



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE

Wednesday 1 April 2015

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RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE
13th 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:

Hamish Lean (Agricultural Holdings Legislation Review Group)

Richard Lochhead (Cabinet Secretary for Rural Affairs, Food and Environment)

Andrew Thin (Agricultural Holdings Legislation Review Group)

CLERK TO THE COMMITTEE

Lynn Tullis

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament

Rural Affairs, Climate Change and Environment Committee

Wednesday 1 April 2015

[The Convener opened the meeting at 10:00]

Decision on Taking Business in Private

The Convener (Rob Gibson): Welcome to the 13th meeting in 2015 of the Rural Affairs, Climate Change and Environment Committee. I remind people not to leave their mobile phones switched on, because they can affect the broadcasting system. You may notice some committee members consulting tablets during the meeting as meeting papers are provided in digital format.

Agenda item 1 is to consider whether to take in private item 5, under which the committee will consider its work programme. Do members agree to take item 5 in private?

Members *indicated agreement.*

Subordinate Legislation

Reservoirs (Scotland) Regulations 2015 (SSI 2015/90)

Reservoirs (Panels of Reservoir Engineers: Sections under which Members may be Appointed) (Scotland) Order 2015 (SSI 2015/92)

Waste (Recyclate Quality) (Scotland) Regulations 2015 (SSI 2015/101)

Alien and Locally Absent Species in Aquaculture (Scotland) Regulations 2015 (SSI 2015/103)

Crofting Counties Agricultural Grants (Scotland) Variation Scheme 2015 (SSI 2015/105)

10:00

The Convener: Agenda item 2 is subordinate legislation. There are five instruments to consider under negative procedure.

Two of the instruments have been drawn to the committee's attention by the Delegated Powers and Law Reform Committee. The first of those is the Reservoirs (Scotland) Regulations 2015, which has been drawn to the committee's attention under reporting ground (h), because the meaning of regulations 10 and 17 could be clearer, and under the general reporting ground, because there is a drafting error in regulation 8. In its report, the Delegated Powers and Law Reform Committee noted that the Government has agreed to address at the next opportunity the matters that have been reported in relation to regulations 8 and 10, and that the committee suggested that the Government consider at the same time clarifying the drafting of regulation 17(2).

The second instrument that has been drawn to our attention is the Crofting Counties Agricultural Grants (Scotland) Variation Scheme 2015. Again, the Delegated Powers and Law Reform Committee has drawn the instrument to our attention on the general reporting ground because there is a minor drafting error. The Scottish Government has agreed to correct that drafting error at the next opportunity.

I refer members to the paper. Do members have any comments?

Sarah Boyack (Lothian) (Lab): All the statutory instruments are welcome—especially given that we have been discussing biodiversity and one of the instruments is on alien species. It is very good

to see that instrument and the Waste (Recyclate Quality) (Scotland) Regulations 2015.

The convener made the point that we have had to note one or two errors in the instruments. Previously, there was an error on common agricultural policy reform. I would normally suggest that we write to the minister, but given that he is in the room, we can just note the errors. It is useful to say that we have picked up those errors and they are on the record. There is not a policy problem, but there have been a few technical errors. It is a pity that we have had to have those errors drawn to our attention.

The Convener: They have been drawn to our attention. I suppose that different Government sections under the minister's responsibilities deal with each of those areas. The point is well made.

Alex Fergusson (Galloway and West Dumfries) (Con): I agree that there are no great overall policy implications, but the issue relating to CAP reform that NFU Scotland brought to our attention would have had serious practical implications had it not been picked up. I just want to reinforce what Ms Boyack has asked for.

The Convener: Thank you.

Do members agree that we do not wish to make any recommendations in relation to the instruments?

Members *indicated agreement.*

Review of Agricultural Holdings Legislation Final Report

10:04

The Convener: Agenda item 3 is on the final report of the review of agricultural holdings legislation. We are joined by the Cabinet Secretary for Rural Affairs, Food and the Environment, Richard Lochhead, and by members of the agricultural holdings legislation review group, Andrew Thin and Hamish Lean. Welcome. Do you wish to make opening remarks, Richard?

The Cabinet Secretary for Rural Affairs, Food and Environment (Richard Lochhead): Thank you very much, convener.

We are very pleased to be here. Iain Mackay had hoped to be here, but I understand that he had transport problems in getting off the Isle of Mull. Other members of the group are, unfortunately, ill today. I am pleased to have two members of the review group to help me to answer questions from the committee, because a lot of good work was put in over the duration of the inquiry. Andrew Thin, Hamish Lean and their colleagues travelled the length and breadth of Scotland and spoke to literally hundreds of tenant farmers, landowners and others who have an interest in the future of tenant farming in Scotland.

I am very proud of our report. We believe that our recommendations point a way forward on protecting our vibrant tenancy sector, which is so important to the future of agriculture—in particular, in offering opportunities for new entrants to get into the industry and get on the first rung of the ladder. Often, securing a tenancy is the best way to do that. We believe that the recommendations are the right way forward, and we look forward to answering the committee's questions today.

The inquiry and the recommendations had three broad aims: first, to promote productive relationships between tenants and landlords; secondly, to enable older tenant farmers to retire with dignity, which in turn would help to facilitate new entrants getting into the industry; and thirdly, to provide letting vehicles and a structure for the sector that are fit for purpose in the 21st century. No doubt members will ask about the various recommendations and the rationale behind them. We look forward to that discussion.

With regard to the recommendation to create a tenant farming commissioner, the industry has made the case to me that it would be helpful to put in place an interim commissioner while we await legislation that will create a commissioner. Therefore, we will announce later today that we will appoint an independent adviser to work with

the industry in the interim, while we await legislation that will establish a tenant farming commissioner.

The independent adviser will work with all the sectors in tenant farming. The ideal will be that we continue the constructive working relationships that have been built up over the past few years—in particular, during the inquiry. The industry is clearly keen that we do not lose the momentum of working together in that constructive approach, which had been lacking in previous years but which finally appears to be happening, to a degree. I hope that the independent adviser, once appointed, will be able to keep up that momentum, work across all the sectors and ensure that they are all pointing in the same direction. We will make the announcement later today.

On progressing legislation, I point out that our intention at this stage is to use the proposed land reform bill as a vehicle for the agricultural holdings legislation. There is a range of recommendations, some of which will require legislation and some of which will not, but clearly that bill is the most obvious vehicle for us to use. The Government will in due course make more announcements about the land reform bill, so I cannot say too much more about its contents at this stage.

The Convener: Thank you, cabinet secretary. We have some questions. I welcome the appointment of an interim adviser; we obviously have to discuss how that will work and what we expect an interim adviser or commissioner to do. Will codes that the commissioner prepares be statutory? What remedies would the commissioner have in dealing with problems that arise?

Richard Lochhead: Clearly, we had the inquiry because of some of the serious issues that have arisen in the tenant farming sector in recent years. There has been the Scottish tenant farming forum, and there have been lots of other attempts at collaborative work across the sector to bring together landowners and landlords with tenants and other players to focus on some of the sore points that have prevented better relationships between landlords and tenants.

In the past few years we have seen being drawn up agreements and codes on rent reviews, land agents and other areas of controversy within the sector. That was a new approach. The rationale behind the creation of a tenant farming commissioner is that there is, following the consultation and the evidence in the inquiry, a desire to continue such working and collaboration, so it was felt that we needed to establish a role to take that forward and make it happen.

One of the roles of the tenant farming commissioner, as outlined in the report, will be to facilitate better relationships between landlords

and tenants, which will in part be about looking at current codes and any future codes that will be required, and at best practice and so on. It is certainly our intention that the role will be underpinned by statute, so I will need to consider that seriously in relation to the proposed bill. We have a bit more thinking to do about the detail: we need to consider whether codes should be statutory or simply be underpinned by statute, in that the law would refer to them so that they would be taken into account in any future legal proceedings.

That is where we are in our thinking. There will be statutory underpinning as a minimum, and the tenant farming commissioner, which will be a new post, will keep a focus on building the relationships that are so essential to a successful and vibrant tenancy sector.

The Convener: You will forgive me for saying that we have been through the business of having voluntary codes before. The code for aquaculture does not necessarily make it possible for us to believe that a code can easily be carried through and interrogated; it is 147 pages long, if I remember rightly. We would be concerned if there were several different codes and no means of ensuring that they dovetail and are answerable to legal interrogation.

Richard Lochhead: Yes. I will bring in my colleagues in a moment, because it is very much the three of us who are giving evidence today. However, in response to that point, I add that I have said all along—throughout the past two or three years—that I would not hesitate to make codes statutory. I said a few moments ago that we can underpin codes by statute, in that they could be given legal recognition, or we can incorporate them in the bill. The former is probably the most sensible way forward at this stage, but we will make a decision in due course, once we come to publish the bill. I assure you that there will be some form of statutory underpinning of the codes.

I would like to bring in Andrew Thin or Hamish Lean, because they have strong views on the subject and have been heavily involved in the inquiry in this regard.

Andrew Thin (Agricultural Holdings Legislation Review Group): I will use rents as an example. It is a controversial area and a source of great angst. Some time ago, the tenant farming forum produced guidance on rents. It was only two pages long, so guidance can be succinct, although that was probably too succinct. Last year, the industry bodies got together and produced, with help from the review group, something much closer to a code. Even then, it was only five pages long. It is clearly a voluntary industry code for self-regulation, but it is widely acknowledged to have made a significant difference to rent-review

procedures last autumn. However, some people do not adhere to it: that is its weakness. As the cabinet secretary said, the need to tackle that weakness is the reason why the code needs to be given some teeth through statute.

The Convener: That is helpful. My colleagues will develop some of those points, starting with Mike Russell.

Michael Russell (Argyll and Bute) (SNP): In the discussion that we had last week about whether codes should be statutory, the examples that we heard—Andrew Thin mentioned rents, which is another one—tended to suggest that even with the best will in the world, which we sometimes do not have in this area, there is difficulty in making non-statutory codes work. If the evidence is that strong, which it seems to be, I hope that the cabinet secretary will not just provide statutory underpinning but will ensure that there is statutory force, because a tenant farming commissioner and the code will be at the heart of making the proposed bill work.

Richard Lochhead: Yes. I hear the message loud and clear and I am sympathetic to what you say.

10:15

Dave Thompson (Skye, Lochaber and Badenoch) (SNP): Good morning, cabinet secretary, Mr Thin and Mr Lean. I am sure that your contributions will not be thin and lean, but substantial.

I will follow on from Mike Russell's point. It will depend very much on what the statutory underpinning in the bill looks like. I have had lots of experience, from a previous incarnation, of statutory codes and voluntary codes. As has been said already, the problem with voluntary codes is that the good comply with them and the bad ignore them. If we want them to work, we really have to have a stick that we can use—I hope sparingly, but if it exists the bad will be forced to comply. Good decent people will always go along with codes. I will be very interested to see exactly what the statutory underpinning will be: it could be as simple as, "There will be codes," which would be "statutory", or the provision might be much stronger than that. Will you comment further on that?

Richard Lochhead: We are considering how best to take the matter forward. Until the bill is published, I cannot tell you exactly what the provision will look like in black and white. I can, however, say that I am very sympathetic to and supportive of there being statutory underpinning as a minimum in the bill.

What does that mean? It means that the law will recognise the codes, so they will not be simply voluntary codes that people can pay attention to or not. People will have to be very conscious that if they do not pay attention to the codes that will be used against them in court proceedings because the codes will have statutory underpinning. That would give teeth to the voluntary codes. As I said, we will certainly take on board the committee's views.

The Convener: How will the commissioner work with and alongside the Scottish Land Court and deal with the potential for arbitration?

Richard Lochhead: The concept at the moment is that the role of the tenant farming commissioner will be to work with and bring together all the players in the sector in order to try to achieve consensus or compromise on issues. The Scottish Land Court is the legal route, so there is a difference between the two roles. The commissioner will work with all the players to try to achieve collaboration to address concerns that continue to exist within the industry.

Alex Fergusson: Will some sort of interrelationship between the commissioner and the Scottish Land Court be needed, given the subject matter that they will be looking at?

Richard Lochhead: I am sure that the tenant farming commissioner will have to be very familiar with the legislation, but the Scottish Land Court is a court of law, which is a different role entirely from the role of the commissioner. The commissioner will be a post to work with the industry, to look at problems that face it and to bring everyone together to address them. Clearly, that is not the role of the Scottish Land Court, which is a judicial body with a distinctive role.

Hamish Lean (Agricultural Holdings Legislation Review Group): If people follow a code of practice, they can still, at the end of the day, disagree about the correct resolution of the problem, in which case it will have to be dealt with by the Scottish Land Court, so codes of practice might interact with Scottish Land Court decision making in that regard. Where one party to a dispute has not followed a code of practice, the Scottish Land Court might take that into account—for example, in respect of a decision in relation to expenses. There is likely, in actuality, to be a relationship or interaction.

Claudia Beamish (South Scotland) (Lab): Good morning. I have a quick supplementary. I noticed that the Scottish Tenant Farmers Association suggested the possibility of shared offices for the tenant farming commissioner and a lands commission—if that recommendation goes ahead—in view of the fact that a lot of the issues

are interrelated with land reform. Do you have any thoughts on that?

Richard Lochhead: We have not taken a decision yet—we do not even have a draft bill. We will take into account the view of the STFA. There will be pros and cons that we will have to consider. I am not ruling out anything at this point.

The Convener: On rent and rent reviews, stakeholders broadly accepted the review's proposal to adopt the budgets approach for calculating rents for tenants who have tenancies under the Agricultural Holdings (Scotland) Act 1991. They called for worked examples to be provided to show how that would work in practice. The Scottish Agricultural Arbiters and Valuers Association said that that approach might lead to more disputes because assessing the productive capacity of a holding involves subjectivity. What difference might adopting a budgets approach mean for rents? How can the productive capacity of a holding be assessed objectively?

Richard Lochhead: As Andrew Thin said, how rents are determined and set is quite a controversial area of the tenant farming debate. The review group took the view that productive capacity and not the open market should be the guiding principle in determining rents. That is seen as being fairer, more proportionate and more realistic. As you say, convener, the question is what factors are taken into account, how that should be modelled and whether there are working examples that could be put together to give the industry some guidance. Officials are actively working on modelling and worked examples. We will also work with the industry in putting those together. All I can say is that that work will be made available and is under way.

The Convener: Will questions about the market generally play a much smaller part in your thinking than they did before?

Richard Lochhead: Yes. Andrew Thin has been heavily involved on the rent side of things.

Andrew Thin: We do not have an effective market in tenant farms; there is massive overdemand and undersupply. If you allow the market to operate, rents will go well above the value of productive capacity in the short term, which cannot be in the public interest. That is the fundamental point.

If we take a long-term view, if the market equilibrates, we can allow the market to operate. Market forces are fine when markets are balanced, but not when they are unbalanced. That is the fundamental point and fundamental ground for regulated rents.

Will that lead to more disputes? There are strong recommendations in the report around

testing and modelling, and around developing model budgets and so on, in order that we can address exactly that point. I do not believe that the approach will lead to more disputes, because it can be modelled very well.

Hamish Lean: I echo Andrew Thin. The basic rent-review test at the moment for a secure tenancy under the Agricultural Holdings (Scotland) Act 1991 is a qualified open-market test. The problem with that is, of course, that there has not been an open market in respect of secure tenancies for at least the past 40 years, and possibly longer.

The productive-capacity test does not solve all the problems. There will, of course, be scope for parties to disagree about the productive capacity of a holding, but industry-standard measurements of production and so on are available. The process should be more straightforward and certainly fairer than adjusting open-market lettings for limited duration tenancies against secure tenancies for example, which happens at the moment.

The Convener: Thank you. That gives us a clear steer.

Jim Hume has questions on investment, improvements, compensation and waygo.

Jim Hume (South Scotland) (LD): Thanks, convener, and good morning, panel. There was a bit of questioning from some of the stakeholders about the value of a tenancy if registered. Have you talked to any lenders to confirm how they would value and lend on a tenancy or grant a security against a tenancy? I am also interested in waygo, but I will maybe come back to it in a supplementary.

Hamish Lean: On being able to take a security against a lease, that is of course possible at the moment in the commercial world in respect of leases that are for 20 years and longer. They are capable of being registered in the land register and lenders will take security over them, essentially on the basis that if they take up the tenant's interest in the lease, that is capable of being assigned on the open market for value and there is therefore a return on the loan made.

We met various banks and their agricultural lending committees, which said to us that in making lending decisions they look first and foremost at the business proposition put before them and ask whether it is workable—whether the person involved can make it work, whether it is affordable and so on. However, one of the factors involved in deciding on a loan is whether security is available. So, one aspect of the decision-making process is assessing whether the available security is capable of having a secure lease registered on the land register and therefore a

bank taking security over it. That may well make the difference in particular decisions.

Jim Hume: Thanks for that. It looks like there has been due process.

The Convener: Alex Ferguson has a supplementary question on that issue.

Alex Fergusson: Mr Lean mentioned 20 years. Is there any evidence to show that a longer security gives greater borrowing capacity?

Hamish Lean: We certainly did not hear any evidence about that, but we did not ask the bankers about it. If a lease was capable of being secured, there would be no reason to think that the length of the lease would be a factor. The bank would be looking at stepping into the tenant's shoes if he or she defaulted on the loan and then disposing of the lease for value in order to recover their lending. So, from that perspective, the length of the lease is not really material.

Alex Fergusson: The factor is the security rather than the length of the lease.

Hamish Lean: Yes, but of course the value of the lease on the open market to somebody who was interested in buying it from the bank would reflect the unexpired duration of the lease. We are proposing that a secure tenancy registered on the land register is capable of being converted into a 35-year LDT and assigned on the open market. So, a bank calling up a security on a secure tenancy would go through the conversion process and then, as it were, sell the resulting 35-year LDT.

Alex Fergusson: The proposal is a minimum 35-year LDT.

Hamish Lean: We have proposed a 35-year conversion.

Alex Fergusson: I will probably come back to that later. Thank you very much. That is really useful.

Jim Hume: That is very useful.

On waygos, there has been fairly broad support for the proposed three-year amnesty, although one organisation wanted it to be a one-year amnesty. However, why we do have to limit it to a three-year amnesty? If somebody has made an improvement, why cannot that be registered at any point? I am thinking of improvements that were not registered for waygo purposes but should have been.

Hamish Lean: We identified a historical problem in that in years past tenants were not always aware of the formal notification procedures in respect of improvements. On occasion, when a tenancy came to an end and had a particular improvement that was still of value, it was not

compensated because the proper notification procedures had not been carried out. That is much less common now because tenants tend to be more aware of the need to go through formal procedures. However, we feel that in the interest of fairness across the whole industry, from the perspective of both landlords and tenants, an amnesty period would enable everybody to bring their affairs up to date, as it were, and provide a clear process and window of opportunity.

Of course, there might be tenants out there who do not take up the opportunity and at some stage in the future carry out an improvement without proper notification, which might result in a problem. However, it is very difficult to do anything about that.

Jim Hume: I suppose that it is then up to the Government to ensure that tenants are aware that they have to register for the future. Does the cabinet secretary recognise that, and will he take on board the need to ensure that tenant farmers who perhaps are not members of organisations such as the NFUS and the STFA are educated about their rights?

10:30

Richard Lochhead: Yes, I will take that point away. We are always trying to think of new ways of doing that, as it applies to all aspects of the legislation and not just this particular area of policy.

The Convener: We will talk about alternative letting vehicles a little later on, but there are a couple of points that we need to make first.

Graeme Dey (Angus South) (SNP): Good morning, gentlemen.

Just because it is possible to borrow in principle, does that mean that it will happen in reality? Many owner farmers have great difficulty in getting funds from banks. From the discussions that you have had, how confident are you that, in reality, banks will take a positive view in that regard?

Hamish Lean: The banks said to us that the lease would simply be one of several factors that they would take into account in their lending decision. If banks are not lending for a variety of reasons with or without security, the fact that a secure tenant can offer up the lease as security probably will not help, but it would be more helpful than the situation that currently exists. So the banks did not tell us that it was a magic bullet in making lending decisions, but they also made it clear to us that when they lend to tenants, they look primarily at the business case for the particular borrowing that is being sought and whether it is realistic, can be achieved and is affordable.

Alex Fergusson: I am sorry to keep coming back in, but there is a really important point there. I am trying not to stray into the next topic of questioning.

Last week, it was put to us quite strongly that open assignments would massively increase the ability of tenants to borrow. Did you find any evidence to back that up?

Hamish Lean: The short answer to that question is no, although in fairness, that was not a question that we put directly to bankers.

The Convener: We will pursue that in a minute or two.

The STFA has suggested a two-stage approach to waygo. In its supplementary written submission, it said:

“At present a tenant has to serve an irreversible notice to quit before reaching agreement over waygo compensation.”

I understand that to be the case. The STFA said that it

“proposes a 2 stage process: firstly, notice of intention to quit served by the tenant one year in advance subject to compensation being reached six months before end of tenancy; secondly, confirmation of notice to quit following agreement of waygo compensation. Vacation of holding following payment of compensation.”

Have you had any thoughts about that process to make waygo more practical?

Hamish Lean: I can probably pick that up. On one view, that is unnecessary. It is within the tenant’s gift to serve a notice of intention to remove. Once that is served, it is, of course, irretrievable, and the tenant is then bound to vacate the holding, but there is nothing currently that would prevent the tenant from approaching the landlord and saying, “If I serve a notice of intention to remove against this particular termination date, what will you pay me in waygo compensation?” The parties can then work to an agreement, and the tenant can have a figure that is acceptable or not acceptable. Therefore, there is probably no need for such a technical process, because that could happen at the moment and, in fact, it does happen from time to time.

The Convener: Does Jim Hume have any other points?

Jim Hume: No.

The Convener: Okay. Let us move on to retirement, succession and assignment. Mike Russell will lead on that.

Michael Russell: Obviously, there was considerable discussion last week about the issue of assignment. There was a particularly strong contribution from Scottish Land & Estates, which said that the cabinet secretary would be liable for

£600 million the moment that it was brought into any legislation.

I am interested in panel members’ view on that, particularly those who have been through the process over a period of time. However, I want to focus particularly on a question for the cabinet secretary. I raised at last week’s committee meeting the issue of the Agricultural (Scotland) Act 1948, which allowed open or free assignment. That act took place because of the imperative of the UK Government at the time to grow more food. I think that that illustrates starkly that the issue of the length and time of an assignment is, above all, a product of the national policy on farming. It is not really a matter for technical discussion between experts, which it was beginning to become.

I want to know from the cabinet secretary what his policy is towards farming, how that is fulfilled by the tenant farming sector and, therefore, what the right level of assignment should be in his view. Should it lie, as many of us think, much more closely with the 1948 model, or with the more restrictive model that has developed since then? The changes in the 1950s came about because of a restriction that landlords wished to place on open assignment. I think that the political intention should guide whatever the legislation does, rather than a technical discussion—I am not trying to be rude about lawyers—between lawyers or experts on land holding.

Richard Lochhead: I assure you that your cabinet secretary is broke just now and cannot afford £600 million. We will perhaps return to that subject later on.

Your question about how the inquiry report’s recommendations fit into our vision for agriculture in Scotland is a good one and I will try to answer it relatively succinctly.

On my and the Government’s policy, it is vitally important that we have active agriculture in this country and maintain the ability to produce food for our people. To do that we must ensure that our land is productive and that we have people to work the land. In essence, that is the vision that we have to realise.

On how the role of the tenancy sector fits into the vision for Scottish agriculture, as I said at the outset, the aims of the reforms are to ensure that our land is being used productively and that we have people who are able to choose a career in agriculture in order to maintain the skills in this country to produce food. So, ensuring that tenancies are available is the first rung on the ladder for new entrants and people who want to farm the land but clearly do not have several million pounds in the bank to buy land—that is very important for taking the vision forward.

Our approach to assignments in the recommendations is clearly designed to keep land in tenancies. For instance, where there is a danger that the land under a 1991 secure tenancy will be lost to tenancy because of the lack of a successor, we are making proposals that will keep that land in the tenancy sector and bring the benefits that I have just described. In addition, the open assignment of the tenancies will allow older farmers to retire with dignity. As we all know, for a long time—since long before I was in post—a feature of the tenancy debate in Scotland has been that it is sometimes difficult for older farmers to retire and make way for the next generation, which can act as a bit of a blockage.

Clearly, if there is a way in which the older farmer is able to vacate the tenancy and receive some return that allows a dignified retirement or a move on to the next stage of their life, that opens up opportunities for others. That fluid and flexible way of working in the tenancy system is important for the future of agriculture in Scotland.

Michael Russell rightly referred to the 1948 act. I wish that Sir Crispin Agnew, one of the review group members, was here as he is an expert on the 1948 act, but I am sure that my colleagues are as well. Of course, the 1948 act came out of the post-war situation in Scotland and the need to ensure that our land was used for growing food. Sometimes, we must take radical steps to ensure that that is the case. I believe that there are radical steps in the report that will help to ensure that that is the case. However, I should point out that there are of course other Scottish Government policies that are important for the agricultural vision. For instance, as Michael Russell and others are aware, we are looking for opportunities to use publicly owned land to open up opportunities for food production and new tenancies to help new entrants get their opportunity. So, the bill is not the only issue; it is about using our land and other areas of policy to deliver the vision.

Michael Russell: I very much agree with what you say. The result of any restriction on assignments—which, conversely, shows the benefit of being more flexible over assignments—is pretty clear. If we restrict assignments, that will almost inevitably reduce the numbers of people who are actively farming and increase the centralised power of a smaller number of owners, and it might well influence the overall market—I was interested in Andrew Thin's view on the lack of a market in tenancies—including the food market, because price controls will come from fewer people.

However, I ask you to comment on another link—the link to community empowerment. In the area that I represent, the availability of tenant farms and the larger number of people who are

active in agriculture have a strong community benefit. They are good for the community. If fewer people are actively involved in farming and working the land, the community is weakened. I presume that, when we come to the question of where intervention may be necessary because of failing landlordism, you will recognise there, as you recognise here, the link to assignment as a community benefit.

Richard Lochhead: Absolutely. That is a good point. If, for the sake of argument, an elderly person in Mr Russell's constituency or anyone else's wishes to retire from a farm and they have a nephew, grandson or whoever who is keen to take over the farm—so the next generation in the community will be able to have jobs, make their living locally and continue the way of life in agriculture—we should make that opportunity available. That is very much an issue of community empowerment and the health of our communities.

Michael Russell: We would be campaigning under the slogan "Back to 1948", convener.

The Convener: Back to the future.

Michael Russell: I think that Andrew Thin wants to comment, too.

The Convener: That is fine. After that, several MSPs have supplementary questions.

Andrew Thin: Given that we have undersupply in the market, with insufficient tenanted land coming forward and one of the lowest proportions of farmland in tenancy in Europe, the review group focused on achieving two things. First, we have to protect the current supply—that point has been made about assignment. Secondly, we have to stimulate, and build confidence in order to stimulate, additional new supply. Those two things are very important, and they go together.

We suggest that the widening of succession will protect most supply and, for those who do not have a successor, we suggest conversions with a minimum term of 35 years. Those recommendations will protect current supply for 35 years.

At the same time, we seek to build in the landowning sector confidence that, if people let land, there will still be sufficient flexibility for them to restructure and so on over time, into the future. We felt that following the crofting model of open assignment and, in effect, the compulsory letting of land—you will be familiar with that model—would undermine confidence and make it difficult to stimulate new supply. There is a balance to be struck between protection and stimulation.

Dave Thompson: I note that the £600 million that Mike Russell mentioned relates to LDTs. SLE said that, if open market assignment was imposed,

it would cost £1.78 billion, which is an astronomical sum. I do not see where the detriment is—although there might be minor detriment—in a landlord transferring from one secure tenant to another, because in essence their position does not change. I do not see where the £1.78 billion comes from.

The cabinet secretary mentioned open assignments. Perhaps one way forward would be to limit them to new entrants. That would limit the effect that Andrew Thin mentioned and would allow new entrants to come into the system.

What does the panel mean by open assignment? How would full open assignment, limited to new entrants, affect things?

10:45

Richard Lochhead: First, the cabinet secretary is too broke to afford £600 million, let alone £1.78 billion. It would be more constructive and helpful in moving the debate forward if we had fewer silly reports such as that. SLE's intervention and the figures in its report—which came when we are supposed to be saying that there is unprecedented collaboration and understanding of some of the key issues facing tenant farming—were unconstructive and unhelpful. It escapes me how those figures were arrived at. Given that we have not even published the legislation yet, there is no way for those with a strong view on one side of the debate even remotely to begin to work out any potential figures.

The member raises a good point about what it would mean to have open assignments for new entrants. We discussed the issue as a group. Although I do not pretend that we have the answers, we are thinking about it in developing the legislation. Dave Thompson is right—it would be preferable if new entrants had a good chance to secure such opportunities. If a tenancy is made available on the market and a new entrant can secure it, that is beneficial for agriculture.

As I said, we are giving the matter some thought. We do not want people simply to snap up every tenancy that becomes available, which would lead to even more consolidation. We are not sure whether there is an easy fix.

Andrew Thin: We think that we have made the public interest case for the changes clear in the report. As far as I understand it, Scottish Land & Estates is not arguing with that case. It is saying that, somehow, there will be a loss of value, for which compensation will have to be paid. Were that the case, we would have expected land values to fall on publication of the report. I have seen no evidence of that. I strongly advise the committee to take SLE's advice with a significant

pinch of salt and to let the Government's law officers consider the matter thoroughly.

Dave Thompson's point on limiting assignment is important. We have thought hard about the matter. It is very difficult to define a new entrant and therefore quite difficult in law to start doing what is suggested. The proposal could also limit the value that the outgoing would obtain. If the market were constrained artificially, the value that the outgoing got would be constrained, and fewer people would want to retire.

The commissioner could put in place a code of practice to govern how assignments were conducted in order to ensure a process that increased the likelihood of that entirely justifiable public interest outcome occurring, but in a managed way. That could be done without having to go to statute and say that assignments were open only to new entrants.

Hamish Lean: It might be helpful for the committee to understand the group's reasoning behind the proposals. Bearing in mind that we recommended widening the eligible class of family members who are entitled to inherit or have a secured tenancy assigned to them, we saw assignment to a third party primarily as a means of motivating an elderly tenant who was not farming a unit efficiently and who did not have an eligible successor, even under our new proposals, to convert that tenancy interest into something of value, which would allow them to retire and have a more efficient person take on the tenancy.

We thought that the person who was likely to take on the tenancy would probably be not a new entrant but someone who was on the second rung of the tenancy ladder, such as someone who was coming to the end of a 10-year limited duration tenancy and had acquired capital and expertise or who might be a general partner in a limited partnership tenancy that was coming to an end in similar circumstances. Under the proposals, they would have an opportunity to move into another form of tenancy. They would also be able to afford the value, which would incentivise the assigning tenant to convert, assign and sell and allow them to have something on which to retire.

The group discussed at length whether the assignment should be like for like—secure tenancy for secure tenancy—or whether there should be a conversion process. However, for the public policy reasons that Andrew Thin explained, we came to the view that we could support assignment on conversion.

Dave Thompson: That is helpful. I have a few small points to follow up. I read somewhere—I cannot find where just now—that around 30 per cent of tenants would not meet one of the new criteria, such as having parents or living

descendants. That is quite a lot. You have given the reason, up to a point, for converting into LDTs, but am I right in saying that the combination of those two things would lead to a further reduction in tenancies overall?

Hamish Lean: I do not think that that is right. Conversion followed by assignation does not result in the loss of a tenancy; it results in a conversion from a 1991 act tenancy to a 35-year tenancy. There would be a loss only if, at the end of the 35-year tenancy, the land was not let further. There is certainly no immediate loss. If the proposals in the report are successful, a regular supply of land that is available for let will come on to the market.

Dave Thompson: You have confirmed the point that there could be a long-term loss.

Hamish Lean: Potentially, but not if our proposals are successful, as we hope that they will be.

Sarah Boyack: It is useful to tease out the review's recommendations on that point. There are two public policy issues. One is the capacity of current tenant farmers to make their own decision about when they want to stop being tenant farmers. For mid-career tenants who have 1991 act tenancies, there are the issues of how they leave farming, when they leave farming and what value they have built up that they can take with them. Another issue is what influence they have over who comes after them and how they work with that person. There might be a crossover point, and not necessarily a cut-off point. It is important to tease out those issues.

The other issue that I am interested in is recommendation 16, which is about the need for national and local planning policies on housing options for retiring farmers. It is stating the obvious that, for many tenant farmers, the farm is their home. We are not talking just about a person leaving the paid employment in which they have built up value but about them seeking a new home. Making sure that all those issues have been thought through is important. I think that recommendation 16 is both important and quite difficult to deliver, because we are talking about a relatively small number of people in a given area who might have distinct needs. Following through on that recommendation will be challenging.

Richard Lochhead: Yes. You have pinpointed some important issues. They are the reason why the review group highlighted planning policy and the need to give retiring farmers the opportunity to have their own home.

I have no doubt that delivering that will be challenging. I recall writing to all local authorities a few years ago to ask them to be sympathetic towards retiring farmers in their planning policy for

homes on the farm. Of course, that sometimes happens—I have visited many elderly farmers who now live in a house while their sons or daughters farm the land and live in the main farmhouse.

We will continue to look at ways of making that a reality and making it happen more easily. That is for planning policy in national guidance and it involves recruiting the support of Scotland's local authorities, because it is in their interest as well that we support that.

The Convener: Is there a presumption in favour of building houses where there are ruins?

Richard Lochhead: I happen to know from experience that some local authorities pursue that approach in wider planning policy. I cannot speak for all local authorities, but some certainly do that.

The Convener: If that is the case, you would think that it would be easier for many an estate or landowner to provide a site for the very kind of house that Sarah Boyack talked about.

Alex Fergusson: In my experience, the approach varies from local authority to local authority quite a lot.

The Convener: That should be an interesting point for us to pursue.

Graeme Dey: I have a couple of questions. First, how can you achieve all that you indicated to Mike Russell in your original answer that you were trying to achieve while adequately safeguarding the reasonable rights of landowners? I am thinking of a question that arose last week, when some doubt was expressed as to whether the grounds for the landlord to object about suitability in terms of character, ability and financial resource would be maintained.

Secondly, you have laid out what you are trying to achieve with assignation, but how will you avoid a situation where, for example, a merchant banker might come along and purchase the expertise of an adviser, so they have the money and the apparent expertise? How would you stop them snapping up an assigned tenancy, which clearly you would not want to happen?

Hamish Lean: In respect of the qualifications of the successor or the assignee, we envisage that the existing tests, which are to do with skills, experience and financial resources—and character, to an extent—will all remain in place.

In the merchant banker situation that you describe, the merchant banker would have to demonstrate that he personally had the skills and the experience, albeit that he might ultimately want to delegate them. That would prevent the sort of situation that you have described from arising.

Graeme Dey: Thank you—that clears it up.

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

Claudia Beamish: There was quite a lot of discussion about the right to buy with stakeholders at our meeting last week. Cabinet secretary, have you formed a view yet on the requirement for tenants to register their interest before they can exercise the right to buy?

Richard Lochhead: We have accepted the recommendation that there should be an automatic statutory pre-emptive right to buy, as opposed to tenants having to proactively register. I have accepted that recommendation.

Claudia Beamish: Will you also say something about the implications of the proposals on widening assignation and succession? What effect might they have on the valuation process under the pre-emptive right to buy—if there is a pre-emptive right to buy—and how would that alter the valuation process?

Richard Lochhead: I am not sure that there will be a direct relationship between the valuation and the pre-emptive right to buy. We have explored at some length the rationale behind widening assignation and the family members who could be successors. We have outlined the reasons for that. I see no direct correlation. I look to my colleagues in case anything came up in the report.

Andrew Thin: It is hard to see how there would be an impact on the valuation.

Claudia Beamish: Will you say something about the trigger points for the pre-emptive right to buy in relation to the landlord failing to meet their obligations and the possibility of going to the Scottish Land Court? Will you also comment on how ministerial intervention would work in the tenant farming context?

11:00

Richard Lochhead: You mentioned two issues in one sentence—the pre-emptive right to buy and the enforced sale issue. I think that you perhaps conflated two separate recommendations. As I have explained, we are going to remove the need to register for the right to buy pre-emptively, so the right will be automatic.

You also asked—I think that it was in the same sentence—about triggering the pre-emptive right to buy. When the group took evidence, it was brought to our attention that perhaps the triggers for the pre-emptive right to buy had to be looked at. The report recommended that the triggers should be widened. I am trying to recall the exact circumstances that the report mentioned. For example, the transfer of some or all of the shares of a company could trigger the pre-emptive right to buy, because it would be a substantial change in

the ownership of the farm and would be like putting it on the market. The group recommended looking at that again and we are sympathetic to that. We will have to wait for the proposed bill, but that was one circumstance that the report highlighted in relation to widening the triggers for the pre-emptive right to buy.

The third point that you asked about was the review group's clear position not to support the absolute right to buy, because of the public policy issues that Andrew Thin laid out, which are to do with maintaining confidence in the letting sector. We need a flow of let land in Scotland, for the reasons that have been outlined, which are to give new entrants opportunities and because this is a key sector of Scottish agriculture. However, cases from around Scotland were brought to the group's attention in which the current arrangements do not work and are not in the public interest. We took the view that, in such cases, the tenant should have the ability to enforce the sale of the tenancy of the farm if the landlord was not meeting their obligations.

As I have said in Parliament, we are bringing forward a radical proposal that I believe will address the situation. There are many good landlords in Scotland and many good relationships between landlords and tenants—perhaps the vast majority are good and are working well. Those good landlords have nothing to fear, but bad landlords who are not fulfilling their obligations will know that the tenant has been empowered to take steps to enforce the sale of the tenancy of the farm.

We think that that is a proportionate and sensible way forward. It is certainly in the public interest and it will ensure that the land is used properly and that tenants are treated with respect. Of course, it is healthy for the future of tenant farming and of Scottish agriculture more widely when there is an enforced sale to take the land out of tenancy to allow it to be farmed properly.

Claudia Beamish: I have one final supplementary point, which is on ministers' right to intervene to address barriers to local sustainable development. Do you have any concerns about compensation issues in relation to that?

Richard Lochhead: There will be another route for addressing obstacles to sustainable development and to land being used properly, which will be through the proposed land reform bill and land reform legislation. The review group did not exactly look at that issue, although it referred to that as an important route.

The Government proposes to introduce the right for ministers to intervene on the basis of promoting sustainable development through land ownership. In some situations—the committee is aware of

some of them and they were highlighted to the review group during our evidence sessions—in Bute, Islay and elsewhere in the country, there are community issues that could be addressed to the benefit of the tenant farmers who live there. There might be a community solution, where the community is in effect a group of tenant farmers. That is one route to empowering tenant farmers when there are clearly obstacles to sustainable development.

Michael Russell: There is a matrix of legislation building up. We have the land reform legislation, the Community Empowerment (Scotland) Bill and the controversial—although I am sure soluble—issue of abandoned and neglected land, and we also have the issue of agricultural tenancy reform. Just to be entirely clear—this is important to a number of my constituents in different places—are you committed to allowing ministerial intervention in agricultural tenancies in circumstances where there is a community impact on a small or fragile community?

Richard Lochhead: Yes, in terms of the community route, which would benefit the tenant farmers in question. As you quite rightly said, a programme of land reform and community empowerment is under way at Scottish Government level. In the case of the review of the tenancy sector that we are discussing today, there are measures in land reform legislation—we have just discussed them—to empower tenant farmers and communities, and the Community Empowerment (Scotland) Bill has a range of measures to empower communities in different ways.

Michael Russell: We must be careful that this very important issue does not fall between three different stools. I want to press you a little on that.

Richard Lochhead: In that case, I should add that the land reform legislation empowers ministers as well as communities and tenant farmers.

Michael Russell: Indeed, and there are circumstances, on which Claudia Beamish rightly pressed you, in which the failure of an individual landlord over a period of time might trigger a purchase. I think that that is entirely right, because there should be no charter for bad landlords.

However, there is the wider issue of landlords within small and fragile communities, including island communities. I want to be assured, because I know that my constituents will want to be assured, that in those circumstances the right of ministerial intervention in a community will be guaranteed. I want to be clear about where that will be guaranteed in legislation. Will it come in agricultural holdings legislation? Will it come in the land reform legislation? The Community

Empowerment (Scotland) Bill is reaching stage 3, so it is a little late for it to focus specifically on ministerial intervention. Precisely where will that intervention be guaranteed? I do not want us to come to the end of the process to find somebody saying “Oh. We thought it was in some other piece of legislation.”

Richard Lochhead: A bad landlord will have to be aware that, in light of the will of Parliament, which still has to be expressed in agricultural holdings legislation that will be brought forward in due course, tenant farmers individually will be empowered to take action. In addition, in the proposed land reform bill, which has still to be introduced into Parliament, we will commit to powers to intervene on behalf of the community. Therefore, landlords will be aware that there are several routes by which either ministers or tenant farmers can take action, so that those farmers are empowered to overcome situations that we want to rectify in our society.

Michael Russell: I want to be clear that one of the triggers in the land reform bill for community action would be the failure of a landlord in relation to tenancies—I presume that it would involve more than one tenancy—in fragile communities. A community might not see itself as being empowered to act alongside tenant farmers, so I want to be absolutely clear that, in your mind, as the begetter of the legislation, that will be a trigger for action.

Richard Lochhead: As you will be fully aware, all that I can say at the moment is that that is a potential scenario. I cannot commit to that, because we have not presented the land reform bill to Parliament. The committee will, of course, have a role in scrutinising that legislation when it is introduced. At this stage, I can assure you that those are potential scenarios that could be addressed by the proposed legislation.

Michael Russell: I am fully familiar with ministerial caution and I am satisfied by the gleam in your eye, at least. Thank you.

Alex Fergusson: There will inevitably be scenarios such as the situations that have just been described, whereby a land manager or owner will have a different view from the community of the way that the land is being managed. The community might well say, “This is inappropriate. We wish to have ministerial intervention so that we can take over the land”, while the land manager or owner is saying that what they are doing is perfectly reasonable. What arbitration process do you envisage in those circumstances?

Richard Lochhead: Forgive me, but you will have to wait for the bill to be presented to Parliament, and that is a—

Alex Fergusson: Sorry, but do you envisage an arbitration process that will be clarified later on?

Richard Lochhead: Clearly, the legislation will lay out the process, but any process is capable of being challenged. You are asking me to dream up hypothetical situations, and I am saying that of course there will be an ability to challenge because the legislation will have to lay out the grounds on which action can be taken. Ultimately, it will be up to the courts to interpret that in due course. You will have to wait for the legislation.

Alex Fergusson: Okay. Thank you.

Sarah Boyack: Nonetheless, cabinet secretary, we are trying to tease out the direction of travel as regards the policy intention. Earlier, Andrew Thin made a point about different ownership patterns and the fact that the proportion of tenant farmers is much higher in other countries. If there is a new direction of travel on the policy objective, we need to think through how everything joins up. As Mike Russell said, we need to know which piece of legislation will do what. We also need to know whether arbitration opportunities will be provided. What came out of yesterday's debate on dairy farming is that there are issues to do with co-operation between farms and producers having power. It is quite important that we know what kind of farming we want and what policy approach we think is important for farming as we move forward into the next 30 to 40 years.

Richard Lochhead: That goes back to some of the comments that I made during my answer to Michael Russell's question about the vision for Scottish agriculture. Scotland is a country that is blessed with fantastic fertile land. It is in the national interest to use that land productively and in a fair way that treats the people who work on it with respect. The purpose of the land reform legislation is to ensure that our land works for the people and that the people can operate in a fair and just environment.

How our land is used is central to the land reform bill and to the review and the recommendations that we are discussing today. It is important that our land is productive and that we have people who are able to work the land—who can access it to work it. If there are obstacles to that happening, those obstacles are not in the public interest. That is why various legislative measures are to be adopted in due course to give us the power to intervene or to empower farmers or tenants.

The Convener: I want to ask about the practicalities of tenancies and owner-occupancy. I understand that the Government proposes to conduct research into the differences in investment levels between owner-occupied and tenanted holdings and into whether owner-

occupation has wider benefits. Can you confirm that that is happening? When will results from that work be available?

Richard Lochhead: I do not have information on the timescale to hand, but I would be happy to come back to the committee on that. You are quite right to highlight the fact that various workstreams are under way, but I would have to come back to you with an exact timescale.

The Convener: That work will be interesting in the context of the debate about the proposed land reform bill, because it is essential that we understand what is required by way of investment.

We move on to the recommendations on letting vehicles for the 21st century.

Alex Fergusson: Yes, I want to ask about the proposals on letting vehicles for the future. The cabinet secretary stated that assignments are designed

“to keep land in tenancies.”

Andrew Thin rightly talked about the huge demand that exists for tenanted land and the limited supply of it. He also said that there was a need to create a balance in order to provide more let land to satisfy that demand.

I am interested in the fact that, at least twice, members of the panel have spoken about what would happen at the end of the proposed 35-year tenancies, whereas my understanding is that the proposal is that the 35-year period should be a minimum, not a maximum. I suspect that people might be more willing to consider letting land if 35 years was a maximum rather than a minimum term and that that length of term might be a deterrent to the letting of land. I would be interested in hearing panel members' views on that.

I have always said that if we can get this right, we will free up more land for the rented market. Surely that must be the aim if we are to have a truly reinvigorated tenanted sector, which is something that we all want. Why do you think that the proposals that you have put forward will create that environment and will bring more land on to the market for rent?

Richard Lochhead: I am happy to respond to that question, but I think that Andrew Thin wants to answer it.

11:15

Andrew Thin: Right at the beginning of the review, we said very clearly that it was about increasing confidence among both tenants and landowners. Everything in the review is about building confidence. Although there is a lot of detailed technical stuff in the report, what you see

set out in it is an integrated package of measures that is all about building confidence on both sides.

We believe that, by and large, if the measures are implemented as a package—although there will of course be details to consider—there is nothing in there that will damage landowners' confidence. The measures cover fair rents and security of tenure, and we have dealt with the issue of right to buy and so on. It is therefore not obvious to us that there is anything in the package that a landowner would say undermines their confidence.

However, tenants' confidence is also enormously important. If tenants are not confident in the system, they will campaign for change in relation to the right to buy and all the rest of it, which in turn undermines landowner confidence; it is a circular process. There is a lot in the package that is about strengthening tenants' confidence in the system: confidence that they can retire with dignity and get their money out, and that they do not have to be succeeded by their son but can be succeeded by a nephew instead—all that sort of stuff.

Although there are quibbles over the detail, most of the feedback that we hear from stakeholder bodies has involved people saying, "Yes, in the round the package is okay, and it will give us more confidence." The evidence is already out there.

Alex Fergusson: I do not disagree with anything that you have said, except regarding confidence and 35-year leases. I accept that that applies only in certain circumstances, but you talk about quibbles over the detail, and that is one of the details that have the potential to undermine landowners' confidence to let land as we all want them to do.

Richard Lochhead: At present, there is the secure 1991 tenancy, so—

Alex Fergusson: But there is also the full repairing lease proposal, which would be for a minimum of 35 years.

Richard Lochhead: That option would be available for people to choose.

Alex Fergusson: Why 35 years? The traditional definition of a generation is 25 years, which seems a reasonable period. I feel that that would make a difference—you can call it quibbling over the detail—and I get the impression from talking to people that 25 years would give a little bit more confidence on the landowners' side.

Hamish Lean: On the full repairing lease of 35 years, we felt that that letting vehicle involves no obligations of any sort on the landlord in relation to fixed equipment. As a result, the landlord can let that land where the tenant has the whole of the

repairing obligation but also has to provide modern fixed equipment if that is necessary for the efficient running of the holding.

We say, in balance, that the rent for that holding should therefore be based on productive capacity, which means taking into account the lack of fixed equipment provided by the landlord, so there is fairness in that respect.

Also, in fairness to the tenant who is taking on a very badly equipped holding, or even one that is not equipped at all, there must be a sufficient length of time that would allow them a decent return on their investment.

Our understanding is that that aspect of our recommendations is fairly widely accepted by industry, and that landlords are not particularly hostile to it and can see the advantages. Our recommendations would allow landlords to let land for much shorter periods of time, but they would have slightly more onerous obligations with regard to providing fixed equipment of a suitable standard, at least at the outset of the tenancy.

We think that our proposal achieves proportional fairness on both sides of the industry on the particular issue of letting out a farm with very poor or non-existent fixed equipment where the landlord does not want to take on any obligation.

Alex Fergusson: Again, I absolutely understand everything that you are saying. I merely leave with you the thought that, if you really want to restore confidence and bring that extra land on to the market, I think that we need to be talking about a maximum rather than a minimum of 35 years.

Do any other members want to come in on that issue before we move on?

Claudia Beamish: I have a question on this section, but not on that specific issue.

The Convener: Carry on, as we will consider a separate issue next.

Claudia Beamish: Did Andrew Thin want to respond to the previous question?

Andrew Thin: The vast majority of new supply will come forward as 10, 15 or 20-year LDTs. I think that some clarification is needed here, because some unhelpful communication about 35 years is being chucked around at the moment. The 35-year minimum applies only to conversion of secure tenancies and what are relatively unusual full repairing leases. The vast majority of supply will be nowhere near that, and our job is to communicate that.

Claudia Beamish: There might be a good reason for this, but I was disappointed that the review recommendations did not say much about limited partnership tenancies, which the committee

has looked at a lot. Indeed, if they say anything about limited partnership tenancies, I must have missed it.

What about those who are in that plight—I know that that is an emotive word—through no fault of their own? The STFA believes that it is essential to put in place some measure to afford those tenants greater protection before solutions can be found to give them a stable and secure future, and it suggests that such partnerships be converted to LDTs. Cabinet secretary, do you or other panel members have any comment on that specific matter or on the broader issue of limited partnership tenancies?

Richard Lochhead: I will make a couple of brief comments, and I know that other colleagues will want to respond, too.

The issue of limited partnerships is a challenging one, and the review group had many conversations about it. I would make two points in answer to your question. First of all, limited partnerships have arisen as a consequence of other measures, and the review group's focus was on getting right the root issues that might have led to such partnerships in the first place.

Secondly, the circumstances surrounding limited partnerships are so variable and different that if you were to pick one particular circumstance that led to the creation of a limited partnership and make recommendations for all of them on that basis, you could be intervening on the many good relationships out there in which such partnerships play a valid role. Because the situation is quite complicated, it is quite difficult to come up with simple catch-all recommendations that cover all the different circumstances. As a result, the review group took the view that although there are issues with limited partnerships, the industry itself needs to tease them out and perhaps come up with some solutions, instead of our doing so for the reasons that I have just set out.

Do colleagues want to respond to that question?

Andrew Thin: We thought very hard about the issue and agreed very strongly that the desirable outcome would be to convert limited partnerships to LDTs. There is absolutely no argument about that. However, we decided not to recommend that that be made mandatory or compulsory through statute for two reasons. First of all, and this brings me back to the point about the confidence of the landowning community, we felt that such a move would have a significant and undesirable impact on that confidence. Secondly, we felt that because most of these things were close to the end of their lives the move might lead to a flurry of terminations and therefore be counterproductive.

That said, I underline our recommendation that the industry move fast to get in place codes,

processes and so on that will make it highly likely that the majority of limited partnerships will be converted to LDTs, unless there is a good reason for not doing so. The commissioner might follow up on the matter later. I know—because we are helping it—that the industry is working on a code right now; in fact, it has already been drafted.

Claudia Beamish: Thank you for that. I have to say that the committee found the issue very complex and found it very hard to grapple with the different groups with limited partnerships, but I would not want those tenants, who, although small in number, are very vulnerable, to be left in a difficult situation. Furthermore, cabinet secretary, I do not agree that the review should not have addressed the matter simply because it was a consequence of something else.

Richard Lochhead: Sure. I take your comments on board. The point that I was trying to make was about new limited partnerships being created in the future as a result of the recommendations and other, more attractive vehicles.

Dave Thompson: On the conversion from 1991 act tenancies, I would like a little bit more information about the thinking on why 35 years and not 50 or 90 years is appropriate.

Richard Lochhead: Colleagues will want to respond to that question, but my simple answer is that 35 years was seen as a career in farming. To make the tenancy attractive and give long-term certainty, stability and confidence, 35 years was seen as a career. A person can have a career in agriculture and be a farmer for their working life.

Dave Thompson: That means that you will be retiring next year.

Richard Lochhead: Me?

Dave Thompson: You have been working for 35 years.

Richard Lochhead: I have not been a minister for 35 years yet; I am only a third of the way through. In agriculture, although perhaps not in politics, 35 years is seen as a sensible length of time for a career, and that period is more attractive. I do not know whether anybody else wants to comment on the 35 years.

Hamish Lean: I will touch on earlier comments that I made. In the main, we envisage that the people who will bid for the 35-year converted secure tenancy will be on the second rung of the tenant farming ladder and that they are likely to be in their mid to late 30s or perhaps in their early 40s. We envisaged that a 35-year vehicle would be suitable to take them through to retirement and give them a productive working life on the unit, balancing all the other interests that were involved.

Dave Thompson: That would take them to the end of their working life, but they would then not have anything of value to sell, because the tenancy would be nearly over. Two or three years will not have much value, whereas if the period was a bit longer, they could retire at 60, 65 or 70 and still have something that was worth passing on or selling to someone else.

Hamish Lean: Any period really has that ultimate problem. At some stage, a tenancy will come to an end and therefore will not have a value that is based on its duration at least, but a certain value will be built up—for example, through the tenant's investment—that can be compensated at waygo.

The Convener: Right. Before we move on to new entrants, Alex Fergusson has another question on SLDTs.

Alex Fergusson: We have had a lot of evidence, particularly from the agricultural sector, that strongly suggests something. Andrew Thin mentioned, quite rightly, that most of the new lets will be for 10, 15 or 20 years. I absolutely accept that, but we have been given evidence that something between one year and 10 years is needed, particularly for some forms of agricultural practice, such as for fruit growers. Is it the intention of the recommendations that SLDTs be abolished, basically? What are your thoughts on something between one year and 10 years?

Richard Lochhead: We are aware of concerns that the agricultural sector has expressed, and we do not have closed minds. Clearly, I do not have a closed mind, because it is now in the Government's hands to take forward and implement the recommendations. I am listening closely to the representations that are being made on the need not to scrap the shorter tenancies and am chewing over whether there is a requirement to maintain the five-year limited duration tenancies.

We have a set of recommendations from the review group that we have to translate into legislation where that is appropriate. They do not all require legislation. I hear what people are saying, and we are flexible on that.

Alex Fergusson: Would you be minded to have that addressed in the legislation, or is that more likely to be addressed through amendment to the legislation?

Richard Lochhead: I suspect that we should take a decision on that quite soon so that we can reflect that in the legislation.

The Convener: We move on to the subject of new entrants and reducing barriers to entry.

11:30

Sarah Boyack: We have been talking about intergenerational issues and how people who are tenants might pass things on to the next generation. There is also the issue of how we proactively create new opportunities for a new generation of tenants on new land.

I want to tease out some points regarding recommendations 36 and 37 in the report. Recommendation 36 concerns publicly owned land, whether it is owned by the Forestry Commission or the Crown Estate, and the possibility of the Scottish Government itself buying new land that could be made available for tenants. That is an exciting idea, so I would like to hear some comments on how you see that happening. Recommendation 37 is about entering into a dialogue with landowners of particularly large agricultural estates on how they might create more opportunities for new entrants.

I am interested in the public sector opportunities, which include those on existing public sector land such as that which is owned by the Forestry Commission and the Crown Estate, new land that you might buy and community new land. The other angle is how you see the private sector bringing new opportunities for lettings.

Richard Lochhead: This is a subject close to my heart. It is important that the Government looks for cases in which to intervene on behalf of the public interest, to ensure that new opportunities are opened up for new entrants. As you know, I asked the Forestry Commission a few years ago to consider using publicly owned land under its remit to create starter units.

Recently, we used the opportunity that was provided by Scottish Government-owned and run land to create a starter unit outside Inverness, at Balrobert. I met the family there, including the young children, and it was exciting to speak to them at a new starter unit that had been created on Government-owned land. We are using Government-owned land and Forestry Commission land to create starter units, and I am very much open to looking for further opportunities to use publicly owned land for starter units for new entrants to agriculture.

The recommendations that we are discussing today will help, although we know that there will still be obstacles in some shape or form to those opportunities for new entrants. Therefore, I am open to radical solutions. We are investigating further radical solutions and various ways in which we can use publicly owned land to create even more starter units. Soon, 11 new starter units will have been created in Scotland on publicly owned land, but I want to continue to investigate how we

can increase that number dramatically in the times ahead.

On the subject of private agricultural and other estates, ironically, although we are currently discussing a lot of measures to open up new opportunities for tenancies for new entrants, if we had the tax powers in the Parliament, the need for many of them would perhaps not be as great as it is, because we could use fiscal measures and the tax system to incentivise let land. One of the easiest and most sensible ways of incentivising large estates and agricultural holdings in order to make more land available for letting is to use the tax system.

Depending on the powers that the Parliament acquires through the current debate on constitutional arrangements, that may become possible in the foreseeable future—who knows? If not, we may have to continue to make representations to the United Kingdom Government. However, tax powers and tax incentives certainly provide an important way forward for encouraging the large estates to make more land available for letting.

Sarah Boyack: That relates to our next question. However, I return to the issue of how new land is identified. To what extent are you carrying out work on a regional basis? You mentioned the opportunity that you have been able to bring about near Inverness. Do you ask public sector or private sector organisations to identify land? Is there a regional aspect to that when it comes to areas in which we are particularly short of new tenant opportunities?

Richard Lochhead: We have found that there are a huge number of people in Scotland who want to let land and new starter units; in some respects, that is a positive thing—it is very encouraging and optimistic for the future of agriculture. The negative side, of course, is that we cannot find land for everyone in Scotland who wants it, as the supply is not keeping up with demand.

We have to keep looking for more opportunities. Our agencies are actively looking for opportunities to let more land, and the Forestry Commission and the Scottish Government's relevant directorates have come forward with proposals.

The many young people who want to find a farm will go anywhere in Scotland to do so, and we find that the applicants for the starter units, when they become available, come from all over Scotland. Whether the units are in Inverness-shire or another part of Scotland, people apply from all over the country. Maybe that is a sign that there is a severe lack of starter units, but it is also a sign that people are very enthusiastic. It is a great

opportunity to get a farm, and people are willing to move to do that.

We do not have a regional approach per se—we do not identify regional shortages—although perhaps we should have one. That is not a bad idea, and I will certainly give it some thought.

Sarah Boyack: That is very helpful, cabinet secretary.

Recommendation 38 is about new financial support. You mentioned tax—we will move on to that next—but there is also the idea of redirecting incentives from larger, established operators to new entrants. How do you see that working, and what will the impact be on existing operators?

Richard Lochhead: All that I can say is that the recommendation is there and we must consider how to act on it. There are big players out there in Scotland that can help and can do more. We must have a better dialogue with them and ask them to be creative in order to open up opportunities for new entrants.

There is a belief that more can be done to make financial support available for new entrants. There are grants within the rural development programme, there is lending by banks and there are other vehicles, but we can perhaps do more to create bespoke packages for new entrants, and that is something that we want to explore.

The Convener: In an earlier answer, Hamish Lean referred to tenants who are on the second rung of the ladder. I would like to explore with you how someone gets from a new entrant's holding to the second rung. Are there barriers to entry to the second rung, just as there are barriers to entry to first-time holdings?

Richard Lochhead: I am sure that there are. The recommendations are aimed at having a more fluid tenancy sector in Scotland, in which all farmers at all stages of their careers will find more opportunities because there are different letting vehicles and it is more attractive to let land. That is the outcome that we seek. Hamish Lean may be able to comment on barriers to the second rung.

Hamish Lean: The principal barrier at the second-rung stage is the availability and supply of opportunity, which is what we are trying to address.

Andrew Thin: The recommendation on tenancy apprenticeships is entirely relevant in this context. As Hamish Lean says, the main barrier is the shortage of supply, but the other barrier is capital. If someone can stage the transfer—if they can stage the acquisition, working their way into it as happens in other countries—they can stage the requirement for the capital.

Richard Lochhead: That is one of the most exciting recommendations in the report. I am very proud of the fact that we are being innovative, and, if we can find opportunities for apprentices in agriculture to have a staged transfer of tenancies over time, that will be a really exciting and innovative route for new entrants into agriculture.

The Convener: Thank you. I am glad that I asked about that. Angus MacDonald will ask about any points relating to taxation that have not been covered already.

Angus MacDonald (Falkirk East) (SNP): I will pick up on the issue of tax incentives. There are some examples of how assistance could be provided—for example, a VAT exemption on let land and the treatment of rent as investment income rather than trading income. Have you or your officials had any discussions with the UK Government about changes to reserved taxes that could encourage the letting of land? Is that an option for the future?

Richard Lochhead: Tax incentives and fiscal measures are important tools for opening up new opportunities to let land. The specific fiscal measures would have to be designed carefully, but they would make a material difference very quickly and would be transformational if we got them right. Measures relating to the tax bills of large estate owners would be one incentive that might lead to more letting of land in Scotland.

Unfortunately, when I have raised the matter with UK ministers I have got blank stares. I wish that we could persuade UK ministers that it is an important priority in Scotland. We have made representations in the past. We will have a UK election in a few weeks' time, and I will make strong representations to the next set of UK ministers, to persuade them that such measures would be really helpful to Scotland. It would be far easier if the powers were transferred to the Scottish Parliament so that we could do it ourselves.

The Convener: We need incentives, but underlying the availability of land is the fact that the saleable value of the land is far in excess of the economic value of units. You talk about encouraging landlords to lease land to tenants. We need to think not just about incentives in the system, and you have hinted at measures involving the tax bills of estates. Do you have any proposals for how we are going to get land values back in kilter with the economic value of units? It is ridiculously expensive for anyone to get on any rung of the agricultural ladder at present.

Richard Lochhead: It is. To understand the underlying factors behind land values in Scotland, we would need Albert Einstein to give us a helping hand. The situation is unbelievably complicated. In

some cases, barren land on which nothing is being done is worth millions of pounds as a result of people not wanting to invest in less secure, less tangible assets, given what has happened with the banks over the past few years.

However, we are not necessarily talking about ownership; we are talking about land that could be let. The land would still be owned by whoever owns it, and they would receive an income from letting it. We need to find ways in which to incentivise that. It is ironic that we keep referring to the unavailability of land, because there is plenty of land in Scotland—it is just not being put on the market for let. That is the key point that we must address.

Jim Hume: As you know, the UK Government has just announced that income tax for farmers will be smoothed over five years rather than over two years. Do you welcome that, and have you been pushing for that with the UK ministers?

Richard Lochhead: Yes. We welcome the fact that farmers have been afforded the opportunity, under the recent budget, to average their income tax over a five-year period. That is particularly helpful to the dairy sector, given the recent volatility of dairy prices. However, that is the first measure that we have seen in quite a while and it is a modest step forward for the farmers who will benefit from it. We are speaking about getting some incentives into the system that will encourage the letting of land in Scotland.

Sarah Boyack: Recommendation 41 concerns the issue of non-domestic rates in advance of the 2017 revaluation. The land reform review group has suggested that the Government should look at land value taxation. Have you discussed that with the Minister for Local Government and Community Empowerment? I understand that, over the next year, a fairly major piece of work will be done on the scope to change or rethink local authority taxation.

Richard Lochhead: I have communicated the views of the review group on that, and the commission that has been set up to look into local taxation will consider those issues. The committee will no doubt want to pay close attention to that work.

The Convener: As members have no further questions, I thank the cabinet secretary and his supporting officials. We look forward to pursuing these matters and the many more that flow from them. This has been a useful evidence session. The review group itself has been a big help, over what seems to have been a long time, in reaching the point at which we might make a breakthrough. I will be slightly optimistic and say that the glass is half full—we will see what happens next.

There is one further agenda item to be taken in public, but we will have a brief suspension to clear the decks.

11:45

Meeting suspended.

11:51

On resuming—

Petition

Control of Wild Geese (PE1490)

The Convener: Our final item before we go into private session is consideration of petition PE1490, by Patrick Krause, on behalf of the Scottish Crofting Federation, on the control of wild geese numbers. I refer members to the paper and I invite comments from members.

Michael Russell: I should make a declaration of interests, as the goose issue affects my constituency. This is an example of how you get to experience everything twice in life; I experienced it as a minister and I now experience it as the member for Argyll and Bute, which has a severe goose problem.

I draw the committee's attention to two important documents. The first is the Islay goose strategy, drawn up last October by Scottish Natural Heritage and others, paragraph 1.5 of which reads:

"The strategy is required for two reasons",

the first of which is

"damage by barnacle geese on Islay is continuing at a level which causes serious agricultural damage. On-going high levels of damage threaten the viability of farming on Islay, which underpins economic and social viability as well as providing wider biodiversity benefits".

In December 2014, shortly after the strategy was issued, there was a press release from RSPB Scotland, in which Stuart Housden was quoted as saying:

"We believe that the evidence base on which that cull is proposed is fundamentally inadequate."

There was no cull. He went on to say:

"We fully acknowledge that grazing geese sometimes affect agricultural operations, but past experience on Islay has shown that, with barnacle goose numbers at their current stable level on the island, less destructive means of managing those impacts are available".

Over 10 years or more, there has been an attempt to bridge the gap between those two positions. One position says that increasing goose numbers—even the current high numbers, which seem moderately stable—are entirely tolerable and create no difficulty, and the other position is that of those who are actually on the ground and running farms and crofts and who can see the damage that is taking place. The reality is that the damage remains considerable. Although I pay tribute to the Scottish Government for its continued attempts to ensure that there is a reconciliation of those positions, they have not been adequately reconciled, and Patrick Krause is

quite right to draw attention to the fact that there needs to be more substantial action to protect the livelihoods of those who are involved in agriculture in the Western Isles, in Orkney to some extent, certainly in the Argyll islands, and now increasingly on the Argyll mainland, where the number of barnacle geese continues to rise. I rarely hold constituency surgeries in Lismore, Campbeltown, Kintyre or Gigha, or even further into Argyll, at which I do not get people telling me that the goose numbers are causing them considerable problems in the running of their farms or crofts.

The issue is not resolved. It requires considerably more work, and there needs to be a recognition that the convention that governs the matter gives a derogation to those farmers and crofters who find that their crops and livelihoods are being adversely affected. The right attitude to the petition is to take the issue back to the Scottish Government and to press it to get the widest possible derogation for agriculture, so that the existence of agriculture in fragile parts of Scotland is not put at risk by what is taking place.

Alex Fergusson: Again on a constituency theme, I very much endorse what Mike Russell has said. I am grateful that the communication problems that led to the Solway scheme not providing written evidence to us earlier were resolved and that it has been able to do that. I am also glad that the minister felt able to meet those who are involved in the Solway scheme fairly recently in the Parliament and that she has visited the Solway scheme.

That scheme has been hugely successful. It has doubled the number of Svalbard barnacle geese. The Solway is the only place in Scotland that they come to, and that is an important part of their life cycle. However, the problems that the farmers are facing are now being exacerbated by the fact that the CAP reforms are reducing the support that is available to farmers in that part of Scotland. A lot of these guys are at the end of their tether and are now threatening to come out of the scheme. That would be a disaster given the amount of funding and resource that has gone into it—so successfully—over the years.

I endorse the position that Mike Russell has taken, but with regard to my constituents in the Solway scheme, which I think is the biggest after the Islay scheme.

Sarah Boyack: I have four brief points. First, this demonstrates the need for continued data gathering and analysis so that we can see which schemes are effective and represent value for money. The second point was partly made by Mike Russell, but it is certainly made in the response from Patrick Krause. It is that we need to balance food production and wildlife management,

and analysis of the research is important to guide investment for the future.

Thirdly, we can see that investment in different geographical areas is making a big difference, and it is important to learn the lessons from that. Fourthly, the point about goose meat opportunities is an interesting issue to pick up in the context of the year of food and drink. We need to look at opportunities for public procurement and new market research so that, where geese are culled, a positive byproduct comes from that.

It would be good to go back to ministers and raise the issues, including the particular ones that colleagues have mentioned.

Angus MacDonald: I agree with Mike Russell and Sarah Boyack that the issue has not yet been properly addressed and that further action is needed. The submission from the Scottish Crofting Federation raises a number of existing points that still require clarification from the Scottish Government. For example, there is still an issue in the Uists, which have not hit their targets. It has to be asked whether SNH is failing to deliver on the matter.

On the plus side, it is worth noting that the programme in Lewis is under way and the Government is allowing the sale of goose meat on Lewis and Harris as well as on the Uists. That is a plus, but we are still not where we want to be. The Government needs to clarify a number of points, as the Scottish Crofting Federation points out.

The Convener: I would like to make a point about the Uists. Last night, in this very room, we had a celebration of the 2015 United Nations international year of soils, and the chief executive of SNH, Susan Davies, pointed out that the two major issues that it is tackling in that regard are the peatlands, which we know much about, and the fragile machairs, particularly in the Uists. Those issues have to come into play when we are talking about the way in which geese affect the fragile nature of those grazings and those lands in the Uists. There is a very good reason why we need to take them into account, and they have not been taken into account in the Government's response at the present time.

Graeme Dey: Thankfully, I do not have a constituency interest in this, but it is a hugely important issue. By any reasonable judgment, the answers that we have received from the Government thus far have not been as comprehensive as we would like. Patrick Krause says that they are incomplete and inadequate, and that is a fair assessment. As a parliamentary committee, we should pursue both the lack of response to the specific questions that we posed and the important on-the-ground issues that colleagues have noted.

The Convener: That sums up what we need to do. We need to go back to the Government and get those answers. Do members agree that we should write to the Government on the basis of Patrick Krause's arguments and back them up by saying that we would like complete answers as soon as possible?

Members *indicated agreement.*

The Convener: At our next meeting, which will be on 22 April, we will consider the Aquaculture and Fisheries (Scotland) Act 2007 (Fixed Penalty Notices) Order 2015.

I wish everybody a great Easter recess.

12:00

Meeting continued in private until 12:37.

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