranges of buildings. If, for example, I do not have any cattle but I have buildings, and my neighbour has cattle and would like use my buildings, how would I arrange that?

The Convener: Well, that is contract farming, is it not?

Ken Bowl: The RICS would echo what everyone else has said. There is a problem with having only two options—the one-year or 10-year option, and the 35-year option. There is not enough freedom for the parties in that regard. If they only have those fixed vehicles that they can use, they will—as Martin Hall said—look outside the box to find other arrangements.

Alex Fergusson: It would be helpful to hear briefly Chris Nicholson's views on the comment that we need more options.

13:00

Christopher Nicholson: We are pleased that the review group rejected freedom of contract for the obvious reasons of the land ownership structure in the tenanted sector.

We do not see a lot wrong with the new-style leases that we have at the moment—SLDTs and LDTs. LDTs were modified in 2012 to reduce landlords' obligations on fixed equipment, so we do not see why they are not fit for purpose going forward. However, we should be realistic about what they will be used for. They will be useful as bolt-on lettings to existing businesses, but it is highly unlikely that they will provide a suitable base for new entrants to build a secure business going forward. To see that, we only have to look at where a lot of limited partnership tenants are at the moment—they were yesterday's new entrants.

Dave Thompson: The discussion that we have just had highlights one of the difficulties. There are all sorts of issues around this that we could argue about for months if not years. The STFA made the point that open assignation deals with the problem simply and effectively. As soon as we move into SLDTs and so on, we get into all sorts of debates,

whereas open assignation gives everyone freedom.

I like to keep things simple. The proposal will only complicate matters and involve the RICS and lawyers and everyone else even more in the future. We need to bear that in mind. That was probably more of a comment than a question, convener.

The Convener: Perhaps Alex Fergusson is going to make a comment, too.

Alex Fergusson: I am tempted to make quite a long comment, but it would not look good in the *Official Report*.

I think that Mr Thompson has got his wires slightly crossed on the issue. It has struck me that there is actually a great deal of agreement here. I would like to think that, with a bit of give and take either way as we go forward, we can all end up in agreement on the issue, which could only be to everyone's benefit.

Michael Russell: Hear, hear.

The Convener: That would be wonderful.

Angus MacDonald has a question on new entrants and reducing barriers to entry.

Angus MacDonald: The review identifies the need for more starter farms to be available and it found that some older tenants would be willing to provide an informal apprenticeship to a new entrant if they were able to assign the tenancy to them. What are the panel's views on the review's proposals on encouraging new entrants? Do you agree that there is need for a phased apprenticeship to tenancy?

Christopher Nicholson: The Scottish Government is making progress on the creation of starter units on Forestry Commission land, and there may be potential in the future in relation to Crown Estate land. We are well behind England, which has 3,000 starter units with county council holdings and other landlords such as the National Trust farms.

The real problem is where the new entrants go after that first rung on the ladder. If the starter farms are let for a five or 10-year period and the new entrants build up some capital, the difficulty for Scotland, and also for England, is where they go for the next stage in their careers. That is where we see the benefits of open assignation, which would allow a complete rung on the ladder for people to enter the tenanted sector and to upsize or downsize.

Open assignation would give opportunities for tenants who are approaching retirement but do not want to retire completely to downsize to a smaller holding, allowing someone younger to move into a bigger holding. It would give a level of flexibility

that would bring huge benefits to the sector and go a long way towards bringing in new blood and affording people opportunities to move to the second stage, which is a secure base on which to develop a long-term business.

Scott Walker: Everyone in the industry agrees that we want to do more to get in new blood and help the industry to develop. I agree with everything that Christopher Nicholson said about forestry units, Crown Estate land and other land that could be looked at as starter units for development. In addition, there is a culture of letting land in Scotland. Making more land available to be rented out will help people to get into the industry and help people to develop their business. It is important that we take the opportunity to ensure that the bill is correct and that it encourages people to let land.

There is also a role for the tweaking of the tax environment to encourage the letting of land to new entrants to farming and give them a leg up. Those who are already in farming usually have a financial advantage that allows them to increase the size of their holding, rather than somebody else getting in. The industry has been slow to take up shared farming agreements and various other agreements that allow somebody to start in the industry, build up their capital and slowly develop.

I was at a Scottish Agricultural Organisation Society conference recently at which a couple of very good examples were given by young individuals who have shared farming agreements in Scotland. One involved a woman who has taken over a dairy business and is slowly working hand in hand with the farmer and building up the number of her cows in his herd. She said that much comes down to personal relationships. It is about putting two individuals together and making sure that they can work things through.

We in the industry probably do not do enough to highlight those good examples. We need to shine a light on them to make people aware of them and of how they can make such situations work.

The Convener: I do not want to stray into the issue of tax just now, as we can come back to it at another point. I want to wrap up the current discussion. Does Sarah Boyack want to ask the final question?

Sarah Boyack: Yes. The question is where we go next with the legislation, as there are different views out there. One view is that we should have a new agricultural holdings bill, but another view is that a section on agricultural holdings should be slotted into the proposed land reform bill. The NFUS said that it is very much against the latter suggestion, because it feels that it would leave the agricultural holdings provisions "indelibly tainted", which is pretty strong wording.

I am keen to hear the panel's views on that. It has been quite a while since we last introduced agricultural holdings legislation. The cabinet secretary sees such legislation as a major priority given the review group's report. So, it is about what happens next. The first question was about the tenant farming commissioner. How urgent is the need for legislation, and what is the best legislative vehicle?

Stuart Young: Scott Walker has talked about the importance of the package and its ability to deliver confidence. Our position is very much that there should be a stand-alone, dedicated agricultural holdings bill that delivers a package and that it should be delivered in the current parliamentary session so that we do not have to wait for important things such as the tenant farming commissioner, to which you referred. They should be delivered sooner rather than later.

Sarah Boyack: What is the argument against having that in a land reform bill?

Stuart Young: My understanding from the dialogue that Scottish Land & Estates officials have had with civil servants is that it will not be possible to get the whole agricultural holdings package into a land reform bill. If it could be delivered in such a bill, that would be better. I agree to an extent with what Scott Walker said on the issue, although I am not sure whether I would use the same language as he did. Agricultural law is a complicated area and it deserves a dedicated bill.

Michael Russell: I am surprised by that. I want to see, as I think many of my colleagues do, land reform legislation completed in this parliamentary session. I also want to see agricultural holdings legislation completed in this session. Given that a lot of the proposed legislation will come to this committee, the most efficient and effective use of resource would be to have land reform and agricultural holdings provisions in the same bill. There is in any case a strong connection between the areas. I think that Scott Walker's language on the issue was unfortunate and, indeed, regrettable, because the connection between land reform and agricultural holdings legislation is about empowering communities and individuals and redressing the imbalance in power relationships that exist in parts of Scotland.

That is a positive, not a negative, agenda, and it is certainly not a negative agenda for Scott Walker's members. I go back to the fact that we should be making that clear and having that conversation, but I simply do not see how, physically, two bills can be run in the next 12 months, and I see another ex-minister, Sarah Boyack, agreeing with that. Given the commitment to do both things, the most efficient and effective use of resources is to do them in a single bill. I

would not accept a bill that excluded either of those items.

Scott Walker: There is general consensus that we want an agricultural holdings bill to be delivered in this parliamentary session; indeed, as others have said, there is a great deal of consensus among all the industry bodies about what the main elements of that bill should be.

Again, I can speak only for NFUS members and the discussions that we have had around the country on land reform and agricultural holdings. It might be confusion on our part or on the part of our members, but our members are certainly concerned about aspects of the proposed land reform legislation. They think that some of it will be excellent or very good, but they are more concerned about that bill than they are about the agricultural holdings bill, in which they can see the direction of travel and what is going to be delivered. As far as confidence for farmers is concerned—I am purely talking about farmers here—we would want the two issues to be separated. Both pieces of legislation could go through at the same time, but it would be helpful if the issues were separated in people's minds.

I see committee members shaking their heads. You will know far more than me about what is possible in a parliamentary session, but that is our wish, if it is at all possible.

Alex Fergusson: My concern is not so much about getting things through by March 2016 as about getting things right in the land reform and agricultural holdings debates. Both bills will come to the committee for scrutiny, but I have to say that we do not have that long in this session of Parliament to scrutinise what are very weighty subjects. They are not without controversy—let us not pretend that they are—but getting the agricultural holdings legislation right brings with it the enormous prize of restoring the sector's faith and confidence in the way that we have been discussing. That must be the principal aim, and I say for the record that I worry about the prospect of undertaking the scrutiny process properly and correctly if the issue is put into another bill.

The Convener: Thank you all.

We could hardly be said to have not given the matter a large amount of scrutiny, including the scrutiny that we have given it today. This is only one of many times that we have had to talk through the matter. When we take evidence at stage 1 on the forthcoming bill, whatever shape it takes, there will be another wide-ranging review of people's attitudes.

I thank the witnesses for the diverse views that they have expressed, but I must point out that the issue is all set in the context of the common good of this country. The public interest, which was

emphasised by the land reform review group and, indeed, which underpins agriculture's contribution to the common good, is something that we take very seriously. We will try our very best to achieve a satisfactory and progressive—even radical, as was mentioned earlier—outcome that I hope and believe will make Scotland a better place.

Before I close the meeting, I should tell members that on 1 April—of all days—the committee will consider five negative instruments, take further evidence on the agricultural holdings legislation from the review group and the Cabinet Secretary for Rural Affairs, Food and Environment and consider petition PE1490, which is on the control of wild geese numbers, as well as our future work programme. It looks like we could do with an extension to the number of hours in the day next week.

I now close the public part of the meeting and ask everyone to leave quickly, as we have two more agenda items to deal with.

13:14

Meeting continued in private until 13:47.

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