RURAL DEVELOPMENT COMMITTEE

AGENDA

26th Meeting, 2002 (Session 1)

Tuesday 5 November 2002

The Committee will meet at 2.00 pm in Committee Room 2.

1. **Items in private:** The Committee will decide whether to take items 4, 5 and 6 in private.

2. **Agricultural Holdings (Scotland) Bill:** The Committee will take evidence at Stage 1 from—
   
   Jamie Williamson
   
   John Renwick
   
   Charles Stewart
   
   Alistair Mann
   
   Alistair MacLennan
   
   James Mortimer
   
   Stuart Black
   
   Andy Wightman
   
   Sir Crispin Agnew.

3. **Subordinate legislation:** The Committee will consider the following negative instruments—


   The Bovines and Bovine Products (Trade) Amendment (Scotland) Regulations 2002 (SSI 2002/449).

4. **Budget Process 2003-04:** The Committee will consider a draft Stage 2 report.

5. **Organic Farming Targets (Scotland) Bill:** The Committee will consider arrangements for its consideration of the Bill at Stage 1.
6. **Witness Expenses**: The Committee will consider claims under the Witness Expenses scheme.

Tracey Hawe
Clerk to the Committee
The following papers are attached or are relevant to this meeting:

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Members are reminded to bring with them a copy of the Agricultural Holdings (Scotland) Bill and accompanying documents.

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SUBMISSION FROM ALISTAIR MANN, CORRACHIE, AVOCH, ROSS-SHIRE, on behalf of Scottish Tenant Farmers Action Group,

Background: I am a Black Isle dairy farmer in partnership with my wife and two sons with a secure tenancy on an estate on which my family have been tenants for 300 years, 107 years of which have been on our present farm. We employ 6 full time workers plus casual labour and local contractors. Our enterprise comprises 260 dairy cows, 300 replacement cattle and 90 beef cattle, 850 wintering sheep which have come from the same Lochbroom farm for 54 years. We produce 1.8 million litres of milk for Claymore Dairies, Nairn and sell 90 – 100 fat cattle through Dingwall and Highland Auction mart. All crops grown on the farm are fed to livestock plus 560 tonnes of concentrates feed and 300 tonnes straw plus 900 tonnes by-product from the distilleries.

We believe farms like ours create local employment directly and indirectly and in our case it adds around £450,000 annually to the local economy. In contrast, our new landlord, a property developer from Scarborough has let five of the farms on 1-3 year partnerships to one farmer who has no full time employees. It has cleansed the neighbourhood of farmers and farm workers families; the cottages are let to commuters to Inverness.

In my lifetime, there have been six owners of the estate and seven factors, each with their own agenda. The present owners, on their arrival, sent the tenants notices to evict all occupants of cottages sub-let by the tenant farmers on threat of notice to quit if the tenant did not comply. The local authorities had to provide emergency housing for these people and some of the cottages they vacated are empty, some ten years on.

In my own case, they then demanded a rent increase from £13,500 to £30,000 which represented a 125% increase and they also wished to charge me for my milk quota, the first time this had ever happened to a tenant in Scotland. This was taken to the Scottish Land Court but the estate refused the request to settle the rent. An arbitration was held which cost us £22,000 not taking into account our own time which took us three weeks to research and present. The hearing took a week. At the end of the arbitration, the Estate turned down the arbiter’s rent and went to the Scottish Land Court. The combined costs of arbitration and Land court cost us £80,000. This sum did not include almost three months of our time and an enormous amount of stress.

We found it impossible to get other tenants to put their farms forward as comparables. This was understandable as they were frightened of reprisals from their landlords. The landlord on the other hand was able to put forward ten comparables from other estates, only too willing in their common aim to increase rents. The associated costs of arbiter, Land court and professional witnesses travelling to inspect these farms (some were 50 miles away), was horrific. In hindsight, it was obvious that chartered surveyors and lawyers had hijacked the whole arbitration process and it seemed to me that the longer the process took the more they could charge! The Estate had obviously intended
to put us through the mill by taking us first to arbitration, the result of which I think they never had any intention of accepting, and then to the Scottish Land court hoping it would deter other tenants from doing the same. I felt I had been used as a precedent, to my great cost.

I believe the arbitration process is long past its’ sell-by date but we did feel that we had a very fair hearing from the Land court who stated that the tenant had invested as much in the farm as the landlord. I pose the question, how much would the tenant get back if he had to give the farm up? I also ask, at present day food prices can one area of land support a landlord, chartered surveyor and a tenant?

Apart from my views on arbitration, I feel compensation must be addressed. A tenant’s investment into his farm has to be given fair recognition as the current system acts as a disincentive to investment by the tenant. We asked if we could put up a new stock building. The landlord agreed but insisted that the building would be written down over a ten-year period and thereafter become his property. Some may call this normal accountancy practice I call it sharp practice. The building, which the tenant has maintained at his expense, may well have a residual value at the end of the write down period, which is greater than the tenant’s original investment but is now the property of the landlord. This is totally unfair.

There are many problems with the current system, which must be addressed by this bill, and I hope that my experience will provide working evidence of the vagaries of that system, the vulnerability of farm tenants and how legislation must be changed to offer us some protection.

I am a member of the NFUS and part of the 57% of tenants in the NFUS survey (tenants represent about 25% of the union’s total membership) who voted for an absolute right to buy. It therefore comes as a disappointment to me to read in the press at this late stage in the debate on the right to buy, statements being made on behalf of the union by John Kinnaird (an owner occupier and tenant) opposing the absolute right to buy.

Therefore I am pleased to be part of the Scottish Tenant Farmers Action Group which at last gives tenants effective representation. Rural communities are undoubtedly suffering from the way tenants like myself are increasingly becoming an endangered species despite small businesses like ours being keystones in fragile rural economies.
SUBMISSION FROM JAMIE WILLIAMSON

I am a landowner, an Estate Manager and the General partner of a Limited Partnership that tenants the farmland on Alvie Estate. I have an interest in this Bill both as a farming tenant and through acting on behalf of a landlord.

As hill farming is relatively marginal in our area we have diversified into other economic activities including forestry and tourism and encouraged others to invest in our land holding by means of tenancies. These include grazing leases, a horse riding stables, soft fruit production and a fish hatchery, all of which may come within the scope of this Bill. We have also set up tenancies or similar arrangements for field sports, mineral extraction, telecommunications masts plus domestic and commercial lets which are not directly affected by this Bill.

Traditional hill farming now generates less than 20% of our gross income from the land and less than 15% of the combined total income generated by the landlord plus tenants business activities.

Our land is finite, the system of tenancies has allowed multiple land use with more than one person investing in and making a living from our landholding. We therefore welcome any legislation that will simplify the procedure and encourage the creation of more tenancies and the continuation of existing tenancies.

Whilst we welcome most aspects of the Bill as introduced we are concerned that the proposed pre-emptive right to buy will discourage Landlords to continue existing tenancies.

Agreements are normally only created and maintained if they are to the mutual advantage of both parties. Security of tenure and the crofters right to buy has persuaded landowners to avoid creating new crofts or farm tenancies. As a result few farm tenancies have been created. We believe a pre-emptive right to buy will be counterproductive and discourage the continuation of existing tenancies.

On many Highland landholdings the farming tenant is no longer the main tenant providing most of the income and employment from the land. We are concerned that a pre-emptive right to buy by the farming tenant may discourage non-farming tenants, sub tenants and other businesses investing in the land. We would prefer to see the legislation amended so that it is more clearly to the mutual benefit of both Landlord and Tenant whether or not the tenancy comes within the scope of this Bill.

Jamie Williamson
I joined the Scottish Tenant Farmers Action Group earlier this year and I welcome the democratic opportunity that membership of this organisation has given me to present evidence to the Scottish Parliament on behalf of many farm tenants in the community where I have always lived. There is much reluctance in my area for tenants to openly express their concerns due to traditional deference to the laird.

I am a tenant of four small holdings making up a total of 150 acres in Deeside, Aberdeenshire on an estate where my family have been tenants for over 200 years. The farm is nowadays not large enough, without diversification, to support my family. I am now working almost full time, off farm as a carpenter/joiner to supplement my livestock farming enterprise of 60 cows on grassland with a small acreage of cereal.

My main problem is the lack of investment. I am a secure tenant under the ‘91 Act but my landlord has not invested in the farm since 1967 when the farm steading was modernised on a 50:50 landlord/tenant basis. I moved into the farmhouse 14 years ago. It was in a very poor state of repair and the landlord carried out limited repairs after my seven-year-old daughter fell through the floor.

The house is still not in a good state but some work was completed after I complained to the council at the level of community charge I was paying which I considered to be inconsistent with the standard of the house I am obliged by my lease to inhabit. Although I have carried out some improvements myself, I am reluctant to invest large amounts of capital because of the ‘black hole’, which tenant’s investments disappear into.

Statutory compensation is so negligible that there is little incentive for me to invest but I am committed to living there through a residency clause in my lease. This problem of the value of improvements reverting to my landlord at the end of the day can gives rise to family stresses. It means that many tenants have to endure substandard housing conditions.

This residency clause in leases also prevents tenants from moving into any retirement home they may buy or build as some leases can stipulate the tenant must reside until the lease passes on by succession and frequently that will only occur on the death of the tenant. I relinquished another house on my tenanted land in exchange for a residential plot but I have not developed this, as I would not be able to live there.

In my area of the northeast there are many pressures associated with high land and residential property values. For example, resumption of land by the landlord for development purposes. This is common, but difficult for tenants to
challenge and the compensation for disturbance (four times the annual rent) never reflects any development value that land may have.

This situation means landlords are putting pressure on tenants to give up their secure tenancies as land with vacant possession has an increasing development value. Tenants may be offered alternative land on a short-term lease but there is no compensation offered for the secure tenancy value and many tenants can fall foul of this if they do not appreciate the inherent value of their secure tenancy. It is however, very difficult for that value ever to be realised by the tenant.

Many tenants have had to fight expensive cases where notices to quit have been issued to tenants on flimsy grounds, for example, alleged late payment of rent. These cases are expensive for tenants to fight legally if they make the smallest technical error and tenants are increasingly having to watch their step, as the stakes get higher with increasing land values.

My own community is a classic example of the benefits which a tenants’ right to buy would bestow on our area. Finzean, which is still tenanted, has dilapidated farms and there are fewer people whereas adjacent Strachan, where tenants have had the opportunity to buy their farms, is more prosperous with better maintained farms with obvious investment. There is diversification of enterprise on these small farms and plots have been sold which create a larger local community, which is more vibrant and self-sustaining. Diverse land ownership creates other business diversity.

I have strong roots with the area and am very attached to the land where my family have been for a very long time. I want to develop my small farm to its fuller potential but it is very unlikely ever to come on the market and it needs investment. Although small farmers like myself are comparable to crofting units in the Highlands and Islands in scale terms of economic viability, we do not enjoy the benefits which crofting status gives. A crofter can invest knowing his efforts will benefit his home and business and if he wishes to buy his unit outright he can do so at a multiple of the rental value. We have no such choices.

However, most small secure tenants farmers are loathe to give up their tenancies because it is their only asset with the downturn in livestock values. We are caught between a rock and a hard place. Changes in legislation would give us a fairer deal with our landlords, the opportunity to survive and prosper through diversification in an increasingly difficult climate. Examples of beneficial change to the ‘91 Act would be adequate compensation for improvements or freedom to diversify with adequate compensation for alternative enterprises created as we could capitalise on our proximity to a large nearby, urban market. Amalgamation of units is not in the interest of rural communities and opportunities need to be created to encourage rural repopulation and allow people like myself to remain on their farms. It would reverse stagnation and communities would benefit eg rural schools, post offices, shops, pubs etc.
Background

I am a writer and researcher on land issues and my interest in the Agricultural Holdings (Scotland) Bill lies in its potential to revitalise agriculture and the rural economy by promoting a more diverse pattern of landownership through the right-to-buy provisions.

To understand why this is important it is necessary to emphasise the history of the tenant farming in Scotland. That history is one of a struggle by tenants to gain security of the land they farmed. The struggle culminated in the 1947 Agricultural Holdings Act.

Today, tenant farmers are faced with new challenges as the post-war policy emphasis on agricultural production disappears to be replaced with a broader rural development focus. In such circumstances it is legitimate to consider what the purpose of tenant farming is.

The tenant farming sector in Scotland exists because Scotland has never had land reform and the only route into agriculture was to "borrow" land. With agricultural land being held in a small number of large estates, farmers were almost by definition tenants until the First World War.

By comparison, the rest of mainland Europe had virtually abolished the landlord tenant system in favour of peasant proprietorship. Accompanying this was the growth in the co-operative sector in food processing, retailing and specialist banking - developments which have resulted in continental farmers having far more clout in the market place.

Why a Right to Buy is Vital

I endorse the submission made by the Scottish Tenant Farmers Action Group and feel that it is vital that secure tenant farmers are given the choice (as currently provided for crofters and council house tenants) to purchase their farms if they feel that it is in their interests to do so. Those tenants who enjoy a good relationship with their landlord and where the advantages of the landlord-tenant system (as articulated by landowning interests) apply, will, correspondingly not seek to exercise such a right.

It is worth noting that tenant right-to-buy has been a policy of British governments (principally Conservative) in the past. It was just such a policy that ended landlordism in Ireland. In the parts of Scotland where tenants have managed to buy their farms (e.g. Orkney, Galloway and much of the north-east) the agricultural economy has thrived.

If the landlord-tenant system is such a wonderful system why does one find it so difficult to find any ex-tenant farmer who would like to return to the tenanted sector. Why, across Europe, are there no moves to return to the landlord-tenant system?

In fact the figures provided in Appendix I in the SPICe Briefing (02/113) on the Bill illustrate a very important point. Despite the landlord-tenant system accounting for around one third of farming land in Scotland, the proportion of tenanted land in the rest of the EU is consistently higher with figures for the EU 15, EU12 and EU9 all in excess of the 31.5% figure for Scotland. This is despite of the fact that in the rest of the EU the landlord-tenant system does not exist!
The explanation for such high figures is that owner-occupier farmers have relatively small holdings and increasingly rent additional land from other non-active farmers.

Thus, if the 9009 Scottish tenant farmers were all to move to owner-occupation, the evidence suggests that the percentage of land available to rent (under the provisions of this Bill) would rise!

**Myths about the right-to-buy**

*The supply of land will dry up.*

Any right-to-buy is restricted to secure tenants under the 1991 Act. Since very few secure tenancies have been created in the last 10 - 20 years it is something of an arithmetic challenge to see how the situation can get any worse. What seems to concern landowning interests is that any move towards a right-to-buy regime may be extended to cover the LDT and SLDTs proposed by the current Bill - an essentially speculative argument which lacks credibility.

Moreover, as argued above, a right-to-buy would perhaps be the best way of increasing the availability of land to rent. There would be more landowners on the same area of land and thus a healthier market in let land with more choice and supply.

*Such a right would be in breach of ECHR*

Despite claims by the Scottish Executive it is difficult to see now the establishment of an absolute right-to-buy would have the effects stated in Ross Finnie's Written Answer (S1W-28916) when no such effects have been identified in the crofting community right-to-buy or the existing 1976 crofting right-to-buy. The depression in value of land is not of itself in breach of ECHR - were it to be so there would be many cases in front of the courts as a consequence of a wide range of Government actions in the economic and legal spheres. The abolition of the Common Agricultural Policy, for example, would have a massive effect on land values but just as landlords have enjoyed the capital gains accruing from the CAP they would have to accept the capital losses.

*The landlord-tenant system is vital to a healthy rural economy*

There is no inherent virtue in the landlord-tenant system. It was abolished long ago in the rest of Europe and there is no suggestion that it has anything to offer in Ireland, France, Scandinavia or anywhere else. In reality it is a hangover from the past when landowners were able to dictate the terms under which anybody else could occupy their land.

The current Bill provides for a further transfer of power from landlord to tenant by providing extended rights of use. This fits into the pattern of farming tenure across Europe - a pattern characterised by increasing rights for tenants culminating in legal arrangements which convert tenancies into ownership. It is a diverse pattern of secure ownership of land which is vital to the rural economy and this can be developed by providing an absolute right to buy for secure agricultural tenants.

Andy Wightman
16 October 2002

e-mail: andywightman@caledonia.org.uk
I believe the purpose of my evidence is to show the potential economic release that is possible when the right to buy is achieved, also the better way that the rural assets are maintained and cared for, including the structural assets, the long term future of the local people, the environment and the economy.

I have lived on Ballieefurth all my life, a former tenant of Revack Estate, not a particularly good relationship, we did not trust the factor, the estate would do nothing on the farm despite us paying what I considered a very high rent, on a full traditional tenancy, although they promised to do the work for 10 years or more. It was not in our own interest to maintain their assets. The estate managed to partially asset strip the farm when my father tried to pass the tenancy on to me, selling off an old stone built barn and block of land for a holiday house, taking back the farm cottage and selling it.

We found out the estate was for sale through the Sunday papers. Estate sold out to a property company at way below market value despite myself and every other tenant on the Estate making it perfectly clear we were very keen to buy.

I managed to purchase my farm and an adjacent block of woodland in September 1999, 3 yrs ago, from the property company. I bought it in partnership with my wife. Despite the state that agriculture is in, being heavily borrowed to the back both mortgaged and overdraft, foot and mouth disease, and other inhibitory influences, since buying my farm I felt almost like a new life had started. I have invested heavily in addressing the long-term decline of the on farm assets, repairing the farm buildings, and the house. We have also invested money in tourism facilities in order to diversify our business, and we have entered environmental agreements, all of which would have been difficult or impossible to do if we had still been tenants.

List of Relevant Actions

£4500 on essential repairs to farm buildings (completed in 2001)
£22000 on repairs and improvements to farmhouse including en-suite bathrooms to facilitate B&B enterprise, and renovation of part of the farmhouse as a self catering unit for two people. (Completed in 2001)
RSPB management agreement
LBAP / FWAG Upland grain agreement
Extension of my ESA agreement for a further 5 years incorporating new ground.

We look at our entire farm in a different light, decisions are made with a holistic and long-term viewpoint.

I am free to manage my land in the best possible way to secure the future of my family.

For a 13-year-old son who may rightly consider agriculture a bad option as a career, the possibilities at home have suddenly broadened dramatically. Extra income generation and the fact that we can now operate any business we wish from the farm give extra impetus to my son to return to his home after school, university or whatever.

Since becoming an owner-occupier I manage my farm in a very holistic manner making agriculture, forestry, environment and tourism all work for the benefit of each other, something that was not possible as a tenant. I won the NFU biodiversity award for Scotland this year and have just been awarded runner up in the Silver Lapwing competition a National award for the integration of conservation with agriculture.

I look at some of my neighbours who are still tenants and they would be unable or discouraged from instigating the management practices that I have been able to, because of their estates influence. In the past a large local estate, which are at present putting over a very caring face, virtually banned their tenants from entering the ESA scheme. The same estate that is saying it encourages new farming entrants by the lease of small holdings has just let a farm beside me and the particulars were only circulated to their own existing tenants.
SUBMISSION FROM STUART BLACK

Tenant Hill Farmer
Highland Councillor for Strathspey NE
Member of Council Land and Environment Committee
Farms with wife and daughter.

My family farm in Strathspey on the Dorback Estate located on the Braes of Abernethy, the estate had been held by the Seafield (Ogilvie-Grant) family for seven centuries.

In 1998 Lady Pauline Ogilvie Grant, owner of Dorback and Revack Estates, put both on the market, specifically promoting Dorback as a highly desirable sporting estate with grouse and deer. I became aware of the sale only when a friend informed me he had read about it in the Sunday Mail. Ironically, a few months before I had responded to the Scottish Office consultation on land reform, and advocating a tenant’s right to buy, had amongst my reasons made the point, ‘that the land and home of a tenant can be traded by anyone, from any country in the World, without any reference to the tenant’. So it proved. I wrote to the then factor informing him, that as a family, we should like to make an offer for our home and land, where for generations and through many difficult times, my forebears had invested so much skill, hard work and massive commitment of their time.

I was told that due to the importance of the grouse moors, bids would only be considered for the whole estate. Dorback was finally sold some months later, the only notification we received, and only goodbye, was a legal notice to pay future rents to Salingor Holdings, incorporated in the Bahamas, the new owners are a French/Belgian family whom I have not yet met.

At the moment we deal with the local agents for the owners, Finlayson Hughes, and have found them professional and efficient. They have recently asked if we would meet with the owners to discuss the future and we are looking forward to an early meeting. The present bill with the pre-emptive right would at least mean that my family could no longer be treated in such a humiliating way at any future sale outside the landlord’s family.

However, the pre-emptive right has significant shortcomings, not least being that the tenants would view it as the one ‘chance’ which would have to be exercised, no matter if it was not the best time for financial or other reasons. This, because the tenant would have no way of forecasting whether their future landowner would turn out to be difficult or objectionable. We, for instance, may not have offered to buy in 1998 if we had the comfort of absolute right to buy ‘in our back pocket’.

If our landlords wish to treat us as equal partners willing to invest together for the future of our rural community, then fine, why buy, but this pleasant possibility would be much more likely with an absolute right to buy as a last resort. Under the proposed Bill sales within a family or trust would not qualify for a right to buy. Established landlord’s policy and attitude towards tenants
could change, perhaps for the worse. There is also no doubt that from a landlord's point of view, a pre-emptive right will make it even less desirable to have heritable tenants on an estate. Landlords have granted almost no full heritable tenancies in the last 25 years, and indeed have been keen to bring them to an end, seeing them as an awkward impediment to them achieving full value for their asset. I am afraid they would set about the task of ending the heritable tenancies with renewed vigour. Some of the methods used to end tenancies have been unseemly, let me quote an actual example.

On the death of his father, a son who previously had to move out the area to seek employment expressed an interest in taking over the tenancy of the family farm, his father having named him as successor in his will. He intended to live with his wife and children on the farm, work it part time and carry out another part time business in the area, helping to support a fragile community. He was told by the estate he could not sublet the farm until such time as work commitments allowed him to return to the family home. They also informed him that since the farm is no longer viable in the purely agricultural sense, i.e. able to support the tenant and a worker they will be able to resume it. Concerned about possible legal costs the son agreed to give up the tenancy for a small payment. His family home was then sold as a holiday home and part of the land put under a woodlands grant scheme. The remainder was amalgamated but under a limited partnership with little security of tenure, with slight variations a familiar story.

With the right to buy the son could either have negotiated a satisfactory agreement with the estate, subletting the land and letting the house to a local family until he was ready to return, or simply bought his farm from the estate. It is now lost forever as a heritable tenancy unit.

I am convinced if Parliament gives tenants the absolute right to buy, more heritable tenancies will survive for future generations, than with pre-emptive right alone.

Most crofters have not exercised their absolute right to buy, even though their financial compensation arrangements of fifteen times the annual rent are far more generous than we ask for tenants. However, the self confidence of crofters and their acceptance of a crucial role in the economic and social life of their communities stems at least partly from the equal status with their landlords conferred on them by their statutory rights, including the right to buy.

The Highland Council have supported tenants absolute right to buy since at least 1998 when Peter Peacock was council convener, the council membership is made up of 80 independent minded individuals with the social and economic advancement of our Highland communities as their first priority. One of the drivers forming members views on tenancy reform was the realisation that reform of the CAP would mean an increasing percentage of agricultural income would come in the form of ‘non agricultural’ measures, such as diversification into such things as tourist accommodation, or in environmental measures, such as farm woodland, or creating better access
core path networks etc. These are all measures in which landlords could deny tenants the opportunity to participate.

As an example a local estate held up the uptake of Environmentally Sensitive Area measures in the Cairngorm Straths by sending a letter to tenants warning that they could resume land entered in the scheme because it was non-agricultural use. Virtually all neighbouring owner occupiers joined the scheme very quickly for it gave the potential to enhance the natural heritage and, at the same time, support the economy of the farm and of fragile rural community. Just the outcome public bodies and NGO’s in Scotland wish to see. Eventually, with a change of factor and estate policy, tenants were pleased to join, but the incident revealed how vulnerable tenants can be if a potentially crucial stream of income is denied them.

It is good to recognise that the Bill will help with diversification and agri-environmental measures but the landlord right to object will still mean that many tenants will not feel comfortable taking forward investments which attract landlord’s disapproval, and therefore will lose out on opportunities which could be of fundamental importance to the financial success of their business. Even with landlord agreement tenants who decided the most appropriate diversification for them involved some sort of built development would be building that facility on someone else’s land, making it very difficult to get any sort of loan. Tenants like all farmers will be subjected to modulation of their CAP support payments, this will involve compulsory reduction of support payments and redirection of the funding into diversification and agri-environmental schemes which as I have pointed out will still be much more difficult for tenant farmers to access as compared to owner occupiers.

We do not believe any absolute right to buy should include the sporting rights. Most tenanted farms would be too small to support commercial shoots, the estates and their staff has the expertise and contacts to maintain a successful shoot and safeguard the employment it generates for the community. Tenants have generally not invested in the sporting side of the estates, whereas many estates have invested only in this activity. If tenants bought their land many, maybe most, estate owners, particularly in the Highlands, would notice little practical difference in their use of the land, since they are primarily interested in its sporting potential. It is perfectly possible for there to be an agricultural owner and a sporting owner on the same piece of land. Joint use has worked well for over 150 years on many grouse moors, and on low ground shooting all over Scotland.

I would like to express my appreciation for this opportunity to give evidence to your committee.
SUPPLEMENTARY SUBMISSION FROM THE SCOTTISH LANDOWNERS’ FEDERATION

AGRICULTURAL HOLDINGS (SCOTLAND) BILL

Towards the close of oral evidence on Tuesday 28 October, witnesses were asked to submit further evidence if they wished to elaborate on any of the responses they had given. I would be grateful if you could bring this letter, and the attached paper, to the attention of the Committee.

Registration of Interest in Purchase

The Bill as introduced relies heavily on a tenant first registering an interest ahead of a landlord choosing to sell a let farm. Such registrations would be for five years, and would require a re-registration - tenants who failed to do so would lose out if the farm came on the market.

The Scottish Executive require this process so that a claw-back mechanism can operate against a landowner who sells over the head of a tenant. In our view, normal conveyancing procedures provide more than adequate protection against this, whereby the solicitor for the purchaser could be satisfied by a letter of discharge from any tenant(s) of land being sold.

Our submission on the draft Bill proposed a procedure wherein all secure tenants would be statutorily notified of intention to sell - dispersing with the bureaucracy of registration. This would provide maximum flexibility for the tenant.

Compensation at Way-go for Tenants Improvements

The SLF recognises the predicament of tenant farmers who wish to relinquish their tenancies and retire from the industry, but who feel they cannot do so because of inadequate compensation for improvements they have made to their holdings.

Our perception is that many of these tenants have either failed to notify their landlord of intention to carry out improvements (as required by the Act if compensation is expected at way-go), or, having notified them so, have subsequently entered into agreements which would limit entitlement to compensation. In each instance the tenant, investing in better economic times, probably believed that they would achieve sufficient benefit from the investment over the years ahead. We believe many of the agreements voluntarily entered into to limit compensation at way-go would be part of a wider agreement with their landlord, for example as part of a rent review agreement. Adequate protection already exists within the 1991 Act for a tenant who feels pressurised into an agreement he does not wish to enter.

The SLF recognises that legislation could provide that future agreements which restricted compensation at way-go should be void. For legislation per se to revoke existing agreements to limit compensation would be extremely unjust and would strike at legitimate contractual clauses, many of which will form part of a wider agreement.
We are actively considering whether some "middle road" might exist, providing tenants who have limited compensation clauses with some entitlement on leaving the farm for retirement, but without retrospectively and unilaterally revising agreements.

**An absolute right-to-buy**

Suggestions have been made that to give tenants an absolute right-to-buy would result in a more active market in farms and farmland.

We attach a paper commissioned from a Farm Management Consultation in Ireland, into the background and consequences of the Irish Land Acts a century ago. In summary this paper demonstrates:

- Irish agriculture currently comprising small, usually part-time farms ill-suited for modern day agriculture and trade.

- Extremely high land prices, with farmers having to compete with industrial and residential buyers for additional land

- Even though it is now possible to let land again, other than on seasonal basis, owners are still extremely nervous of doing so, with new lets mainly within families.

We emphasise again that many SLF members, whether estate owners or farmers, do want to let land. Legislation could provide confidence to them to do so, and know they can regain possession at the end of term. A dynamic let sector, alongside owner occupation provides the best prospect for Scottish agriculture and its dependants in a world market.

The Federation would be happy to expand upon any of these comments, or provide information on other aspects of the Bill.

Yours sincerely

Dr Maurice S Hankey
Director
4 November 2002
SUPPLEMENTARY SUBMISSION FROM SCOTTISH ESTATES BUSINESS GROUP

COMPENSATION AND WRITEDOWN AGREEMENTS

The issue of compensation at Waygo and the use of write down agreements continue to be a contentious and complex issue.

The present arrangements are seen as unfair, despite the statutory framework which provides for a residual value which is equal to the value of the improvement to an incoming tenant. To qualify for that, the investing tenant must follow the statutory procedures, including giving notice to the landlord etc. If he does not, it constitutes a tenant’s fixture, for which there is no compensation and which he can be required to remove. Writing down agreements have been used to “contract out” of the ’91 Act by writing down the value of a tenant’s improvement, typically to £1, over a set period. SEBG would endorse a recommendation that under the new legislation contracting-out of the Act on compensation for improvements would not be permissible.

As the law on diversification within an agricultural lease is freed up, some tenants will wish to invest in ventures which are specialised and whose value to an incoming tenant in the event that they go out will be questionable. For example, if the business fails, why would somebody else want to come into the farm to repeat that mistake? It would be unreasonable to expect the landlord to carry the burden for that kind of business risk, to which he might not have been able to have objected and might even have left the farm in a worse state than it was before the tenant embarked on it.

The circumstances under which tenants are entitled to compensation are comprehensively set out in the current legislation. Maintenance, repairs and even renewals under some leases are not “investments” in the terms under which compensation should be properly payable. Maintaining the value of an asset under the terms of contract is a different thing from improving the value of that asset at the investor’s discretion. ‘Improvements’ which do not qualify for compensation and which do not constitute works carried out as part of a contract are treated as tenants’ fixtures, with the tenant having a right of removal on leaving the holding. It is also important to confirm that a landlord cannot charge rent on tenants’ improvements / fixtures and these have to be disregarded in any rent assessment.

To maintain the continuing viability of the tenanted sector, it would be unreasonable to expect landlords to underwrite each and every tenant’s improvement. The best test for valuing these improvements is in reality the “value to an incoming tenant” because that is the acid test of whether an improvement has enhanced the letting value of the farm. There are already procedures for settling that value in the event of a dispute between the parties, involving an arbiter, independent expert etc. There are some cases where the tenant can leave the farm with significant compensation for improvements and in cases without improvements, no compensation is paid.

The Bill is introducing measures on dispute resolution which have widespread industry support. The SEBG has proposed that the Tenants Forum might helpfully look at the whole issue of compensation at Waygo and investment. We believe that the use of a clear and simple mechanism to value tenants improvements would have
benefits for the industry and help both landlords and tenants to better understand their respective obligations.

SEBG is working with the other industry stakeholder organisations on the issue of retirement and compensation and would hope to report progress on this issue to RDC in the future. As we have indicated above, tenancy is not necessarily a barrier to retirement with 12% of an SEBG sample of farms going out as a result of retirement.

PUBLIC INTEREST

Members of the rural development committee made it clear on October 29 they were seeking evidence on the ‘public interest’ arguments on the absolute right to buy. In view of this and the assertion made by the Scottish Tenant Farmers Action Group that the absence of an absolute right to buy risks “continuing social and economic damage to our rural communities and further environmental degradation of our countryside”, SEBG presents this additional evidence to demonstrate how estates – far from frustrating rural development - fulfil a beneficial role in rural communities and make a significant contribution in social, economic and environmental terms. We also suggest there is evidence to show that the loss of integrated land management has had a detrimental effect on land management. SEBG has commissioned survey work from the Scottish Agricultural College on the socio-economic and environmental contribution of estates in Scotland. That data is not complete but SEBG will supply data from that survey to the committee as soon as possible. In the interim, evidence on the public benefit of estates has been compiled from the following estates.

ATHOLL ESTATES

Attractive employment: Well run businesses based in fairly remote areas such as 5-Star graded Blair Castle and Blair Castle Caravan Park, together with newly awarded CCI*** status. Such businesses provide for structured local employment which promotes personal development and career enhancement.

Local Support for Community: Developments such as the all-weather sports facilities in Blair Atholl, due to commence spring 2003, procured after the Estates significantly assisted the formation of a Community Trust which obtained grant funding and significant local match funding, including the free provision of land by the Estates. Landscaping central parking area in Blair Atholl. Provision of children’s play facilities in the village of Calvine. Provision of children’s play facilities adjacent to an affordable housing development, again partnered by the Estates with the local Housing Association in 2001.

Professional advice for Tenant Farmers:

- S.A.C. Farm Membership for all Tenant businesses paid for annually by the Estates
- Leadership in the confidence to commit to the Organic Aid Scheme, started by the Estates in 2001. Almost 50% of the Estates agricultural land is now under the Organic Aid Scheme.
- Clarification about the Rural Stewardship Scheme and its potential to run along E.S.A. or C.P.S. schemes. After successfully entering the R.S.S. in
2001, the Estates have now convinced two other let farms to put forward an application.

- Without exception, all eligible tenant farms on the Estates are subscribed under the Environmentally Sensitive Areas Scheme.

**Opportunities for start-ups:** This year, a local shepherd was made redundant when a hill flock was dispersed on an owner-occupied farm due to economic constraints. The individual has accepted the tenancy of a hundred acre holding on Atholl with 3-bedroom farmhouse. He will move to this farm with virtually no capital to build a sheep flock he plans to develop to the highest of standards specifically to sell breeding stock, while at the same time offering his services as a self-employed farm contractor.

Last year another tenant retired leaving a farm of 150 acres vacant together with the farmhouse and steading. At that time the Estates were aware that a significant local employer, a landscaping and construction company, was planning to re-locate to Perth as they had out-grown their facilities and were finding it difficult to employ local labour. The Estates offered this business the vacant holding, which provided them with both a home for their Foreman, additional land to expand into poly-tunnels and the growing on of young exotic trees together with a wide range of buildings for conversion to machinery storage and workshops. The business now has forward plans to start a rural trades vocational centre for young people wishing to obtain practical experience and qualifications in skills relating to rural businesses. The business has also asked if the Estates would be willing to work with the training facility to provide work sites and projects which we have happily agreed to do.

**Opportunity for diversification:** Due to an existing relationship with the Estates tenant, farm business and usually younger members of the family have a distinct advantage over their owner-occupied neighbours in that they can tap into the huge work-load facing the Estates. Examples on Atholl include a plant operating business operated by a tenant farmer’s son, which now employs full-time two members of the family plus seasonal assistance. The business completes almost all the Estates road maintenance and soil haulage works amounting to approximately £100,000 per annum.

**Lease Commitment and Restructuring Opportunities:** With the advantage of scale and undiluted farm unit structure, Estates can provide long-term commitments and options for re-structuring. A recent example would be a Limited Partnership started in 1985 which was renewed in 2001 for a further twenty years bringing into the Partnership the existing general Partner’s son. Also discussed is the potential to expand into a further 100 acres currently leased to an elderly tenant with no young family coming on.

**Habitat Management:**

- Implementation of the Forest of Clunie S.P.A/S.S.S.I. After much encouragement from Atholl, all the Estates let farm units have now carried out a Habitat Assessment and are in the process of developing Management Plans with S.N.H. and the Estates. This scheme is a good example of how such management initiatives can be set up to allow for both the farming
tenant and the Estates to be party to the agreement, benefit from the agreement and have clearly defined objectives and roles.

- Implementation of vermin control, particularly foxes, across farm boundaries. Estates structure allows for the retention of keepers and provides for the control of these species which could not be co-ordinated or financed on a single farm basis.

- Deer Control: With the overview of Estate Management, deer populations can be controlled through the co-ordination of keepering staff, particularly in areas of hill or moorland.

**Affordable Housing:** Recent examples on Atholl have been twenty affordable units constructed in 2000, ten in 2001 and sixteen being procured for 2003. In addition, twenty further open market housing units are in the process of being made available during 2002 and 2003. Six of these have been approved by Communities Scotland as eligible for rural home ownership grant and marketing will be focused on these units towards the local community.

**Training:** Partnerships for grant-aiding training can be extended from the Estates structure to the wider community as has been the case on Atholl where our local training provider, Kincardine and Deeside Estate Training Group, have agreed that farming tenants on the Estates would be eligible for the same grant assistance as the Estates' staff.

**BUCCLEUCH ESTATES**

**Buccleuch Scotch Beef:** This business has been expanding since it took over the abattoir in Castle Douglas in 2000. A £250,000 investment in 2001 in a new cutting and boning plant has created some 15 new jobs, bringing the total in the business to 32. Buccleuch Scotch Beef is drawn from three main sources – from the Estates' own in-hand farms, from its tenanted farms (largely through Farmstock, a procurement co-operative which the Estate had a hand in founding 10 years ago) and through the Buccleuch Scotch Beef Producers Club.

**North Lowther and Muirkirk SSSI:** The southern end of this newly designated SSSI, the largest in Scotland, lies on the Buccleuch Estates Queensberry property in Nithsdale, Dumfriesshire. The Estate has a reputation for the high quality of its conservation management and has won many awards for its work. This commitment is ongoing and is demonstrated in the Estates' role in a new and innovative moorland restoration and management project.

Much of the Queensberry Estate is in an ESA and almost all the tenant farms are in the ESA scheme. In partnership with the tenants, the Estate is working on stock density reductions to encourage moorland restoration and habitat improvements. Heather burning is carried out working with tenants.

**Foot and Mouth Disease**

The Foot and Mouth epidemic had a major impact on the Buccleuch Estates particularly on the Eskdale and Liddesdale Estate around Langholm where 62 of the
74 tenanted farms had livestock culled during the crisis. The disease also had an impact on the Bowhill and Branxholm Estate in the Scottish Borders where 8 farms were affected as dangerous contact, contiguous or extended culls.

Within a very short time of the outbreak starting, the Estate working with the SAC employed a farm business advisor to man a special helpdesk for tenant farmers. This was designed to respond to urgent requests and advice on continuing farm practice during the crisis.

This work was extended subsequently into a farm business review scheme contracted to the Estate from SAC, in which the Estate paid for a farm business review for tenants affected by the disease.

Tenants wishing to diversify after the outbreak had access to a Challenge Fund set up by the Estate. This was designed to fund research into alternative enterprises or to fund study trips to look at new ideas elsewhere.

**Community Facilities**

Buccleuch Estates and its communities have been closely linked for generations, from the building of the 19th century villages like Newcastleton and Thornhill to the gifting of ground for the sports fields in Hawick and the new Sanquhar swimming pool in the late 1990s.

For over 100 years the Estate has had a policy of open access and actively encourages recreational use of all types. The Estate employs a number of countryside rangers and spends in the region of £100,000 per year on managing public access and providing countryside education.

The Estate at Drumlanrig Castle provides craft workshop units for what are essentially micro businesses. These are offered at low rents (typically £600 pa. per unit) or have been offered rent free to starter businesses.

Buccleuch Estates were founding members of the Southern Uplands Partnership and have given continuing support in cash and kind to this community based organisation.

**Business Support**

The Estate has from time to time worked with tenants and estate contractors to fund as an equity partner or on other terms, business development or diversification schemes. The Estate contribution can vary in these cases from soft loans, rent free accommodation, minimum guaranteed work to underwriting loans or acting as guarantor. Successful farming and forestry contracting businesses have been established through this sort of partnership working.

**Investor In People**

Buccleuch Estates has been a recognised Investor in People since 1997, having successfully made the connections between people and business operations. The IiP standard has provided a useful tool for looking at business planning processes and the development needs of people in the business, making the connection live.
The commitment to making this process work came from the top. The Duke of Buccleuch as Chairman of the company, and his fellow Directors were committed to the principles of IiP. Commitment was won from managers and the workforce of over 250 employees spread across business operations over 400 square miles of countryside in South Scotland and Northamptonshire in England.

The Estate was the first business of its type to be awarded the IiP standard in 1997 and is currently working with IiP Scotland on its second IiP review which will take place early in 2003.

**DUNECHT ESTATE**

Dunecht Estate lies 13 miles west of Aberdeen. Enterprises include in-hand farming, let farms, residential and commercial property lets, forestry and sportings including a pheasant/partridge shoot, roe stalking and fishing lets. Conservation and amenity interests are significant and include:- breeding and wintering grounds for wildfowl - Loch of Skene (Site of Special Scientific Interest) Garlogie Dam, Waterton Loch and Policy Loch; year 2000 and 2001 plantings of new small woods and shelterbelt extensions under Woodland Grant Scheme; the annual planting of 500 hardwoods as long term replacements for existing mature beech, oak, ash and elm; Dunecht Home Farms' participation in the Countryside Premium Scheme; the employment of a full time drystone dyker to maintain the Estate’s extensive network of dressed and ashlar drystone dykes; and proposed conservation area status for Dunecht village and the historical part of Echt village.

The Estate also facilitates a wide variety of recreational opportunities within the managed parkland of Dunecht House and on other parts of the Estate. The Dunecht playing field has both a football pitch and cricket square and includes a clubhouse facility with the football club competing in the local summer league and the cricket club providing two teams for the Aberdeenshire Grades. The Aberdeenshire Pony Club has its clubhouse at Dunecht and facilities including cross country course and sand school. Dunecht House Golf Club plays over a nine hole course with full Scottish Golf Union accreditation and has an active membership of over 300. Also, Loch of Skene is the early season base (March, April, May and June) for Aberdeen and Stonehaven Yacht Club. Other users including Aberdeen City and Aberdeenshire Councils and Aberdeen University also sail on the Loch. In addition to informal recreation Dunecht has its own Ranger who works and liaises with local walking clubs and interest groups and, as well as arranging guided tours for the local primary schools and Scout pack.

The pheasant/partridge shoot operates over both in-hand and let farms. Three gamekeepers are employed full time with the shoot also providing casual employment on shoot days throughout the season. Historically, areas have been planted to improve the shoot and this practice continues with benefit extending to wildlife generally as well as having a positive impact on the landscape. Game cover crops are sown annually in strategic locations and a recent study carried out by The Game Conservancy and University of Dundee has shown that the number of farmland birds using these cover crops is many times higher than that using other habitat types. The study shows that, at a peak, cover crops support 95 birds per hectare compared with 6 for stubble fields, 3 for set-aside and 0 for conventional
crops. Overall the study recorded that game crop areas supported almost twice as many species of birds than conventional crops.

In contrast to Dunecht, an adjoining estate to us, Castle Fraser estate, which extended to 3600 acres, was sold in 1992/93 in various lots split between farms, woodland and houses. Prior to its break up, all the farmland was farmed in hand and the estate had 22 employees in total. Of the 22 employees, 2 were employed in the game department which ran a commercial shoot. The rest of the staff were engaged in the usual departments - office, farm, forestry and maintenance. Now the estate has no commercial shoot and no gamekeepers are employed with the resulting loss in economic activity not only by way of rents but also wages, trade bills etc and the money spent on accommodation, food and ammunition by the various shooting parties. Because the shoot has disappeared, general maintenance has suffered and maintenance of small woods, clearance of windblow etc. has suffered.

Stuart Young, the factor at Dunecht Estates, says he has no knowledge of any shoot in Aberdeenshire employing full-time gamekeepers which operates over a group of farms in owner-occupation.

**SEAFIELD ESTATES**

Seafield Estates has, over many years, been committed to an integrated natural heritage and environmental management programme. Seafield Estates believes there are many benefits to be derived from the scale of operation of estates. Seafield estates natural heritage and environmental work includes:

- Encouraging the sustainable development of rural industries with due regard to flora and fauna
- Participating with Scottish Natural Heritage and the Royal Society for the Protection of Birds and others in research surveys including Capercaillie and Twinflower
- Encouraging conservation by removing redundant deer fencing in order to reduce bird strikes
- Promoting the restoration of birch woodlands within let farms and to research in co-operation with Highland Birchwoods the impact of different grazing regimes
- Controlling deer numbers by culling to at least the numbers recommended by the Deer Commission for Scotland in agreed management plans
- Producing a Management Action Plan for the highly acclaimed Kinveachy Site of Special Scientific Interest and Special area of Conservation
- An active regeneration programme of Castle Grant grouse moor in association with an Advisory Consortium including the Game Conservancy, Stirling University, Edinburgh University and the Moredun Research Institute
- Improvements to tributaries of the Spey in order to encourage habitat conducive to good spawning in association with the Spey River Board, Scottish Natural Heritage and the Scottish Environment Protection Agency
OWNER OCCUPIER COMPARED TO TENANT

Proponents of the absolute right to buy for tenant farmers claim that not only would the right to buy be beneficial for Scotland’s environment but that farms in owner-occupation enjoy greater investment compared with tenant farms. It is, in the view of the Scottish Estates Business Group, impossible to sustain a ‘public interest’ argument on this point unless there is overwhelming evidence that investment in owner occupied farms is far greater than that in tenant farms. The overarching factor in investment in farms, whether owned or tenanted, in recent years has been the difficult circumstances in which the farming industry finds itself. The Scottish Estates Business Group does not in any way wish to denigrate owner-occupation and its members sell farms to tenants as an ongoing process. For example, between 1959 and 2000 on the Seafield Cullen Estate, around 35 farms were sold with the vast majority sold to the sitting tenants. These were individual sales, mostly in one area, and not the sale of a mini estate as a block.

Seafield Estates believes only a few of these farms show any noticeable investment beyond what was in existence when they were tenanted units. Farms that have been improved are either owned by very good farmers, some still tenants on other Seafield holdings, that would have been successful anyway or, owned by families who own good businesses away from the farm. The availability of capital and the business skills are more important than the status of farm occupation. It cannot be stressed strongly enough that the state of the agriculture sector has made life difficult for owner-occupiers and tenants.

In Seafield Estates’ area, one north-east land auctioneers and valuers has confirmed that around 25-30 farms are currently sold by them each year. Looking at sales over the last 15 years, there is evidence of the difficulties facing farmers. For example, sales during the period 1986-1989 resulted from the owners experiencing financial hardship following a period of sustained high interest rates which were high during the early 1980's from a peak of 18% in 1979. The other component was a very bad harvest in 1985 which compounded the problems. The 1987/88 sales were mainly made following instructions from bankers. Roughly one third of the owners were technically bankrupt.

This evidence shows that ownership of land does not ensure security of a farming business.

The committee has heard evidence that owner-occupation accounts for around 70% of farms in Scotland with tenant farming accounting for roughly 30%. In many cases the tenant farmer is more able to cope with adverse economic circumstances. The Scottish Estates Business Group firmly believes the letting sector allows the sharing of risks and is an excellent way to enter the sector safely and must continue to be available.

SEBG has argued that a vibrant tenanted sector is good for Scottish agricultural. A farming economy with a variety of tenure patterns is inherently more sustainable than
a system dominated by one sector. In this, SEBG endorses the Ministers approach in the Forward Strategy for Scottish Agriculture.

The tenant system retains freedom of choice and:

- Provides choice of tenure
- Allows choice over how capital is invested in a farm
- Facilitates phased enlargement of operation, which allows economies of scale (present difficulties enhance the need for this)
- Allows new blood to come in and reinvigorate the sector
- Offers financial risk management advantages as farm rents fluctuate less than bank interest rates
- Allows for greater scale of integrated land management creating more opportunities to meet social, economic and conservation objectives across rural communities.

Consider a typical 800-acre stock farm:
Purchase price £400,000 (Mortgage at 5% pa £20,000)
Rental as tenant £10,000 per annum
In-going stock/equipment £150,000

Where the farm business has a limited amount of capital available, the tenanted farm offers an affordable option.

Contrary to popular belief, farm tenants under the ‘91 Act have a high degree of security of tenure and are able to commit financial planning to the long term.

Evictions are an extremely rare occurrence. Secure tenants under current Agricultural Holdings legislation have more security than council house or short assured residential tenants.

Notices to quit are served only in very extreme circumstances, for example:

- Prolonged failure to pay rent
- Bankruptcy
- Bad husbandry

**Evictions**

In an SEBG sample of about 500 hundred tenanted farms, there have in the last 10 years or so only been 6 evictions from the farm. Of these, one was for non-payment of rent, two were for bad husbandry and three were due to bankruptcy.

Three of the six tenants were allowed to remain in the farmhouse.
Retirement

Being a farm tenant is not a barrier to financing a retirement. Again in the SEBG sample, there have been 62 retirements during the last 10 years. This would be about 12.5% of the sample.

On retirement, some farms are re-let, others are amalgamated with existing holdings to facilitate farm expansion for tenants.

New Entrants

In the SEBG sample, a number of Estates mentioned that they had been attracting new entrants to tenancies over the last 10 years. The ages ranged from 19 to 57 years old. A number of new entrants came from existing farming families and had moved to their own enterprise. An absolute right to buy would remove the opportunity for these people to get their foot on the farming ladder as tenants. Some were happy to dispose of privately-owned farms to secure a larger tenanted holding.

TRUSTS

The issues of family trusts in relation to the right to buy debate was raised at the committee. Sarah Troughton, chief Trustee at Atholl Estates, is writing to the committee on this matter and her views correspond with SEBG’s understanding of how the proposed legislation would affect trusts.

LET LAND IN EUROPE

Scotland is far from unique in Europe in having and maintaining a viable tenanted farming sector. Land is let in France on renewable 7 year fixed term tenancies whereas in Belgium there is a much more flexible approach to letting land. Nearer to home Northern Ireland uses 1 year leases and in Eire the industry is looking at options for medium to long term tenancy arrangements in response to demand from the sector.

Tenanted farms are an important part of the agricultural landscape across much of Europe, from the northern countries such as the UK and Germany to France and Italy and other Mediterranean countries. For example in Greece there is a system allowing local government to lease land to farmers.

The need to retain an option for letting land is common across the EU. Locally arrangements vary in to reflect local farming traditions and business needs.
SUPPLEMENTARY SUBMISSION FROM RODDY JACKSON, ROXBURGHE ESTATES

The Roxburghe Estates recently submitted written evidence to the Committee on the above Bill and following the announcement of changes to the triggers to the Community Right-to-Buy under the Land Reform Bill to include inheritance and inter-family transfers I thought the Committee should be made aware of the significant impact this measure will have on landlords willingness to let land in future.

It had been understood that the trigger for the pre-emptive right-to-buy by secure tenants would apply at the time a landlord chose to sell and would exclude any inter-family arrangements and inheritance. It now appears that this will not be the case if the agricultural holdings legislation adopts the same provisions as have now been accepted under the Land Reform Bill. This confirms what we, and, I believe, many other landowners have feared that the right-to-buy would be extended thereby placing a significantly higher degree of risk to letting.

As a result we have been forced to review our policies on letting in future. Sadly we believe the political risk is now such that, instead of letting on long term arrangements as has long been the practice on the Roxburghe Estates, we will now look at short term occupational arrangements such as contract farming or share farming agreements, and SLDT’s. Attractive though the LDT’s would have been we cannot have confidence to let on long term arrangements when the Parliament might introduce legislation in future with adverse consequences for landlord’s interests.

The loss of confidence will, in our view, seriously undermine the tenanted sector by restricting opportunities for new entrants to the industry and for existing tenants wishing to expand. We hope that the Committee will consider very seriously the impact that this erosion of confidence will have on the industry before it issues its recommendations on the Bill. We repeat our invitation to the Committee to visit the Roxburghe Estates and to see first hand the level of investment in maintenance and improvement of let farms taking place and the excellent relationship which exists between the Estate and the farming tenants. As we have made clear in our original submission we value this good relationship and look to assist the farming tenants with the development of their businesses.

Reform of outdated legislation on agricultural holdings is needed to revitalise the tenanted sector and to reverse the long term decline in let land in Scotland. We would urge the Committee to reject measures such as the absolute right-to-buy and an extension of the triggers for the pre-emptive right-to-buy for secure agricultural tenants which would seriously undermine the objectives of the Bill.

Roddy Jackson
1 November 2002
SUPPLEMENTARY SUBMISSION FROM TOM GRAY

Reading the papers for this and last weeks committee meeting taking evidence on the Bill, my input of 23rd October would seem to be appropriately supported by my comments below, previously submitted at the consultation stage of the draft bill.

COMMENTS on DRAFT AGRICULTURAL HOLDINGS (SCOTLAND) BILL

Scotland is well renowned for many attributes. The warm-hearted and inventive nature of its people, beautiful countryside and coastline, and the quality of our products come to mind.

However, our land tenure structure, locking land in the hands of few, frustrating the ambitions of many who seek to live and work in the countryside, and committing the vast majority to urban landlessness or emigration, is infamous worldwide. Consequently, land reform is the single most important issue necessitating the reinstatement of our Scottish Parliament toward the well being of the nation as a whole.

Foreword and Outcome of Consultation

I welcome Environment and Rural Development Minister Ross Finnie’s comment in the Foreword to the draft Bill document where he acknowledges the Executive’s ability to achieve real change for the people of Scotland.

Regrettably however, having sought major change throughout my entire life, the Outcome of Consultation, (chapter 3), makes depressing reading and I am concerned that he has lost sight of who the Executive is working for.

It would appear that the two key vested interest parties, SLF and NFU Scotland, instrumental in perpetuating our imbalanced land tenure structure, and resultant need for real change for the people of Scotland, are also key players in the formation of the proposals. It is perfectly understandable that such parties should seek to defend their respective interests. However, never likely to emulate turkeys voting for Christmas, they were always certain to seek conclusions likely to perpetuate our infamous land tenure structure rather than present solutions inclusive of the interests of the landless majority.

The text of the consultation document confirms those fears.

The land-owning community in particular was the very sector of Scottish life perhaps least in favour of the Scottish Parliament, even more so its proposed land reform measures.

Meanwhile those outside the farming and land-owning lobby groups are invariably the very people relying on the Executive to bring about change, through land reform, providing maximisation of opportunity to develop home and livelihood throughout rural Scotland. Scots sing to this legendary theme in their recently adopted anthem celebrating their forefathers who fought and died for such freedom. Further evidence to this need for opportunity can be seen in the rural property market which has for long borne scant relation to the agricultural value of land. Yet it seems that mere tinkering with the detail in the next of a succession of Landholding Acts, effectively in the perpetuation of our anachronistic land-tenure structure, is the limit to what is on offer under the draft Bill.

Our urgent need is a healthy land ownership structure reflecting the needs and aspirations of Scots.

Stability and strength in our rural communities and economies will develop as a result of increased opportunity in owner-occupation of land.
Somehow oblivious to this, and ignoring the fact that many farmers consider farming is for life, just as landowners see landowning for life, indeed generations, Mr Finnie suggests we need to maintain a healthy tenanted sector to attract new blood and ideas. Personally, I struggle to identify what constitutes a healthy tenanted sector in land occupation and doubt if there can be such a thing.

Why Mr Finnie suggests a tenanted sector is unclear when a healthy owner-occupied countryside would meet Scotland’s needs.

New and old blood, needs opportunity to flow through a healthy set of unrestricted veins in the development of natural strengths and aspirations. The landlord tenant system restricts such development by those seeking to occupy the countryside. Meanwhile, with the SLF and NFUS holding longstanding opposition to capping of farm support, the unlimited expansion of existing enterprises persists. The proposed new limited duration tenancies offer opportunities for established farmers to farm more land and I have no doubt the proposals will simply facilitate, and thereby accelerate, this trend at the expense of opportunity for new entrants to land-holding and farming, the supposed reason for maintaining a tenanted sector.

Contrary to trends shared by neighbouring EU partners, where commonplace part-time farming promotes rural development and increased opportunity for new blood, part-time farming is discouraged in Scotland under the proposals (3.41.) It seems land-owners claiming part-time farmers were an impediment to the efficient management of their estates is considered more important than the efficient development of the countryside in the interests of everyone else. That NFU Scotland fail to protect the interests of smaller farms merely confirms its greater interest in the expansion of existing enterprises rather than maximisation of opportunity for new entrants to the farming industry.

We already have only one tenth of the proportion of farmers relative to the non-farming community in Scotland compared to the Republic of Ireland. In Ireland rural development, tourism, and empathy, understanding and support for all things rural leave us well behind in confusion and stagnation.

In view of the recent suggestion by Prince Charles that we must bridge the real gulf of understanding between those who live in the towns and those who live in the countryside, further amalgamation of farms is the last thing we should be doing.

In reality many of our farming enterprises, from the very small to the very large, are already maintained by part time farmers and landowners subsidising their farming enterprises and estates with income from elsewhere. Indeed such support from employment and business outwith agriculture has traditionally been the mainstay of support to Scottish country estates and the certain necessity of crofting. If farming small areas of land is a basis for maintaining local working rural communities in our remote crofting areas, where supplementary employment is often difficult to find, the same principle must apply, even more so, in more accessible areas throughout mainland Scotland where off-farm income to subsidise farming is more readily available.

Logically we should be enthusiastically supporting part-time farming throughout Scotland.

Without doubt the desperate need in Scotland, both to meet the needs of its people and stabilise its economy, is to maximise opportunity to allow all willing individuals to invest in their own patch of rural Scotland. Scale of enterprise is irrelevant. The ability of the land to produce is not dependent on scale of enterprise, and, importantly, the incessant drive towards the ever-larger, but apparently ill-defined, if not unattainable, viable unit, ultimately destroys the countryside, rural communities
and rural life. Indeed rural development and environmental concerns are better cared for when the pressure on farming for profit is removed and farming for pleasure restored.

Members of three Royal generations, the Queen, the late Queen Mother and Prince Charles, the archetypal part-time or hobby farmers, maintaining their respective estates, farms and stock, in pristine condition, at no doubt considerable financial expense, are prime examples.

Others can be found throughout the spectrum of land-ownership scale including the countless homeowners who dedicate huge resources into their beloved gardens nation-wide.

Scotland is a great big beautiful garden. It will be all the more so the more gardeners there are with a stake in it, to tend to it, and maintain contact with, and welcome visitors from, the wide world beyond.

Much hope was pinned on the ability of the Scottish Parliament to bring real opportunity to the countryside.

I therefore urge a very strong rethink on the relevance of a tenanted sector today with careful consideration of the measures to ensure opportunity for new entrants prevails rather than opportunity for further expansion of established farming and landowning enterprises, the very antithesis of that which Scotland needs and Scots want.

Tenants’ right to buy

With regard to tenants’ right to buy, it is essential to recognise the stark difference experienced by different tenant farmers in their relationship with their landlords.

No doubt many have comfortable businesslike relationships within which a good understanding and mutual consideration of respective requirements of landlord and tenant is maintained and the well-being of land and property kept in good state throughout the tenancy. For such farmers, proposed limited duration tenancies, presenting opportunities for further expansion, are no doubt welcome with a pre-emptive right to buy considered appropriate.

Alas, not so for every tenant!

Some have never met or even know who their landlords are, far less have any sort of relationship with them.

Some landlords maintain a policy of apparent indifference with regard to the well-being of their land and properties, allowing vacated properties to remain empty and in disrepair. A climate of decay and despair is evident within such estates where remaining tenants strive to survive.

The loss of 30 of the 35 tenants, never to be replaced, on the estate on which I farm is a tragic and surely disgraceful indictment of government, SLF and NFUS policy makers throughout the post war period. The estate having changed ownership more than once throughout the period, without opportunity for tenants right to buy, and tenants inflicted by the intimidating ways and leverage of successive factors, the air of despair and decay is palpable. Only the experience of living in a slowly dispersing community, with dehumanisation of property and land all around, can tell the tale of hopelessness felt by those remaining. These tenants love their farms now steeped in blood, sweat and tears, and fond happy memories of generations of extended families. It is intolerable that Mr Finnie through misguidance, or misunderstanding of the facts, should condemn such people to further years of sub-standard housing, increasing solitude and prolonged uncertainty. As one eighty year old widow put it to me, ”I go to bed every night and wonder what is going to fall in next during the night.” This where the tenant, because of age, was entitled to 90% grant to upgrade
the farmhouse. Yet the factor refused to authorise the estate’s share of 5%, a typical tenant-sickening manoeuvre. The opportunity was lost and the farmhouse remains a day to day patched-up substandard draught and damp zone, desperate for investment, all the while housing willing buyers, if only the right to buy was available. This is a modest but hard working, highly dedicated and respected family of the very highest level of achievement stockpersons, the very backbone of our renowned livestock industry, scunnered, like many others, by successive uncaring landlords and their tenant-sickening policies.

My own parents, father a Perthshire tenant farmer’s son, mother born in Greenock, raised in Glasgow, taking the tenancy in 1943, raised five children in a similar humble but happy home. By 1967 two were in Australia, two in America and one in Edinburgh trying to make sense of the factor telling my father that when he died there was no future for his sons there and the estate would let the farm fall down.

I never could make sense of it and it now falls on Mr Finnie to provide explanation or change his thinking.

Some six of the vacated farms to the south east of the estate lie within the catchment area of a bottled water supply and now cover the source of raw product to a major employer in that area. Most of the remainder are located a river valley and several miles from this alternative land use and there is no excuse for those farms being unoccupied. The fact that farms draw subsidy, whether occupied or not, does not help. Indeed justification is required from the SLF and NFUS, whose policies of no capping promote such activity, and Mr Finnie, whose department allows such distribution of support against the public interest.

The responsibility now lies with the Executive to put an end to needless depopulation of rural areas, here in the upper Allan valley, and widespread throughout Scotland. Remaining tenants here, as indeed on other similar estates, invest considerably to meet the respective infrastructure requirements of their farms, however there is a point where only owner-occupation will justify further major long-term investment into these properties. Under the circumstances of uncertainty within such tenancies it is commonplace for tenants to struggle on and survive without farmhouse renovation and appropriate permanent buildings with concrete yards and floors, all essential improvements towards efficient and healthy farm management today.

Despite Mr Finnie’s assertion that absolute right to buy would decimate the tenanted sector, in fact, only absolute right to buy will protect the opportunities represented by these farms.

Opportunity for pre-emptive purchase of these properties is highly unlikely and the tenant-sickening circumstances that discourage tenants to invest fully, also discourages succeeding generations to maintain their heritable tenancies. Undoubtedly the fate of dereliction and lost opportunity awaits the remaining tenanted farms, thereby completing depopulation of the farming community they once served.

It must be recognised that the air of despondency experienced by tenant farmers within such neighbourhoods is similar to that shared by others, denied opportunity completely, or forced to accept the alternative of partnership agreements today, and the next generation of agreements, the proposed SLTs and SLDTs, in the future. All this frustration stems from the land-ownership structure, not the detail of the landlord tenant system, past, present or proposed.
With regard to 4.4 suggesting absolute right to buy will result in loss of farms it is worth noting that, over the past 50 years, some 70 farms have already been lost within five miles of here. How many more needlessly lost opportunities lie throughout the countryside, and every one representing another family locked in desperate deprivation in an open urban prison?

How many other decimated rural communities struggle to maintain services through sheer lack of working rural populations while the fruits of urban deprivation yield yet more ill-health, crime and despair?

It really does matter! We pay twice for the folly of depopulating rural Scotland. Once for the lost enterprise and positive spirit generated there, and again for the huge cost of maintaining those who might otherwise lead more positive lives, adding to our well respected attributes, if not needlessly condemned to landless urban deprivation.

I PROPOSE, as a first step to revitalise those farms lacking the investment they require, either from land-owners who no longer repair and maintain, or tenants demotivated through uncertainty, single farm tenants of such farms should have an absolute right to buy their farms.

Secondly, for so long as one non-farming individual desires to occupy a farm, no farmer should receive support on more than one farm.

Unoccupied farms should not attract subsidy.

The sums saved should be modulated towards loan schemes to assist new entrants in the purchase of vacant farms.

Tom Gray
West Park
Braco
Perthshire
Telephone 01786880384
4 November 2002

Addendum

Two days ago a young man appeared to watch our silage making operation. I stopped and spoke, asked where he was from and discussed farming. As he farmed in County Down, I asked the size of his farm. "You'll laugh" he said. With a smile, I said, "I don't think so" (He was speaking to the wrong, or was it right, guy this time)

In fact he was a plumber, his brother an accountant and father an electrician. They farmed 27 treasured acres in Northern Ireland, produced the very best of pedigree beef, throwing every hard earned pound into their beloved enterprise and all for the love of it before profit. This included coming to Perth in February and buying the champion female Limousin at the Pedigree sales.

This family typifies the spirit of enthusiasm lost here in Scotland by denied opportunity and our constant drive for further scale, elusive viability and profit. Our rural development potential is about maximising opportunity to exploit the latent enthusiasm of people here to do just as the Smith family is happily subsidising their fond small patch of Co. Down in development of their preferred rural enterprise.

Tom Gray
We are of course completely taken by surprise at the astonishing submission by James Mortimer. We do not believe he wrote it, and think he is being manipulated by clever people with their own agenda, nor do we for one moment believe that he represents the tenant farmers of the community.

In recent years, in order to make his own farm more viable, Bogmore Farm in Finzean, was added to his tenancy, and substantial invested capital in the way of extra land and farm buildings were entrusted to his care. In addition he was at the same time granted a plot of land to build a house which he has never developed, in spite of the huge increase of capital value that would have been incurred if he had done so at that time. With reference to his house, in 1997, a sum, which equates to more than two years rent for the whole of his farm tenancy, was spent on the farm house. It is true that there was dry rot in his house, discovered shortly after he first moved into the house. The cause was also discovered to be the blocking off of all under-floor ventilation, installed by the landlord, during his father's tenancy. In spite of this the Estate paid the expense of putting it right. In addition, the bridge approaches over the Feugh were improved, part of the farm road was tarred and further improvements made to his house, including a new bathroom. During this period Mr Mortimer has been in breach of his tenancy on a number of points which can be listed, for he has contributed to a deterioration of the value of the landowner's property, to a substantial degree.

Much of his submission is completely irrelevant to the area in which he resides. Indeed the ownership of his building plot, negates much of what he implies. The residency clause, to which he refers, has never been exercised, the resumption of land by the landowner and expensive legal cases in tenancy disputes have never happened, and rent increases over the last forty years have always been negotiated amicably. Mr Mortimer has had one rent review in the last 12 years, the most recent, 7 years ago, and he pays £22 per acre per annum for arable ground where £35-40 per acre is more the norm in Deeside. This example shows that Finzean Estate is by and large a low rented estate, with the policy to encourage and help tenants of long standing to continue farming in a very unstable industry.

In the community in which he lives, the record of Estate policy over 30 years reads like this:-
◆ 4 tenant farmers acquired land to build houses for retirement;
◆ 2 other farmers acquired land for building and are still farming, James Mortimer being one of them;
◆ 7 other tenant farmers or their widows chose to remain in their own homes, having given up their farms;
◆ 5 former Estate employees enjoy/or have enjoyed rent free accommodation on their retirement;
9 other cottages were sold to young people, mainly brought up in Finzean; cont./

14 additional plots were sold at advantageous prices to encourage newly married young people to settle in Finzean. And an additional 4 sites are about to be sold on the same basis;

2 Farm steadings were converted for industrial use giving badly needed local employment, and training opportunities for young people in new skills.

Further, in addition to all of this, the land for the first rural sheltered housing scheme in the North East of Scotland was donated by the Estate. The first Community Wood in this part of Scotland was established, and six years later leased to Birse Community Trust. This Trust was largely created by the owners of this estate for the Millennium Celebrations, and their rights held for over four hundred years were donated. The historic water mills previously owned by the estate were also donated to the Trust at this time.

We could go on with listing other community benefits, supporting the village shop, post office, hall, school, church and local football team. However most people who live in the community would acknowledge this.

The Estate’s policy of supporting local farmers, including one of who went bankrupt, has stood the test of time, for he now owns the house in which he still resides.

Much of the submission made by Mr Mortimer is completely irrelevant as he didn’t write it and creates a false picture of what actually happens in Finzean. We think the Tenant Farmers Action Group has chosen the wrong estate to single out for special criticism, and by using Mr Mortimer in this way totally discredits their cause.
RURAL DEVELOPMENT COMMITTEE

Subordinate Legislation

Note from the Clerk


This instrument has been laid under the negative procedure and the Committee is required to report on it by 11 November. This is therefore the last scheduled meeting at which the Committee can discuss the instrument.

Members may wish to note that SSI 2002/445 breaches the 21 day rule. At the committee meeting on 24 September, the committee discussed the Conservation of Seals (Scotland) Order (SSI 2002/404) which also breached the 21 day rule. Members noted that they could be minded to annul further instruments which breached the 21 day rule and did not have financial implications. A letter to this effect has been sent to the Minister, however members may wish to note that he would not have received this letter at the date on which SSI 2002/445 was laid. A response from the Minister to this letter is attached for information, as is a response from the Lord Advocate.

Members were advised of the arrangements for consideration of SSI 2002/445 by email and by circular (clr 19, 16 October) and advised that if they wished to lodge a motion to annul this should be done in good time, and preferably several days prior to the meeting of the Committee.

The Bovines and Bovine Products (Trade) Amendment (Scotland) Regulations 2002 (SSI 2002/449).

This instrument has been laid under the negative procedure and the Committee is required to report on it by 18 November. Members may wish to note that these regulations also breach the 21 day rule, although in this case, this will allow the Scottish Industry to participate in the date based export scheme under less stringent conditions, and allow for exports to Europe at the earliest possible opportunity.

The Subordinate Legislation Committee will report on both of the above instruments in their 38th Report, which will be available on Monday 4 November and will be issued as a late paper by e-mail to Members. Hard copies will be available at the meeting.
Subordinate Legislation Committee

38th Report 2002

Subordinate Legislation

The Committee reports to the Parliament as follows—

1. At its meeting on 29th October the Committee determined that the attention of the Parliament need not be drawn to the instruments listed in the Annexe to this report.

2. The report is also addressed to the following committees as the lead committees for the instruments specified:

- Justice 1
- The Legal Aid (Scotland) Act 1986 Amendment Regulations 2002, (draft)
- Rural Development
- SSI 2002/445
- SSI 2002/449
- Transport and the Environment
- SSI 2002/450
- SSI 2002/451
- Justice 2
- SSI 2002/458
- Local Government
- SSI 2002/469
Instruments subject to annulment


1. The Committee raised six points with the Executive.

Question 1
2. The Regulations breached the 21-day rule in order, the Executive explained, to meet EU deadlines. The Executive was asked to explain the reason for this breach and also why it was not possible to bring forward these Regulations earlier as the English Regulations were made in May 2002.

Answer 1
3. In its reply, reproduced at Appendix 1, the Environment and Rural Affairs Department stated that the preparation of these Scottish Regulations fell out-of-step with DEFRA in the finalisation of their Regulations in May. Due to consideration of a number of drafting issues and summer leave, it was not possible to finalise the Regulations before September. The Executive was concerned that there was a real risk of infraction proceedings being taken if it did not. In order to minimise that risk it was felt preferable on balance to breach the 21-day rule in this case.

Report
4. The Committee is not unaware of the difficulties in co-ordinating with UK Departments and in this instance the delay in completing the Scottish Regulations was not without incidental benefits. It enabled the Department to take account in the Scottish Regulations of the comments of the Joint Committee on Statutory Instruments (JCSI) on the drafting of the English Regulations¹.

5. Whilst the Committee commends the frankness of the Department, it nevertheless seems to the Committee unacceptable in principle to delay making of the Regulations for a period of 4 months even due to the holiday period and then to breach the 21-day rule because of possible infraction proceedings. The 21-day rule is intended to allow the Parliament and this Committee in particular the opportunity to consider an instrument before the instrument comes into force. In the view of the Committee it should not be breached lightly.

6. The Committee therefore draws the instrument to the attention of the Parliament and the lead committee on the ground that the reasons for the breach of the 21-day rule appear insufficient.

Question 2
7. The Committee asked why in the definition of “owner” in regulation 2(1) the words “or part” had been omitted after the word “consignment” the second time it occurred.

Answer 2
8. The Department suggests that the missing words do not affect the operation of the legislation but is grateful to the Committee for drawing this to its attention. The

Department is already aware of the need for amendments to these Regulations, principally updating legislative references in the Schedules and will, for the avoidance of doubt, add the omitted words in those amendment Regulations

*Report*

9. The Committee offers no comment on the correctness of the Executive’s assessment of the legal position. Nevertheless, the Committee considers that the inconsistency in the wording of the definition may give rise to doubt. The Committee normally considers such inconsistency to be undesirable. **The Committee therefore draws regulation 2(1) to the attention of the lead committee and the Parliament on the ground of defective drafting.** The Committee welcomes the Executive’s undertaking to make an appropriate amendment to the Regulations.

*Question 3*

10. The Committee had difficulty in following regulation 4(c), which did not appear in the English Regulations and asked the Executive to explain its meaning.

*Answer 3*

11. Regulation 4(c) contains a drafting error. The words “at premises” require to be inserted after the words “paragraph (a) and”. Under that amendment, a local authority will have power to inspect products (i) at a border inspection post in its area other than one under the effective authority of the Scottish Ministers and (ii) at premises in its area other than premises under the effective authority of the Food Standards Agency.

*Report*

12. **The Committee draws regulation 4(c) to the attention of the lead committee and the Parliament on the ground of defective drafting acknowledged by the Executive.** The Committee notes that the Department has given no express undertaking to make an appropriate amendment though no doubt it will do so when it makes the amending Regulations to which it refers in its letter.

*Question 4*

13. In regulation 33(6) there is a reference to “destination premises” but elsewhere in the Regulations the reference is always to “destination establishment”. The Committee asked the Executive to explain this divergence.

*Answer 4*

14. The word “premises” has been used in error, and once again the Department expresses its gratitude to the Committee for drawing this to its attention and will correct this in the amendment Regulations referred to above.

*Report*

15. **The Committee draws regulation 33(6) to the attention of the lead committee and the Parliament on the ground of defective drafting acknowledged by the Executive.**

*Question 5*

16. The Committee noted that regulation 61(1) did not refer specifically to unincorporated associations and partnerships, thus being inconsistent with the wording of paragraph (3) of that regulation. The Committee asked the Executive to
explain this omission in 61(1) and also precisely how notices etc would be served on such bodies.

Answer 5
17. Regulation 61(1)(b) provides for service upon incorporated bodies, and although that definition is wide enough to encompass companies registered under the Companies Acts, it is primarily directed at incorporated trade associations and the like. Regulation 61(1)(c) provides for service on “any other person” and that definition is sufficiently wide to include limited companies, unincorporated associations and partnerships. Thus, regulation 61(1) covers service of a document upon any legal person including unincorporated associations and partnerships.

18. Regulation 61(3) makes a specific provision only for companies registered, or partnerships covering a business, outside the United Kingdom and to that extent there is no omission and no inconsistency with regulation 61(1).

Report
19. Paragraph (3) of regulation 61 does, as the Department states, provide for service on overseas companies and partnerships that have a place of business in the UK. It provides in relation to such businesses that “the principal office of that company or partnership for the purposes of paragraph (1) shall be its principal office within the United Kingdom”.

20. Paragraph (1) of regulation 61 however makes reference to a “principal office” only in sub-paragraph (b), which relates to incorporated bodies not partnerships. The Department explains that it considers that unincorporated bodies and partnerships are intended to be covered by sub-paragraph (c) of regulation 61(1) but this sub-paragraph does not mention “principal offices” but refers to “the usual or last known address of that person”. Accordingly, in the Committee's view, as drafted paragraphs (1) and (3) of regulation 61 do not match.

21. The Committee notes that the equivalent regulation in the English Regulations (also numbered 61) is drafted partly in different terms. The final 3 paragraphs are identical but in copying paragraph (5) of the English regulation, which refers to service of overseas companies and partnerships the Department may have failed to notice that the equivalent cross reference includes partnerships and unincorporated associations, which the equivalent Scottish paragraph does not.

22. The Committee therefore draws the attention of the lead committee and the Parliament to regulation 61 on the ground that it is defectively drafted.

Question 6
23. The Committee asked why the heading to Schedule 7 and the relevant item in the Table of Arrangement did not correspond.

Answer 6
24. The relevant item in the Table of Arrangement should be headed “Disapplications”. The Department undertakes to amend this in the amendment Regulations referred to above.
Report
25. The Committee draws this error to the attention of the lead committee and the Parliament on the ground of defective drafting acknowledged by the Department. The Committee welcomes the Executive’s undertaking to amend the Regulations appropriately.

The Bovines and Bovine Products (Trade) (Scotland) Regulations 2002, (SSI 2002/449)

Question
26. The Schedule to the Regulations, which inserted new Schedules 1, 2 and 3 into the principal Regulations, seemed to have missing footnotes. The headings for the second and third columns in each inserted Schedule had a “*” (asterisk) but with no explanation as to what this symbol meant. In the principal Regulations (and in the English version - but not the Welsh version - of these Regulations) there was a footnote that said “* To be completed in respect of each approval”. The Committee suggested that perhaps a similar footnote should have been included here.

Answer
27. In its reply, reproduced at Appendix 2, the Environment and Rural Affairs Department advises that each of the regulations in the principal Regulations which refers to Schedules 1, 2 and 3 makes it clear that the requirements of columns 2 and 3 in the Schedules have to be met. In practice, during the approval process the Executive requests the information in relation to columns 2 and 3 of the respective schedules from the applicant. That request is made by providing forms based upon the respective schedules and accompanied by guidance notes on how to complete the forms.

28. The Department does not consider the omission of the footnote as substantive and suggest that a formal amendment is unnecessary.

Report
29. The Committee considers that, whether or not the omission of a footnote has any practical effect, the presence of the asterisk is clearly misleading and the regulations are defectively drafted to that extent. The Committee therefore draws the instrument to the attention of the lead committee and the Parliament on this ground.
Appendix 1

THE PRODUCTS OF ANIMAL ORIGIN (THIRD COUNTRY IMPORTS) (SCOTLAND) REGULATIONS 2002 (SSI 2002/445)

On 8 October 2002, the Subordinate Legislation Committee raised the following points:

1. The Committee noted that the Regulations breached the 21-day rule to meet EU deadlines. The Executive was asked to explain the reason for this breach and also why it was not possible to bring forward these Regulations earlier as the English Regulations were made in May 2002.

2. The Committee asked why in the definition of “owner” in regulation 2(1) the words “or part” had been omitted after the word “consignment” the second time it occurred.

3. The Committee had difficulty in following regulation 4(c) which did not appear in the English Regulations and asked the Executive to explain the meaning of this regulation.

4. In regulation 33(6) there was a reference to “destination premises” but elsewhere in the Regulations the reference was always to “destination establishment”. The Committee asked the Executive to explain this divergence.

5. The Committee noted that regulation 61(1) did not refer specifically to unincorporated associations and partnerships, thus being inconsistent with the wording of paragraph (3) of that regulation. The Committee asked the Executive to explain this omission in 61(1) and also precisely how notices etc would be served on such bodies.

6. The Committee also asked why the heading to Schedule 7 and the relevant item in the Table of Arrangement did not correspond.

The Scottish Executive Environment and Rural Affairs Department responds as follows:-

(i) Breach of 21-Day Rule

The preparation of these Scottish Regulations fell out-of-step with DEFRA in the finalisation of their Regulations in May. Due to consideration of a number of drafting issues and summer leave, it was not possible to finalise the Regulations before September. The Executive had a serious desire to press ahead with the Regulations and were concerned that there was a real risk of infraction proceedings being taken if it did not. In order to minimise that risk it was felt preferable on balance to breach the 21-day rule in this case.

(ii) The definition of “owner”
We note the omission of the words “or part” in the definition. We would suggest that the missing words do not affect the operation of the legislation but we are grateful to the Committee for drawing this to our attention. The Executive is already aware of the need for amendments to these Regulations, principally updating legislative references in the Schedules and will, for the avoidance of doubt, add the omitted words in those amendment Regulations.

(iii) Regulation 4(c)

Regulation 4(c) contains a drafting error. The words “at premises” require to be inserted after the words “paragraph (a) and”. Under that amendment, a local authority will have power to inspect products (i) at a border inspection post in its area other than one under the effective authority of the Scottish Ministers and (ii) at premises in its area other than premises under the effective authority of the Food Standards Agency.

(iv) Reference to “Destination Premises”

The word “premises” has been used in error, and once again we are grateful to the Committee for drawing this to our attention and will correct this in the amendment Regulations referred to above.

(v) Regulation 61 and service of notices

Regulation 61(1)(b) provides for service upon incorporated bodies, and although that definition is wide enough to encompass companies registered under the Companies Acts, it is primarily directed at incorporated trade associations and the like. Regulation 61(1)(c) provides for service on “any other person” and that definition is sufficiently wide to include limited companies, unincorporated associations and partnerships. Thus, regulation 61(1) covers service of a document upon any legal person including unincorporated associations and partnerships.

Regulation 61(3) makes a specific provision only for companies registered, or partnerships covering a business, outside the United Kingdom and to that extent there is no omission and no inconsistency with regulation 61(1).

(vi) The Heading to Schedule 7

The relevant item in the Table of Arrangement should be headed “Disapplications”. Once again we are grateful to the Committee for drawing this to our attention and will amend this in the amendment Regulations referred to above.

Scottish Executive Environment and Rural Affairs Department
10th October 2002
The Schedule to the Regulations, which inserted new Schedules 1, 2 and 3 into the principal Regulations, seemed to have missing footnotes. The headings for the second and third columns in each inserted Schedule had a " * " (asterisk) but with no explanation as to what this symbol meant. In the principal Regulations (and in the English version – but not the Welsh version – of these Regulations) there was a footnote that said " * To be completed in respect of each approval". The Committee suggested that perhaps a similar footnote should have been included here.

The Scottish Executive Environment and Rural Affairs Department responds as follows:

We are grateful to the Committee for drawing this to our attention. We would advise that each of the regulations in the principal Regulations which refers to Schedules 1, 2 and 3 makes it clear that the requirements of columns 2 and 3 in the Schedules have to be met. See regulations 10(3)(d) and 10(3)(e)(ii) in respect of Schedule 1 and regulations 12(3)(d) and 13(2)(b) in respect of Schedules 2 and 3. In practice, during the approval process the Executive requests the information in relation to columns 2 and 3 of the respective schedules from the applicant. That request is made by providing forms based upon the respective schedules and accompanied by guidance notes on how to complete the forms.

We do not consider the omission of the footnote as substantive and would suggest that a formal amendment is unnecessary.

Scottish Executive Environment and Rural Affairs Department
25 October 2002
Summary and conclusions

21. Overall, the Committee wishes to acknowledge the clearer presentation of the budget proposals this year, which, notwithstanding their complexity, has made it easier to scrutinise the proposals at stage 1. Nevertheless, there is still much to be done in identifying outcomes, and in reviewing cross-cutting expenditure in rural areas.

22. The Committee notes the following conclusions for the Finance Committee’s consideration:

- The Committee strongly requests that the Finance Committee considers an examination of the impact of overall Executive expenditure in rural areas as an issue for potential cross-cutting review by the Finance Committee during 2003.

- The Committee would welcome clarification on the implications for Scotland should the Curry Commission’s proposal on increasing modulation be implemented in England.

- The Committee invites the Minister to assess the costs and the impacts of introducing enhanced rates of modulation in Scotland, with progressive and discriminatory rates of modulation, and with the proceeds matched by UK funds and applied as part of a revised Rural Development Plan through land management contracts or whole farm development schemes.

- The Committee would welcome clarification from the Minister on his objectives in allocating additional funds to the Less Favoured Area Support Scheme rather than to other rural development measures.

- The Committee welcomes the Minister’s commitment to review the Crofters Grants and Loans Scheme and would like to be kept informed of progress.

- The Committee suggests that the Rural Partnership Fund might be one priority to be considered for enhanced funding should further funds become available as a result of the Comprehensive Spending Review.

- The Committee would welcome clarification of the Minister’s priorities for SEERAD’s expenditure on the Agricultural and Biological Research Group programme.

- The Committee suggests that assembling an improved evidence base on rural communities and development might be another priority to be considered for enhanced funding should further funds become available as a result of the Comprehensive Spending Review.
The Committee recommends that the Minister gives further consideration to the three proposals put forward by the Scottish Fishermen's Federation, namely:

- making adequate budgetary provision to attract the proposed European Centre for Fisheries Research and Management to Scotland
- a continuation of the programme of research cruises, jointly managed by fishermen and scientists
- the establishment of an executive body, such as a specialist enterprise company, to manage inshore fisheries and related marine resources.

Rural Development Committee
30 April 2002.
1st STAGE OF THE 2003-04 BUDGET PROCESS

1. I have read with interest the views of the Rural Development Committee on the 1ST Stage of the 2003-04 Budget Process and write to you now to offer the agreed formal response to the points raised by the Committee.

Expenditure in Rural Areas

2. The Committee recommends that expenditure in Rural Areas is one which the Finance Committee might subject to cross-cutting review during 2003. This is entirely a matter for the Parliament but, as I have discussed with your Committee, the measurement of Executive spending in Rural Areas is bedevilled with difficulties. I believe that we can more profitably consider impacts and outcomes of spending rather than the quantum of the spending itself. We have work underway to improve the rural evidence base and data information which should, over time, enable the proper evaluation of rural spending and policies. As I have reported to the Committee, this work includes development of the Neighbourhood Statistics Strategy to allow disaggregation of Social Justice Milestones on a rural/urban basis; similar disaggregation of Enterprise Network targets; consolidation and augmentation of our Geographical Information Systems data on rural services; and, over the longer-term, the spatial development of small area statistics to provide an additional evidential base with which to measure the outcome of rural policies and spending, over a range of policy areas.
Modulation of CAP On-farm Payments

3. The Committee seeks clarification of the implications for Scotland, should the rates of modulation be increased in England and invites me to assess the costs and impacts of increased rates of modulation. The current position is that increased rates of modulation could not be introduced in England alone. Any increase would have to be agreed by all four UK Ministers responsible for Agriculture and apply throughout the UK. I have made it clear that I could consider increased modulation rates only if I had assurances that the additional sums raised would be match funded by the UK Exchequer and if changes could be secured to the EU Rural Development Regulation to allow greater flexibility for spending on rural development measures.

4. The current agreed maximum rate of modulation for the UK is 4.5%, from 2005. On the basis of current forecasts of CAP Market Support expenditure, this would take between £16m and £17m a year from annual on-farm livestock and arable payments. A 10% modulation rate would see the top slice rise to over £35m a year. In considering any proposal that the modulation rate should be increased beyond 4.5% I should, of course, assess carefully the impact on farm businesses which would lose support as well as the benefits which might accrue to the industry from the redeployment of the additional modulation and match funding sums. The recent EU proposals for mid-term review (MTR) of the Common Agricultural Policy suggest the introduction of compulsory modulation, across the EU. We await further detail on the Commission’s proposals but I will be discussing with my counterparts elsewhere in the UK what our position should be in the MTR negotiations, later this year.

Allocation of Funds to the Less Favoured Area Support Scheme (LFASS)

5. The 2000-01 £37m baseline to which the Committee refers was in respect of the predecessor to the LFASS – the Hill Livestock Compensatory Allowances (HLCA) Scheme. That baseline was as planned by a previous administration but had been supplemented in-year, by succeeding administrations, on an “emergency” basis, following BSE, to maintain support under the scheme at the level of some £60m a year – the level from which support was reduced in 1998. In SR 2000 additional resources were made available by Treasury, outside the Block arrangements, to fund the new LFASS. These additional resources came in the form of additional DEL and an estimated £12.5m a year of funding from the EAGGF Guarantee Fund. The allocations of both DEL and AME here have, therefore, been ring-fenced by the UK Treasury for use on the LFASS.

6. The key policy decision here was taken in the course of the 2000 Spending Review, when our aim was to secure from the UK Treasury - for a scheme where provision remained outside the Scottish Block - the necessary UK resources to consolidate aggregate provision for the scheme at a level significantly higher than the previously planned baseline of some £37m. We succeeded in that aim but were not at liberty, subsequently, to deploy the additional ring-fenced UK resources in areas of spending other than the LFASS.

7. In any event, I have no doubt as to the worth of our support for some 13,500 livestock businesses in Scotland’s hills and uplands. The LFASS is targeted on hill areas where population is sparsest and other opportunities to generate income are limited. We have evidence that this support increases the sustainability of rural communities, including the smaller, more remote areas and supports jobs in areas where there is little other employment. It makes a significant contribution towards our objectives to reduce the opportunity gap and to encourage the sustainable development of the communities involved.
Rural Partnership Fund

8. I note the Committee’s suggestion that the Executive might, in the 2002 Spending Review, consider enhancing the funding of the Rural Partnership Fund. Of course, the Committee will have to await the outcome of the Spending Review - which will be announced shortly. As ever, there are many pressures for additional spending which require hard choices on priorities but, in considering priorities for my portfolio, I will give due weight to the Committee’s views here. I note here also the Committee’s wish to be kept informed of progress in reviewing the Crofting Building Grants and Loans Scheme. We are looking carefully at the nature and balance of assistance made available under the Scheme and I will keep the Committee informed of any proposals for change.

Greater Priority for Socio-economic Research and Application of SEERAD Science Budget

9. In recommending greater priority for socio-economic research the Committee may, I think, have misunderstood my comments to it on the deficiencies of the evidence base. My reference to the need to expand our evidence base was primarily concerned with the lack of suitable rural indicators in the social justice and economic development areas. As I set out above, we are committed to addressing this weakness by gathering and monitoring, on a disaggregated rural/urban basis, both the social justice milestones and the key economic development indicators set for the Enterprise Networks. This activity will build a database crucial to determining policy. Of itself, this activity does not require additional research although, where such research is necessary to identify and establish new indicators of this kind, we will fund such work.

10. As to the Committee’s wider observations about the socio-economic component of the SEERAD Agricultural and Biological Research programme, that programme is devoted primarily to funding a wide range of agricultural, biological and environmental research at the Scottish Agricultural and Biological Research Institutes, as part of the UK science base. A proportion of that work, primarily at the Macaulay Land Use Research Institute and the Scottish Agricultural College, goes on socio-economic research. Indeed, in response to our Research Strategy of 1999 – 2003, that proportion has nearly doubled in the last three years. There is therefore much useful work already being funded and, as I indicate above, we will fund further research, where appropriate, in support of the evidence base for rural policy.

European Centre for Fisheries Research and Management

11. In evidence to the Committee the Scottish Fishermen’s Federation suggested that I should consider making budgetary provision available to attract to Scotland the proposed European Centre for Fisheries Research and Management. The EU Commission put forward a number of proposals concerning a Centre for Fisheries Research, only one of which implies a physical Centre with a single location. In its proposals for the Review of the Common Fisheries Policy, the Commission has indicated that it intends to bring forward, in the coming months, a Communication on the improvement of scientific advice for Community Fisheries Management. Once I see these more detailed proposals I will consider the relative merits of the options offered and take a view. Meantime, I note the Committee’s interest in the matter.

Joint Research Cruises

12. The Federation suggested also continuation of the programme of research cruises jointly managed by fishermen and scientists. It is an Executive aim, shared by the EU Commission and reflected in the current proposals for Review of the Common Fisheries Policy that there should be increasing collaboration and improved mutual understanding between fisheries scientists and the industry. I do not rule out the possibility of further, joint research work but the scope and magnitude
of any such activity will need to be considered carefully against other competing demands for fisheries research.

An Inshore Fisheries Agency

13. Finally, the Federation suggested the establishment of “an executive body”, such as a specialist enterprise company, to manage inshore fisheries and related marine resources. Without prejudice to the specific proposal here, I am keen to explore ways to improve the management of inshore fisheries and I am content that my Department should liaise and discuss with the Federation and others the potential for, and merits of, different approaches to managing inshore resources.