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Pàrlamaid na h-Alba

Official Report

RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE

Wednesday 3 February 2016

Session 4

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RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE
4th Meeting 2016, Session 4

CONVENER

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

DEPUTY CONVENER

*Graeme Dey (Angus South) (SNP)

COMMITTEE MEMBERS

*Claudia Beamish (South Scotland) (Lab)
*Sarah Boyack (Lothian) (Lab)
*Alex Fergusson (Galloway and West Dumfries) (Con)
*Jim Hume (South Scotland) (LD)
*Angus MacDonald (Falkirk East) (SNP)
*Michael Russell (Argyll and Bute) (SNP)
*Dave Thompson (Skye, Lochaber and Badenoch) (SNP)

*attended

THE FOLLOWING ALSO ATTENDED:

Patrick Harvie (Glasgow) (Green)
Richard Lochhead (Cabinet Secretary for Rural Affairs, Food and Environment)
Aileen McLeod (Minister for Environment, Climate Change and Land Reform)

CLERK TO THE COMMITTEE

Lynn Tullis

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Rural Affairs, Climate Change and Environment Committee

Wednesday 3 February 2016

[The Convener opened the meeting at 09:30]

Land Reform (Scotland) Bill: Stage 2

The Convener (Rob Gibson): I welcome everyone to the fourth meeting in 2016 of the Rural Affairs, Climate Change and Environment Committee. First of all, I remind members and everyone else to switch off mobile phones or at least switch them to silent. I point out that committee members will be consulting tablets during the meeting as meeting papers are provided in digital format.

Agenda item 1 is day 3 of the committee's consideration of amendments to the Land Reform (Scotland) Bill, and we will pick up where we left off last week with amendments up to part 9. There will be a brief suspension at the conclusion of part 9 before we move on to amendments to part 10, when we will be joined by the Cabinet Secretary for Rural Affairs, Food and Environment and his officials.

I welcome back the Minister for Environment, Climate Change and Land Reform and her officials, who will be present for amendments up to part 9. We will pause briefly after the first group of amendments to allow for some changes to the officials supporting the minister. At this point, I note that officials are not permitted to speak on the record in these proceedings.

We are also joined this morning by Patrick Harvie, who has lodged amendments. Welcome to the meeting, Patrick.

Everyone should have a copy of the bill as introduced; the marshalled list of amendments, which sets out the amendments in the order in which they will be debated; and the groupings, which were published on Monday. There will be one debate on each group of amendments. I will call the member who lodged the first amendment in the group to speak to and move that amendment and to speak to all the other amendments in the group. Members who have not lodged amendments in the group but who wish to speak should indicate as much to me or the clerk. If the minister has not already spoken on the group, I will invite her to contribute to the debate before moving to the winding-up speech. I might, at times, allow a little more flexibility in a debate for members to come back on certain points.

The debate on each group will be concluded by my inviting the member who moved the first amendment in the group to wind up. Following the debate on the group, I will check whether the member who moved the first amendment in the group wishes to press it to a vote or to withdraw it. If the member wishes to press it, I will put the question on the amendment; if the member wishes to withdraw it after it has been moved, I will check whether any other member objects to its being withdrawn. If any member objects, the amendment cannot be withdrawn and the committee must immediately move to the vote on it.

If any member does not wish to move their amendment when it is called, they should say "not moved". However, any other MSP present may move the amendment. If no one does so, I will immediately call the next amendment on the marshalled list.

Only committee members are allowed to vote. Voting is by a show of hands, and it is important that members keep their hands clearly raised until the clerks have recorded the vote. As the committee is required to indicate formally that it has considered and agreed to each section of the bill, I will put a question on each section at the appropriate point. If we do not reach the end of chapter 4 of part 10 today, we will stop at an appropriate point and pick up where we leave off on day 4 next week. I hope that that is all very clear.

After section 65

The Convener: The first group of amendments is on compulsory sale orders. Amendment 128, in the name of Sarah Boyack, is grouped with amendment 132.

Sarah Boyack (Lothian) (Lab): When I raised this issue in the stage 1 debate on the bill, the minister agreed to pursue it in advance of stage 3. I wrote to her to exchange ideas on how we might proceed on the matter, and I received her reply last week before the committee meeting.

The issue has been under consideration and discussion for some time now, and Shelter Scotland, Scotland's Towns Partnership, Rural Housing Scotland, the Scottish empty homes partnership, Community Land Scotland and the Development Trusts Association Scotland have all been enthusiastic about the measure.

Compulsory sale orders are intended to be used as a last resort when all other approaches to bring back into use land or property that has been vacant have failed. Their introduction would strengthen the bill, particularly in relation to urban

areas, but the orders could be used in rural areas as well.

We first discussed compulsory sale orders in the debates on the Community Empowerment (Scotland) Act 2015. They would give local authorities another option—another tool in the toolkit—to regenerate communities. Local authorities report that existing compulsory purchase order legislation is inappropriate for that purpose and that that is why they do not use it. Introducing compulsory sale orders would help councils and communities to bring long-term empty property and vacant and derelict land that blights communities back into use by giving local authorities a legal right to force such property and land on to the open market for sale with the purpose of securing its reuse.

When we gathered evidence on the bill, we talked about the number of people, particularly in rural communities, who cannot get access to affordable housing. Throughout the country, 150,000 people are on housing waiting lists. Using compulsory sale orders would be one practical and effective way to begin to increase housing supply.

Amendment 128 relates to vacant and derelict land. It can blight communities when land remains in that condition, sometimes for years. The amendment would not only create an incentive to develop such land but provide an effective sanction when it is not developed. I hope that the power would concentrate the minds of owners who sit on land waiting for a better price when the market rises while our communities and urban environment suffer.

The amendment would create an additional opportunity for local authorities to deal with vacant and derelict land and property and would promote better economic and environmental conditions in our communities. It would provide a cost-effective, viable tool. Councils do not use current legislation and are unlikely to do so. That is the key point.

I highlight the point that the Development Trusts Association Scotland made. Its strong view is that CSOs would complement measures in the Community Empowerment (Scotland) Act 2015 and that, like the general right to buy, their greatest impact might be to bring about a change of culture in the ownership and use of vacant and derelict land. CSOs would help to encourage discussion, negotiation and, I hope, voluntary agreements. Their use would be very much a last resort but they do not exist at the moment, and they are sorely needed.

I look forward to the minister's comments. Her letter was very helpful. She welcomed the references to the measure in the stage 1 debate. A consultation has been running in parallel with our discussions on the bill so, in deciding whether to press amendment 128, I am keen to know the plans of the minister and the Scottish Government for the measure and whether the minister has a timescale or vehicle for bringing it to the Parliament.

I move amendment 128.

Jim Hume (South Scotland) (LD): I support amendment 128. We can all point to land that sits unused, especially in urban Scotland, where bodies such as housing associations could have been putting up houses to address the housing shortage. The amendment might even affect local authorities, which sometimes sit on brownfield sites.

Michael Russell (Argyll and Bute) (SNP): I am very supportive of amendment 128. We have to introduce compulsory sale orders. There is a weakness in the present system. When we drive around urban and rural Scotland, we see quite a lot of land that, even if it is not completely vacant and derelict, could be used by communities and individuals for their benefit. Land is a resource that requires to be put to good use, and there are many circumstances in which that does not happen. I also think that having a register of land that makes it clear what the situation is will, of itself, bring a lot of attention to the issue. We will come to that later, in debating group 2.

My only reservations relate to the parallel consultation that has been taking place and the fact that the issue is wider than simply being a land reform issue—it is of great importance for housing and communities. Without doubt, I would like to hear from the minister a commitment to take compulsory sale orders forward across Government and an indication of the timescale for doing that. This is, to use a well-worn phrase, an idea whose time has come, and it is time that the powers were available to communities in Scotland.

Alex Fergusson (Galloway and West Dumfries) (Con): I am supportive of the principle of the amendment. I can think of examples in my constituency of land that is owned by an arm of Government in the shape of the Forestry Commission where such a provision could be highly applicable. I have one concern, however, which the minister may come to. Sarah Boyack said that the measure would complement the Community Empowerment (Scotland) Act 2015, but I wonder whether it would not duplicate what is in that act. Even if it does, I am not minded to oppose amendment 128; I am just interested in whether anyone has any comment to make on that.

The Convener: Minister, a third leg to this stool is the independent planning review that is taking place, and I wonder whether it is taking forward

issues around the purchase and compulsory purchase of land. If you have any information on that, it would help us in our deliberations this morning.

The Minister for Environment, Climate Change and Land Reform (Aileen McLeod): I thank Sarah Boyack for explaining her amendment 128 and the related amendment 132. I very much welcome much of what she and other members have said about amendment 128, which seeks to ensure that our local authorities have the power at their disposal and that it could be used at the request of a community group.

In terms of the policy context, the committee will be aware that the call for the introduction of a compulsory sale order was made in the land reform review group's recommendations, which were published in 2014. The recommendations relating to land assembly, housing and regeneration were the subject of an extensive consultation that was undertaken by the Scottish Government last summer. As part of that work, the compulsory sale order recommendation was widely welcomed by more than 300 stakeholders that took part in the consultation process.

However, it was made very clear that a lot more work was required to ensure that the power was effective; that a correct balance was achieved between the rights of owners and the benefits that would arise from such a power; and that the fit with existing powers such as compulsory purchase powers was understood. The consultation feedback also made it clear that the power would be most useful in relation to abandoned buildings and small plots of land, particularly those that blight our town centres and neighbourhoods, rather than large pieces of land.

I am happy to reconfirm the comment that I made in the stage 1 debate that the Scottish Government is considering compulsory sale orders. Ministers are still giving full consideration to the consultation findings, and it will take time and careful consideration to bring forward an effective compulsory sale order. In the stage 1 report, the committee made it very clear that it is imperative that the bill, like all legislation that is passed by the Scottish Parliament, is within the Parliament's legislative competence and compatible with the European convention on human rights.

There are a number of technical and legal issues with the amendment that illustrate the type of issues that we would need to consider further before bringing forward effective proposals on the subject. On the drafting of the amendment, we would need to consider whether the words "vacant" and "derelict" would need to be defined in this context. Other definitions and key concepts—how an order would be enforced, for example—are missing.

09:45

There are legal issues that would need to be considered. Requiring a landowner to sell their land would be an interference with rights under article 1 of protocol 1 of the ECHR. We would have to consider whether such a proposal could pursue a legitimate aim, whether the proposal would achieve that aim and whether, on a fair balance, the benefits of achieving the aim through the proposal would outweigh the interference with rights under article 1 of protocol 1.

As members have said, however, the time has come for compulsory sale orders. Scottish ministers intend to fully consider all the issues with any such measure. If the Government is re-elected, we would want to bring CSOs forward in the next session as part of our on-going programme of land reform measures.

Such a measure cuts across a number of portfolios—it is to do with not just land reform but local government, housing and, as you rightly said, convener, planning—and I assure Sarah Boyack and the committee that we are currently considering it.

We have an election on the horizon and, as with all plans for potential legislation in the next parliamentary session, it is not possible to give precise timescales as to the overall legislative programme, which is obviously dependent on the outcome of the election, but I assure the committee that the Government is absolutely committed to proceeding.

We are very happy to keep the committee up to date, and I would welcome the opportunity to meet Sarah Boyack, along with the Cabinet Secretary for Social Justice, Communities and Pensioners' Rights, Alex Neil.

There is a real commitment to take forward work on compulsory sale orders, and in that light I ask Sarah Boyack to consider withdrawing amendment 128.

Sarah Boyack: I thank committee colleagues and the minister for their comments about amendment 128. To borrow Mike Russell's phrase, this is an idea whose time has come. It has been hanging around for a while, however, and that is why I was keen to push it today. As the minister said, the land reform review group raised the question of compulsory sale orders, and we discussed it in relation to the Community Empowerment (Scotland) Act 2015. When I held the local government brief, I discussed the issue with local government colleagues in relation to town centre improvements and regeneration. The

idea has been around for quite a while now. I was keen for us to return to it, and to do so on the record so that we could secure a commitment from the minister. I was hoping to achieve that before stage 3, but I am an optimist. I hope that I have secured that commitment to compulsory sale orders around the table and across parties. It is something that we could all work together on.

As for getting the detail right, I would have been astonished if my amendment had been perfect in all respects. However, I will take the general political support that has been expressed around the table today. I hope that the campaigners outwith the Parliament, some of whom are here today, will be reassured by what they can now all take as a commitment from all of us to pursue the matter over the next few weeks and months, and certainly into the next session.

The proposed measure would be an additional power and an additional option for local authorities. On the points that were made by colleagues about what will be in the register and the different types of land that might be available in urban and rural communities, I think that the proposal would complement the powers that are already in the Land Reform (Scotland) Bill and in the Community Empowerment (Scotland) Act 2015. They would help us to tackle the problem of the lack of affordable housing as well as the problems affecting our town centres.

I will not push amendment 128 now, but I am grateful to everybody for their positive comments.

Amendment 128, by agreement, withdrawn.

The Convener: There will now be a change of officials.

Before section 66

The Convener: The next grouping is entitled "Non-domestic rates: vacant and derelict, and unoccupied industrial, lands and heritages". Amendment 129, in the name of Patrick Harvie, is grouped with amendments 130, 131 and 133. Patrick Harvie will move amendment 129 and speak to all the amendments in the group.

Patrick Harvie (Glasgow) (Green): As a non-member of the committee, I did not ask to speak to the previous group of amendments, but I endorse many of the arguments that members made about the issue. It is certainly an issue that I recognise from Glasgow.

The amendments in this group are related to the previous group and seek to address some of the same concerns, albeit that they do so in a different way. Sarah Boyack described her proposal as something that would, perhaps, be used as a last resort. This proposal might be more of a first incentive in relation to the same issue—vacant and derelict land and buildings.

When I come to the committee to move amendments, I always do so in a spirit of hopefulness. In this instance, I think that there is some cause for hopefulness, because some of what this group of amendments tries to do is very much in keeping with aspects of the Government's agenda.

First, I will speak to amendment 131, because it concerns something that the Scottish Government has already taken some action on—or has, at least, indicated its intention to act on—in relation to unoccupied industrial land and buildings. The local government finance settlement makes it clear that the Government proposes to reform reliefs of empty industrial properties, which will, in effect, mean that those properties will be treated in the same way as empty retail properties. The Federation of Small Businesses has welcomed the Government's proposals and noted that by reducing the amount of property relief, landlords would have an incentive to drop rents and to invest in their properties, thereby making them more attractive to potential tenants. I welcome the steps that the Scottish Government has taken in that area. Amendment 131 would simply lock that in for the future. Of course, all Governments hope that they will be in power for all time, but that will not necessarily be the case, so I hope that the Government is willing to support amendment 131 to ensure that its own policy is given a statutory basis, and to give a clear signal that it will be a long-term provision. Amendment 133 is consequential on amendment 131.

Amendment 129 takes the same principle as amendment 131 and extends it to vacant and derelict land. From the many instances that we discussed in relation to the previous group of amendments, we can all recognise that the reality is that there are, in our constituencies and regions, many examples of land that could be put to better use by bringing it back on to the valuation roll and making sure that the owners of that land have a financial incentive to put it to use, to invest in it or—should they not wish to put it to use themselves—to dispose of it at a fair price. I think that that would be an important step towards eradicating some of the perverse incentives that currently exist. For example, there are situations in which owners of land have an incentive to demolish the buildings that are on that land so that it, in effect, ceases to show up on the valuation roll.

As far as I understand it, there is not an explicit exemption for vacant and derelict land, and it is more a question of case law that has been on-going for centuries. I think that we have arrived at a situation at which we would not have arrived by

design. Amendment 129 and amendment 130, which is consequential on it, are intended to rectify that situation. I am told by the legislation team that there might be a requirement for some modification to other aspects of the bill as a result of agreement to them, but my understanding is that the bill already gives ministers a general power, so I have not included that as a specific aspect of the amendments.

I move amendment 129.

Michael Russell: I, too, am sympathetic to the idea of the register and the incentives. I think that there is something inherently attractive about having both a last resort power and an early incentive for people to consider what should happen.

I think that Patrick Harvie's amendments are more applicable to the urban situation than to, for example, my constituency, but they could have applications there, in places where there is a blight on community activity and development because of the way in which land and buildings are treated. Therefore I am sympathetic to the amendments.

I have a feeling that some of the reservations that the minister has expressed regarding the progress that she is making and the need to have that progress spread more widely across Government may apply here, too. However, I do not think there will be any lack of willingness to accept that the principles that Patrick Harvie is enunciating are principles that we should be able to take on board. The practicality of putting them in place is the difficulty, but the idea is right.

Alex Fergusson: I can see where Patrick Harvie is coming from with his amendments, but I see great practical difficulties. I also see enormous potential for conflict and argument when it comes to determining whether land is derelict or is actually serving a purpose environmentally—for instance, when it is not being put to what one might deem to be normal or traditional use. I am not minded to support the amendments at this stage. I can see the principle behind them, but I think that there would be practical difficulties in implementing them, were they to be passed.

Aileen McLeod: I thank Patrick Harvie for lodging, and for setting out the rationale behind, his group of amendments. I understand absolutely the principles behind them.

The intention of amendment 129 is to include vacant and derelict property on the valuation roll. That is already provided for in statute: non-domestic property is currently entered in the valuation roll, whether the property is vacant and derelict or not, subject to specific exclusions including farms and shooting estates.

Amendment 129 also seems to intend prescription of the valuation method for vacant and derelict properties, but that provision is flawed. It refers to a method that is prescribed by section 6(1) of the Local Government (Scotland) Act 1975, but that section only provides an order-making power and does not prescribe any valuation method. That part of the amendment also refers to

"such method ... as the assessor considers appropriate".

That would seem to have the opposite effect of prescription, which is to curtail the discretion that the assessor otherwise has in respect of valuation.

For those reasons, amendment 129 seems to be flawed in both its intention and content, so I ask Patrick Harvie to seek to withdraw it. Amendment 130 is consequential on amendment 129, so I ask Patrick Harvie not to move it.

On amendment 131, I assure Patrick Harvie that the Government wishes to retain different rates-relief provisions for empty industrial property and other empty non-domestic property. As he has said, we have made related proposals as part of the draft budget 2016-17. We have proposed to limit the rate-free period for empty industrial property to the first three months for which the property is empty and to provide 10 per cent relief thereafter. For non-industrial property, we have proposed to reduce relief for the initial three-month period from the current 100 per cent to 50 per cent and to retain the current 10 per cent relief thereafter. In our view, those changes can be made by secondary legislation; subject to final ministerial decisions, we will be laying regulations soon. Therefore, I ask Patrick Harvie not to move the amendment.

I also ask Patrick Harvie not to move amendment 133, which is consequential on amendment 129.

I would like to add that we would be very happy to explore with both the assessors and Patrick Harvie the practical approach and outcomes around the issue that is raised by his amendments.

Patrick Harvie: I am grateful to those who recognise the case in favour of what my amendments propose. We have not only to try to increase the incentives to bring derelict and disused land and buildings back into use, but to recognise that they are a potential source of revenue. Current estimates of the amount of derelict and disused land and buildings in Scotland suggest to us that using the existing rate poundage of 48p would enable us to generate more than £300 million per annum from existing disused land and buildings.

10:00

We talk about the need for investment in social housing. It is not just a case of freeing up the land; it is also a case of finding the revenue that we want to invest. My amendments would go some way towards freeing up the land and finding the money that would need to be spent to achieve what I think is a shared objective.

I acknowledge the minister's comments about the technical aspects of the amendments, but it is not quite clear whether she endorses the basic proposition that what I suggest should be done. Is she saying that it is the wrong way to do something that ought to happen or is she saying that it ought not to happen? I would be grateful if she could be a little clearer—if she is permitted to intervene.

Aileen McLeod: The current legislation on this is quite clear. That is the only point that I will make.

Patrick Harvie: I am tempted to seek permission to withdraw amendment 129 on the understanding that I will have some discussion with the minister prior to the deadline for stage 3 amendments, although I might come back with a revised version of the amendment.

Amendment 129, by agreement, withdrawn.

Section 66—Repeal of exclusion of shootings and deer forests from valuation roll

The Convener: We come to the group on non-domestic rates in relation to shootings and deer forests. Amendment 94, in the name of Alex Fergusson, is grouped with amendments 122 to 126, 95 and 99. I call Alex Fergusson to move amendment 94 and to speak to all the amendments in the group.

Alex Fergusson: Amendments 94 and 95 seek quite simply to remove sections 66 and 67 from the bill, the result of which would be to continue the exclusion from the valuation roll of shootings and deer forests, for the time being.

During our evidence taking, in particular at our meeting in Dumfries, it became increasingly obvious that the Government is, to be frank, unclear about too many aspects of this provision in the bill. I say with respect that the minister was unable to answer questions about how much the measure is likely to raise, how much it will cost to raise it, how much it will be required to raise—given the First Minister's statement that proceeds would go towards the Scottish land fund—or even how the assessors would go about assigning a rateable value to every acre of non-urban land in Scotland, which I will come back to in a minute, if I may. The Government was not even able to answer the question why shootings and deer forests have been singled out while several other forms of non-agricultural land use will continue to be exempted.

The result of our stage 1 deliberations was as damning a section of a stage 1 report as there is likely to be in this parliamentary session. The committee was not convinced by the Government's arguments, and suggested strongly that a major rethink is required. Not the least of our concerns is the lack of any social, economic or environmental impact assessments. However, the aspect that concerns me almost most of all is that in answer to the question why the Government seeks to reintroduce the tax, the only answer has been that it is a question of fairness. I have to ask: exactly to whom does that fairness apply?

I refer members to the letter to the committee from the minister and the Deputy First Minister and Cabinet Secretary for Finance, Constitution and Economy that was sent on 19 January. Paragraph 72 of the letter refers to the ministers' view that the 8,000 subjects that were on the valuation roll in 1995 are an indication of the scale of the exercise that is faced in this instance. However, in its evidence, the Scottish Assessors Association told us that the total of potential entries is likely to be between 52,000 and 55,000. Can the minister explain why she appears to be seeking to include only a small proportion of the subjects, and who is going to decide which subjects go on to the roll and which do not?

Paragraph 73 of the letter states:

> "The Government notes the suggestion from some stakeholders that 'shootings' entries will be required in the valuation rolls in respect of every area of land. This however was not the case for the many years that shootings were rateable, and this Bill proposes no such change or anything to cause such a change."

Therefore, I have to ask whether that means that the Government is suggesting that many of those who should be on the valuation roll will end up not on it, because that is what happened last time. Prior to the exemption coming in, many people appealed their rates bill successfully, with the result that some people ended up carrying the tax burden while others carried on happily rates free, thanks to what were, in effect, Government-approved avoidance measures.

Those two approaches do not seem to exemplify the principle of fairness that the Scottish Government says it seeks. Indeed, the only witness whom the committee met in our travels who is dependent on running a shooting business was an individual who rents the shooting from a Borders estate. That business employs seven people—more, during the shooting season—in a rural area, to say nothing of those who come to shoot and who stay in local hotels and add considerably to the local economy. That individual

explained to us that although he makes a living from his business, the profit margins are not huge and the weather plays a major part in whether the business makes a profit. I suspect that he might have some difficulty this year. However, that business is situated only a few miles from the border. I find myself asking how it can possibly be fair to that person, his seven employees or the local hotels and shops that benefit from the business, to impose a burden of taxation that will not have to be borne by a similar business south of the border. Sporting rates will simply place that businessman at a massive competitive disadvantage to a similar business just a few miles away. That is not fair: it is the absolute opposite.

It is often said that the exemption was introduced by a Tory Government as a sop to its benefactors. That is absolute nonsense. The exemption was brought in because the cost of collecting the rates was overtaking the amount that was being raised. Thus far, the Government has not been able to tell us how much it is likely to cost to implement the system and to raise the sporting rates that it seeks to impose.

I remind members of our statement in our stage 1 report, referring to the ending of the exemption. We said:

"based on the available information, the committee believes the case for change has not yet been made".

The committee asked for robust and comprehensive evidence-based analysis of the potential economic, social and—most important—environmental impacts of the proposal. I do not believe that the limited amount of information that has since been provided comes anywhere close to satisfying that request.

I will conclude by saying a brief word about the possible environmental impact of the proposal. Shooting businesses are known to assist in the delivery of the Scottish biodiversity strategy. It is an interesting fact that shoots over farmland are proven to provide habitat that reverses the trend of the decline in farmland songbird numbers. It is worth noting that the Game and Wildlife Conservation Trust supports my amendments on the grounds that, without the evidence-based assessment that the committee has asked for, this part of the bill poses an unqualified risk to the environment, is based on unclear policy drivers and displays a failure to acknowledge the conservation benefits that stem from game management. I have to say that I agree fully with that.

Until the requests of the committee are fully complied with in respect of this part of the bill, I believe that it should be removed from it. That is the purpose of the amendments in my name.

I move amendment 94.

Aileen McLeod: I thank Alex Fergusson for explaining his amendments 94 and 95, which would together remove the part 6 provision to return shootings and deer forests to the valuation roll.

I will reiterate the purpose of part 6. It is to enable revenue raising to fund public services, and to reflect fairness by returning shootings and deer forests to the same rating regime that applies to the majority of other non-domestic properties.

To briefly recall the background to the current exemption dating from 1995, I remind the committee that the rationale that was given by UK ministers when the exemption was brought in was that it was designed to align Scotland's arrangements with those in England. However, the exemption did not do that, and alignment was achieved only when a subsequent exemption was legislated for in England, taking effect in 1997.

Others have suggested that the reason for the 1995 exemption was that the administrative cost exceeded the revenue, but there is no evidence to support that. We have engaged local government and the assessors on the administrative costs, and consider them to be incremental and sustainable.

I recognise the issues with scrutinising a valuation provision such as this, as it is not a rating provision and does not itself determine rates revenue. For non-domestic rates, the first step involves valuing the tax base. However, given the absence of entries in the valuation roll since 1995, there is no available data source to identify shootings and quantify rents. As with the 220,000 properties that are already on the valuation roll, that work is for the assessors. In that light, the Government has committed, subject to agreement to the bill, to return to the committee to provide information on the emerging valuations once they are available, and to invite the committee to express any views before rating decisions are made, ahead of implementation next year.

At this stage, 2017 rates revenue cannot be predicted accurately for any sector, as we know neither the valuations, the poundage nor the relief eligibility for respective properties. That is the case across all sectors ahead of a revaluation year.

We have also said that, if we are re-elected, we will continue the small business bonus scheme for the duration of the next session of Parliament. I anticipate many shootings being eligible for considerable rates relief under that scheme, which already benefits around 100,000 rateable properties. The liability should be considered in that context.

Having considered the extensive evidence on the proposal—including our public consultation, which drew more than 1,000 responses, with 71 per cent agreement among those who gave a

view—we consider the measure to be sustainable, as it was for over 100 years before the exemption.

We recognise the potential conflict with our wider deer management policies. However, taxes can conflict with objectives in any sector, but that does not necessarily mean that we should not tax. Our intention is that there will be a fair and sustainable rating liability, and our view is that any conflicts will be manageable.

The assessors will work with the sector to ensure that there is an appropriate valuation methodology, and I welcome the preliminary discussions that are already under way. As with all rating valuations, ratepayers can appeal their valuations in independent hearings.

We have presented the available evidence to the committee and we have, although we have had calls for more information and analysis, received no suggestions about what the alternative data sources or types of analysis might be. The Government has not heard any compelling evidence why shootings and deer forests should remain a special case and be entirely excluded from valuation and rating, and accordingly does not agree that the current exemption should continue.

We intend to continue to work closely with stakeholders during scrutiny of the bill and ahead of and during implementation in order to secure fair and workable arrangements. I therefore ask Alex Fergusson to seek to withdraw amendment 94 and not to move amendment 95.

Mr Fergusson referred to comments that were made by the chair of the Scottish Assessors Association, Alasdair McTaggart, in relation to whether there should be shootings entries in the valuation rolls covering every area of land. As we have said, in our analysis, there were around 8,000 shootings on the roll in 1994. By comparison, there were around 55,000 farms and other landholdings including estates and woodlands.

10:15

However, when Alasdair MacTaggart was giving evidence to the committee, he said:

> "hypothetically, every shooting right should be in the valuation roll. However, over the 100 years leading up to 1995, a degree of pragmatism came in and the valuable shootings—the shootings for which the right was exercised and for which there was some value in that right—were the ones that were entered in the valuation roll. Assessors will now have to re-establish the position in the next two to three years."—[*Official Report, Rural Affairs, Climate Change and Environment Committee*, 30 September 2015; c 42.]

That may have caused some confusion.

I thank Alex Fergusson again for explaining his amendment 99. Amendment 99 is consequential on amendments 94 and 95, which I have asked Alex Fergusson not to press. Therefore, I ask Alex Fergusson also not to press amendment 99.

The Government's amendments 122 to 125 will amend the wording of section 67 to remove any unintended scope for misinterpretation. Amendment 122 will simply remove the term "yearly value". Although it was used right up to 1995, it has now been questioned by some stakeholders, given that the prescribed form in existing subordinate legislation—the Valuation Roll and Valuation Notice (Scotland) Order 1989—is for entries in the valuation roll to include net annual value and rateable value. Given that existing provision, amendment 122 will remove any possible doubt as to what is required.

Amendment 123 will insert the term "relating to" to make the link with the valuation area, so that shootings are entered in a valuation roll only in so far as they relate to that valuation area.

Amendment 124 will insert the term

"in so far as situated in"

to make the link with the valuation area, so that deer forests are entered in a valuation roll only in so far as they are situated in that valuation area.

Amendment 125 will remove the original links to the valuation area,

"in so far as exercisable or, as the case may be, situated in",

for shootings and deer forests respectively, which are instead addressed by amendments 123 and 124.

The combined purpose of the three amendments 123, 124 and 125 is to remove the term "exercisable" and correspondingly to avoid any doubt as to its interpretation. The intention of the original wording was simply to make the link to the valuation area, not to invite a distinction to be made as to whether shootings are exercisable or not. The amended wording removes any possible doubt in that respect.

Michael Russell: I was alarmed to receive an email on Friday from a local journalist in Argyll who said that she understood that Alex Fergusson and I were jointly moving amendments to wreck this part of the bill. I was a little concerned about that and asked where that idea had come from; apparently the Countryside Alliance had made that assertion on its website. I would just like to make it clear that that is not the intention of amendment 126. I do not share Alex Fergusson's view that the Government has failed to come forward with more information. I think that it has come forward with more information and that that information is

perfectly easy to understand. It is quite clear why section 66 is in the bill, and I shall support it.

However, we should not rewrite history. I was interested enough in the abolition of sporting rates to go back and look at why that had happened. Among the reasons—I am citing the minister of the day—was the wish that the money spent on the sporting rates should go to better management of deer.

I shall say something later on about the history of deer management in Scotland, which has not been a terribly happy one over the past 60 years, but there was an intention that the resources of estates should be used for better deer management. All that I am seeking in amendment 126 is to continue that linkage, to ensure that if sporting rates are in existence they do not impact in a detrimental way on deer management.

I contend—and will contend later on—that the deer management situation that we are in is considerably worse than it was in 1995, and in that respect I do not think that the proprietors involved did use the resources for the better management of deer, which is in itself an argument for re-imposing the sporting rates.

However, I do not wish to see that imposition being made if it might, even accidentally, produce circumstances in which deer management suffers, so I am looking at the very least for an assurance from the minister that the issue will be borne in mind and will form part of the general guidance to the assessors. I hope that assessors considering the matter—the minister has referred to custom and practice by assessors—will consider this and other debates that the committee has had and realise that deer management is of extreme importance in Scotland and needs more activity and more resource, not less activity and less resource. I look forward to that reassurance from the minister, to see whether I will move amendment 126.

Jim Hume: I have been minded to support some of Alex Fergusson's amendments. The minister mentioned that in 1995 there was no evidence that the revenue received covered the costs of gathering the income. There is also no evidence that incomes received would exceed the costs of gathering the income, because we have not had enough evidence back from the Government, especially regarding the economic, environmental and social impacts. Like many other members, I represent remote areas where there are few options for employment, and I feel that bringing in the domestic and non-domestic rates for shootings and especially deer forests could lead to a loss of jobs in some of the more remote areas. I believe that it is more of a political move that is aimed at the so-called landed gentry, but we have to remember that there are tenancies, that ordinary working folk also engage in shooting and that they are the people who would be more at risk.

An independent survey of work that was done back in 1999-2000 in the Scottish Borders looked at the economic impact of shootings and the like in that area. It pointed out that £41 million was brought into the economy. Lots of hotels would not be open during the winter period if there were no shootings active in the area. I would therefore be happy to support Alex Fergusson's amendments.

Graeme Dey (Angus South) (SNP): Alex Fergusson is right to say that, in our stage 1 report, the committee raised significant concerns over the issue of sporting rates relief, on the basis that we had insufficient information. Unlike Mr Hume and Mr Fergusson, I am reassured by the Government's response, both in writing and again today, so I am not going to support Mr Fergusson's amendments. I do, however, have considerable sympathy for the sentiments and intent that lie behind Mr Russell's amendment 126, although I suspect that the matter might be more appropriately addressed in guidance, if the Government is minded to offer encouragement to estates and shootings to continue doing the right things, or to begin to do the right things, in terms of deer management.

I would like the minister to comment on a particular aspect. We have heard that those who oppose the measure warn, among other things, that it has the potential to harm local economies and therefore to undermine communities. I just wonder whether the reverse could perhaps be the case. The sums that are to be generated are earmarked for the land fund, which would support acquisitions, and I think that I am right in saying that that can include helping to meet the cost of the formulation of business plans. Is there, or could there be, scope to go beyond that and to fund Community Land Scotland to seek proactively to develop capacity in communities where there is an interest in acquisitions, but a lack of knowledge about how to go about it? As part of such an initiative, Community Land Scotland would be charged with raising awareness of the fact that such support could be available to communities the length and breadth of Scotland. I am not convinced that, at the moment, everyone who might be interested in getting involved in that sort of thing fully understands the backup that might be there for them.

Claudia Beamish (South Scotland) (Lab): The committee's stage 1 report concluded that, on the available evidence, the case had not been made, but I—along with my colleague, Graeme Dey—am reassured by the minister's comments today. It is important that the type of non-domestic rate in question returns to the same arrangements that

are made for the majority of non-domestic property rates.

I note what the minister said about the policy being incremental and sustainable, and I am reassured by her comments about the assessors and the development of Scottish Government dialogue with them. I am also reassured to hear that, in the next session of Parliament, the issue will return to the committee so that it can seek views on the arrangements. That will be important, because analysis will be needed at that stage.

It is very important that small businesses are protected, and I listened to what the minister said about that. I support Michael Russell's amendment 126 because it is important that we continue to link moneys that are raised from the rates with future deer management. I also take on board Graeme Dey's suggestion in that respect.

Sarah Boyack: It is quite striking, thinking about the principle behind the policy position, that we would continue to exempt shooting estates when a lot of other rural businesses are marginal and struggle depending on the weather, and are related to wildlife and tourism. That raises wider issues about what is appropriate.

We wanted wider consideration in committee at stage 1 of the impact and commitment to monitoring. We have pretty much got that now, but in principle the other elements in the bill regarding deer management must be considered at the same time, and we need a joined-up discussion about the issues.

The reintroduction of the business rates must be monitored, but I do not see why, in principle, shootings should be excluded when other rural businesses, including wildlife and tourism businesses that are also involved with management issues, are included in the rates system. There is a fairness issue, in that respect.

The Convener: Minister, have you considered equal opportunities issues with regard to the seasonal workers who are employed for shootings and so on? Do we have any information on whether they are paid the minimum wage, or indeed the living wage, by the businesses that we have discussed? People have had concerns about that; I do not know whether you have any information on the matter, but it is worth asking the question.

Aileen McLeod: That is a good point, convener. I do not have that level of detail to hand this morning, but I am happy to supply such information to the committee in writing.

I thank members for their contributions, including on amendment 126 from Michael Russell, and on the other amendments in the group. I thank Michael Russell for setting out the rationale behind his amendment. Amendment 126 would give the assessors discretion to set the rateable value of shootings in deer forests lower than the net annual value to reflect good management in the public interest. I understand the intention and reasons behind the amendment.

However, such discretion would be problematic because it would require the assessor to interpret whether good management existed and, subject to that, to apply a deduction at their own discretion, which could range from zero to the full net annual value; they could, in effect, set the rateable value at zero. Such a judgment, and the corresponding revenue effects, might sit beyond the long-standing role of the assessor in valuing property. More tangible criteria would normally be provided for in such de-rating under valuation legislation.

10:30

I note the discretion that the assessors would have under the unamended provision. For example, before the current exemption was put in place in 1995 assessors discounted valuations to take account of increased culling activity due to Government policies. Although the assessors cannot give a guarantee at this time of what their future methodology would be, they have confirmed that valuation would take account of all material factors.

I reassure Mr Russell that the Government acknowledges and recognises that we need to get there through a combination of regulation and incentives, and my officials and I have given the matter of a relief much consideration. If it appears that the business rates are unduly interfering with that goal, we will consider whether it is necessary to provide relief through the normal mechanism of rating reliefs or an alternative support measure ahead of the rating implementation in April 2017. The matter certainly will be borne in mind when we are working with the assessors—I give that assurance to Mr Russell and other members of the committee.

The tax base for shootings and deer forests will be a more permanent reference point in primary legislation, and it should be valued under the same general provision as other non-domestic properties, with the same due discretion for the assessors to reflect relevant factors. As I have said, part 6 is a valuation measure, not a rating measure, and is a necessary first step to value the tax base before we consider rates reliefs and revenues. Only once that step is complete can an informed assessment be made of a new relief. I also give Mr Russell and the committee that assurance.

I therefore ask Mr Russell not to move amendment 126 and I give a commitment to

engage the sector once we have seen the emerging valuations, which will probably be later this year, and ahead of making rating decisions in 2017.

I say to Graeme Dey that the First Minister said in her programme for Government speech in Parliament on 26 November 2014 that ending the rates exemption would help the Government to increase the Scottish land fund. Therefore, we will welcome and consider any expenditure proposals that are linked to the non-domestic rates income from shootings and deer forests.

Alex Fergusson: I will not take up a great deal of the committee's time; I merely ask for a point of clarification about the information that the committee asked the Government to produce before stage 2. I did not say that it has not produced any further information; I said that, in my opinion, the information that it had produced does not come close to satisfying the committee's request, and I still believe that to be the case. I am not happy with where we are in regard to the information.

I am somewhat confused by the minister's response to my amendments. She has acknowledged that there are no available data and that accurate assessments of future revenue cannot be made, yet she believes that the measure is sustainable as it has been set out. She says that it will raise revenue and be fair. However, experience suggests that it will be neither.

I am very supportive of Mike Russell's amendment 126, and I will be sorry if he seeks to withdraw it. Rates can be a considerable burden, but in this case I believe that they could be used as a great incentive to encourage proper deer management. The committee has been very hard on deer managers and deer management organisations, and Mike Russell's amendment 126—I was going to lodge a similar amendment myself before I realised that Mr Russell had done so—provides that incentive. I find it worrying that there might be a situation in which an estate carries out exemplary deer management, as we all want to happen, but is hit by a rates burden for doing so. I will be sorry if Mr Russell withdraws his amendment, although I hear what the minister says about taking the matter forward.

I will press my amendment 94. In doing so, I am very mindful of a bit of verbal evidence that the committee got off the record in the Borders when a tenant farmer told us, "Just be careful when you're going after the big guys that you don't catch the wee guys." The people who will be badly impacted by what is proposed are not the owners of shooting rights—although it might be people who run shooting businesses—but the wee guys: the beaters, the hoteliers and others who are very dependent on shooting activity.

The Convener: The question is, that amendment 94 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Fergusson, Alex (Galloway and West Dumfries) (Con)
Hume, Jim (South Scotland) (LD)

Against

Beamish, Claudia (South Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Dey, Graeme (Angus South) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 94 disagreed to.

Section 66 agreed to.

Section 67—Valuation of shootings and deer forests

Amendment 130 not moved.

Amendments 122 to 125 moved—[Aileen McLeod]—and agreed to.

The Convener: Amendment 126, in the name of Michael Russell, has already been debated with amendment 94.

Michael Russell: I accept the minister's assurance on amendment 126, but I reserve the right to lodge an amendment at stage 3 to put the issue of good deer management on the face of the bill. I would like to have discussions with the minister on that, because I think that there is a need to put a reference to good deer management in section 67. I will not move amendment 126, but I will take the opportunity to come back to the issue at stage 3.

The Convener: Does any other member want to move amendment 126?

Alex Fergusson: I wonder whether I can seek an assurance from the minister that she will have that discussion with Mr Russell. I would imagine the answer is yes—

Michael Russell: If she said no, I would be disappointed.

Alex Fergusson: —because she knows what is good for her. [*Laughter*.]

Michael Russell: Oh, dear!

Alex Fergusson: I am very tempted to move amendment 126, but if the minister could give that assurance, I will not move it.

Aileen McLeod: I am happy to give the assurance that I will meet Mr Russell to discuss his amendment.

Amendment 126 not moved.

Amendment 95 not moved.

Section 67, as amended, agreed to.

After Section 67

Amendment 131 not moved.

Section 68 agreed to.

Section 69 agreed to.

The Convener: I thank Patrick Harvie for attending. That is the end of his involvement today.

Section 70—Deer management plans

The Convener: We move on to deer management. Amendment 119, in the name of Claudia Beamish, is grouped with amendments 1, 2, 120, 121, 3 and 4.

Claudia Beamish: Thank you, convener. Scotland is probably unique in having a public resource such as deer, which are largely managed as if they were private property. Other bodies—mainly public ones—typically pick up the costs of the arrangement, which include the costs of damage to forestry, deer fencing, road accidents, the effect on biodiversity and wider environmental impacts.

In Scotland, the voluntary approach to deer management has been given every opportunity to work. The 2014 report of the assessment of deer management groups, which was published only in October 2015, shows quite poor delivery in many areas against public interest outcomes. That was of concern to the committee.

The amendments that I have lodged are not costly or particularly complex, although it is a very complex issue to resolve and the situation has been on-going in Scotland for many years.

The committee took evidence on the impact of deer management on natural heritage in 2013, when I was a member of the committee. The then minister, Paul Wheelhouse, summed up the concern that existed at that point when he stated:

"I too recognise that deer populations are having an impact on Scotland's natural heritage in certain areas. We need to continue to take steps to minimise these impacts".

Following its investigations, the land reform review group also had concerns about the limited progress that had been made.

I now come to amendments 119 and 120. Amendment 119 proposes the creation of a legal duty on landowners to implement the code of practice on deer management, which came into effect in 2012. I will give a quick summary of the situation as I understand it, having had discussions with those outside Parliament who know much more about it than I do.

In 2011, as part of the consultation on the deer provisions in the Wildlife and Natural Environment (Scotland) Act 2011, the Deer Commission Scotland proposed that there should be a duty on landowners to manage deer sustainably. The aim was to deliver a better balance between the rights enjoyed by landowners in relation to deer and the responsibilities that should accompany those rights. I believe that we have now reached the point where, without a legal duty to manage deer sustainably, the fact that the deer management code is not legally binding has become a serious problem. I propose that a legal duty on land managers to implement the deer management code should now be brought in and that we should not wait for the review that will come before a committee in the next session of Parliament.

In terms of enforcement, the duty should be supported by existing offences that relate to non-compliance and by the ability of Scottish Natural Heritage to recover costs, similar to the approach that is taken in current provisions on control schemes in the Deer (Scotland) Act 1996.

The code of practice on deer management defines the public interest and provides for benchmarks or standards. Concern has been expressed about the effect on small landowners when it comes to the issues that we have just been looking at in relation to rates for shooting rights. Although some concern has been expressed, I do not think that small landowners will be affected if SNH uses discretion in applying the duty. In addition, the duty would be linked only with those landowners who receive a statutory cull return notification, who have to say what numbers they are culling under the existing powers.

Amendment 119 would create an offence of failing to comply with a notice of non-compliance with the code of practice. As the amendment says, such a notice may be appealed to the Land Court. However, if the notice was not appealed or was upheld at appeal, it would become an offence not to comply. In effect, the amendment would create a duty on owners and occupiers to comply with the code of practice or risk SNH issuing a notice of non-compliance, which, if not complied with, would mean that the owner or occupier would be committing an offence. I have recently been given to understand that that is similar to the land management order procedure that is provided for in the Nature Conservation (Scotland) Act 2004.

10:45

Amendment 120 would provide a general enabling power allowing Scottish Government ministers to make provision by regulation for SNH to take actions for improved deer management. Sustainable deer management is required for the delivery of a range of public policy outputs, and therefore in the amendment I propose that Scottish ministers should be able to improve SNH's powers in relation to deer management through a straightforward process of regulation, for which I seek the use of the affirmative procedure. Such a power would better enable SNH, on behalf of the Scottish Government, to make quicker and more responsive decisions in managing deer in the public interest without the need for primary legislation. That approach would have public safeguards, in that regulations would still need the approval of the Scottish Parliament and would follow ministerial advice. I am keen to hear my colleague Mike Russell's arguments for amendments 1 and 2.

I move amendment 119.

Michael Russell: At the outset, it is important to say that the deer issue in Scotland is not a new one. There is a deer problem in Scotland, the roots of which can be found in the 19th century, with the establishment of about 1.5 million hectares of private deer forests—essentially, the private hunting estates.

Since the mid-19th century, there have been no fewer than seven Government-appointed inquiries into red deer in Scotland. The last of those, after the second world war, resulted in the establishment of the Red Deer Commission in 1959. I am grateful to Simon Pepper for a wonderful analysis of the process since then, which he has provided as a private paper. He points out that, in 1959, Frank Fraser Darling, who was the adviser to the Red Deer Commission, suggested that the optimum number of red deer in Scotland would be 60,000. Today, there are between 350,000 and 400,000, and there are also increasing numbers of roe, sika and fallow deer. The Scottish deer population is now well over half a million.

Simon Pepper's analysis of the reports of the Red Deer Commission, the Deer Commission and SNH tells an extraordinary story of the failure of public policy—I cannot put it any other way. I was an environment minister for more than two years and I wish that I had known that at the time, because the reality is that, year after year, public bodies repeatedly pleaded with private owners to take effective action and, year after year, that did not happen.

There was considerable debate before 1959. From 1959 onwards, there has been an argument for change, but that change has not happened. Even when there has been limited legislative change, it has produced virtually no effect. That is not a criticism of the individuals involved, such as those on the deer management groups. I have met some of them in recent weeks and I think that people engaged in this activity are genuinely committed to change. However, change is now almost impossible to achieve because deer numbers are so great. I remind committee members that, in order simply to stop the growth of the deer population, we would require to cull a third of the population every year. That is clearly impossible given the numbers, so the problem of the deer population simply goes on getting worse. Although in some areas it is broadly contained, in other areas, such as the area where I live, it is completely out of control and it is impossible to grow trees in unfenced areas; the optimum number of deer per hectare for that is massively increased.

If members go back and look at some of the reports, they will discover that they discuss the same things that the Rural Affairs, Climate Change and Environment Committee has talked about in discussing the bill.

In 1965, the Red Deer Commission's annual report said that

"deer stocks could be greatly improved in quality if numbers were reduced".

However, nothing happened. The 1970 annual report said:

"control of red deer must begin with efficient management of deer".

The 1987 annual report said:

"With few notable exceptions, the passage of another year has seen little success in reducing the populations of red deer".

And so it goes on. In 1989—the 30th anniversary of the Red Deer Commission—the chairman's statement in the report said:

"Thirty years on and no improvement".

We are now in 2016 and facing an even worse problem.

My amendments are very modest proposals. I am grateful to Scottish Environment LINK and others for their help in putting them together. Even so, the amendments get nowhere near to tackling the problem, although they will help SNH to begin to take some action. Although the SNH officers on the ground are very active, management has been completely supine in the matter. As I have said before in committee, the merger with SNH has not produced the results that it should have produced.

When the Scottish Government reviews the deer issue later this year, I hope that it will look

first at the evidence in the reports of the Red Deer Commission, the Deer Commission and SNH. If it does so, it will draw the inevitable conclusion that a major change in public policy is required to tackle the deer issue in Scotland.

The number of deer in Scotland is out of control. There is no question about that fact—it cannot be disputed. The good work of deer management groups in various parts of the country is succeeding perhaps in stemming the tide, but no more than that.

We have a considerable environmental problem in Scotland that is of our own making. It was created by the circumstances in the 19th century and has not been managed effectively by public policy since then. Therefore, major initiatives are now required. If we can wake Scotland up to that by the small things that we might do today, I hope that, in the coming months and years, the Scottish Government will be determined to tackle it much more radically. It is vital for the environmental wellbeing of the country and the wellbeing of the deer, and it is very important for how we take forward the whole of Scottish public policy on land.

My proposals are modest. Claudia Beamish's amendments 120 and 121 are also important. I am looking to the Scottish Government to recognise that the time is now right for a major rethink.

Alex Fergusson: I am very torn on the matter. I am very aware of Mike Russell's considerable expertise on the issue, which stems from his constituency interest. The problems of deer management in my part of Scotland are very different from the problems of deer management in his part of Scotland and further north. However, I have some difficulties with his amendments, which he may be able to satisfy me on.

Michael Russell says that a major change in public policy needs to come about. Any major change in public policy needs to go hand in hand with private interests' buy-in to the policy aims that are on the table. In other words, such changes are most effective when they are part of a consensual process. My concern about amendment 2 is that it would be a very top-down process, in which SNH would have the ability to rewrite sections of a deer management plan and bring it back to the affected deer management group without further consultation. I worry about the top-down approach that that exemplifies.

I am also a little concerned about amendment 3, which asks for cull returns to include forward projections. My understanding is that that is already part of deer management plans. If amendment 3 were agreed to, it would simply lead to duplication and unnecessary administrative costs.

I am concerned about Claudia Beamish's amendments 120 and 121 because they seem to apply statutory requirements in codes of practice that are not statutory. Codes of practice provide guidance, not statutory requirements, so I have difficulty with that equation. Perhaps the minister, along with Michael Russell and Claudia Beamish, can address that issue. I will listen carefully to the debate before deciding how to vote.

Graeme Dey: I hear Alex Fergusson's concerns about the top-down approach, but seeking consensus has evidently not worked, and that is where we are today.

Alex Fergusson: I know that this is not a normal debate, but I have to come back on that point. We know where we are today, but—as members are very much aware—the committee has taken a robust position on deer management. It has put in place a mechanism for the Government to carry out a review during 2016, at the end of which it should be ready to act. It is much too early to say that we are not having any impact. I restate the concerns that I have expressed.

The Convener: The very first chair of the Deer Commission, Major Crichton Stuart, served for a term and a half and then resigned. He was quoted in *The Glasgow Herald* of 23 September 1963, which stated:

> "The last report of the Red Deer Commission complained that lack of co-operation from farmers and landowners could cripple it in its task, which is to reduce the red deer population of the Highlands to manageable proportions."

The matter is all the more pressing today, as there is a much wider range of landowners. Some of them, such as community land trusts, are small; some are non-governmental organisations; and some are shooting organisations. It seems that deer management could, in areas of crisis such as Assynt in my constituency, bear down on a community trust, which has need of a small income, rather than on people who shoot for pleasure and therefore have no likely pecuniary interest in carrying out the culls that are necessary, or on an NGO such as the John Muir Trust, which has a stated national policy of not allowing fencing and so on in areas in which there are threats to trees.

I understand that, in the circumstances of this debate, we must take into account the realities on the ground, but the view of Major Crichton Stuart in 1963 suggests to us today that we cannot wait any longer for action to take place. I hope that the minister will take into account the serious nature of Michael Russell's amendments.

Aileen McLeod: Before I address this group of important amendments in detail, I will, with the

committee's agreement, set out some context in relation to on-going action in deer management planning to help the committee to consider the issue more broadly.

I have noted the committee's concerns about deer management, and I take those concerns extremely seriously. The key step in the future of deer management in Scotland is the review that was agreed with the committee. Claudia Beamish mentioned the 2014 assessment of deer management groups by SNH, which was intended to set a baseline for the 2016 review. However, given the concerns that we heard at stage 1, we are absolutely determined and committed to bring about an improvement in the management of deer to protect the public interest.

We have taken the significant step of bringing the review forward so that it will be completed this year. If the review points to the need to make major changes to the legislation that governs deer management, we will be in a position to take action to develop proposals, and we will consult sooner rather than later. I recognise that that increases the pressure on the deer sector to step up and improve, but the current system can deliver effective management, and I am confident that the sector will recognise the concerns that have been expressed in Parliament and the need for concerted action.

I turn to how the review will be carried out. It will focus on the key question whether there has been a step change in the effectiveness of deer management. It will be evidence based and factual and will draw on an assessment of the progress of deer management group plans in meeting the public interest. It will also draw on data on the condition of protected areas and a review of the outcomes of existing section 7 voluntary agreements.

11:00

The Scottish Natural Heritage report will evaluate evidence from upland deer management group areas and the lowlands of Scotland. In compiling the report, SNH will seek data and evidence from other organisations. It will also liaise with the Association of Deer Management Groups regarding progress on the deer management group plans. It will provide a report to ministers by the end of October. A baseline has been established and work is already in hand to gather the data and the evidence.

SNH will also put in place an internal quality assurance process that will ensure that the evidence that is presented is robust. Staff resources have been allocated within SNH and a project manager has been put in place to ensure that the deadline is met.

I hope that some of those details reassure the committee that the review will be comprehensive as well as fair and measured and that the Government and I, as Minister for Environment, Climate Change and Land Reform, are determined to make, and committed to making, a real improvement in how our deer are managed. I met the chair of SNH last week and we discussed the importance of ensuring that we have a timely and robust review process. I have no doubt that all those who are involved in the process understand that.

I turn to the amendments, as I am conscious of time. I thank Claudia Beamish for explaining amendments 119 to 121.

Amendment 119 creates a mechanism whereby non-compliance with the SNH code of practice on deer management could become a criminal offence. The code was introduced under the Wildlife and Natural Environment (Scotland) Act 2011 relatively recently. It was approved by Parliament under the affirmative procedure and came into effect from 1 January 2012. It is intended to support deer managers with practical guidance in setting out the responsibilities of owners and occupiers who have deer on their land. It has various categories of guidance. It sets out the legal obligations on owners and occupiers and provides advice that might apply only in particular circumstances.

Although I appreciate the sentiment behind Claudia Beamish's amendment 119, it would not be appropriate now to create a mechanism whereby non-compliance with the code became an offence. The amendment would, in essence, mean that the code would have to be re-drawn to reflect its altered purpose. It would have to be more prescriptive and would end up providing less useful help and guidance, which would reduce the support that is available to our deer managers. Not only has the code been helpful to individual deer managers but it has been used in the deer management group assessment process, which drew its public interest criteria from the code.

I understand that there is a desire for the code and the requirement for effective deer management to have teeth. I remind the committee that SNH already has significant intervention powers, to which we are adding through provisions in the bill. SNH has the power to call for a voluntary agreement to deliver specified deer management measures under section 7 of the Deer (Scotland) Act 1996 and, if those measures are not taken, it can move to compel landowners and deer managers through the use of a section 8 control scheme. As the committee knows, in the bill we are significantly increasing the penalty for non-compliance with a section 8 control scheme.

That hierarchy of intervention powers available to SNH is more focused than a new offence of failing to comply with the code. SNH is required to have regard to the code in exercising those powers of intervention, and that is the appropriate role for the code. Although I understand the intention behind amendment 119, for all the reasons that I have set out, I cannot support it and I ask Claudia Beamish to withdraw it.

I thank Claudia Beamish for the thought that has gone into amendment 120. I appreciate that it could be useful in certain circumstances. We are not always able to predict situations that could arise in deer management and there might be times when we wish to take action. For example, when the code of practice on deer management strongly advises a course of action but deer managers routinely do not comply with that advice, we could consider whether that part of the code could be strengthened by further regulatory action.

There are some problems with the amendment as drafted. For example, there is no provision for penalties for non-compliance with the new regulations, and the powers are rather wide. It is also not realistic or fair for a legal duty to comply with the code to apply only to some owners and managers and not to all. I therefore suggest that, if Claudia Beamish does not move amendment 120, my officials and I will work with her between now and stage 3 with the aim of coming back with a much more tightly drafted provision that could assist SNH in ensuring that we have sustainable deer management.

Amendment 121 provides for a penalty in relation to the requirement to comply with a code of practice enforcement order under amendment 119. I also ask that amendment 121 not be moved.

I thank Mike Russell for setting out the rationale behind amendments 1 to 4, and for the detailed work that has gone into them. I recognise and fully support the intention behind amendment 1 in encouraging more consultation and engagement with the local community and interested parties on the development of deer management plans. However, the process that is set out in amendment 1 is a little bit cumbersome. I am advised that it is also legally problematic. For example, it defines the legal owners and occupiers to which it applies by reference to membership of a deer management group. At the moment, deer management groups have no legal status, membership of them is not compulsory and they do not cover all the deer habitat in Scotland.

The amendment also does not provide for the publication of the plans in draft or final form. That could be problematic. Given that the trigger for the proposed provision is the development of a new plan, it could actually provide a disincentive to the production of new plans, which I am sure would not be Mr Russell's intention.

I support and welcome the intention behind Mr Russell's amendments and the fact that they address transparency and opportunities for community engagement. I suggest to the committee, however, that there are other ways of achieving what amendment 1 is trying to do. The benchmark for deer management groups includes a communications section and advises that local consultation should be accessible and that it should be carried out during the development of the plan. I know that action is being taken to place deer management plans on the Association of Deer Management Groups website—I am on there just about every day to see what progress is being made.

As the committee will be aware, the deer provisions that are already included in the bill include a provision that allows new functions to be conferred on deer panels with a view to facilitating improved consultation and communication with the local community. While I completely support the spirit of amendment 1, for all the reasons that I have set out, I ask Mr Russell if he will consider not moving it.

On amendment 2, I expect there to be dialogue between SNH and the owners or occupiers who have been served with a section 6A notice that requires them to prepare a deer management plan, while allowing for modifications to any plan under preparation to be made. However, I can see that there is benefit in formalising the position in legislation and I am happy to accept Mr Russell's amendment 2, which clarifies that.

I am extremely sympathetic to the intention behind amendment 3, which will provide a focus and a reminder for all that, although there are a number of aspects to deer management, it will nearly always be important to keep control of numbers. There is a technical issue, however, with the way in which the amendment is drafted, in that the offence in the Deer Act 1996 that attaches to the requirements to provide a cull return would also attach to the new requirement to provide a cull projection. The offence also applies to the provision of false data, and clearly that would be difficult to interpret when applied to projections. Therefore, although I am happy to accept amendment 3, we will probably want to give further thought to the operation of the offence that is linked to the new requirement and work with Mr Russell to come back at stage 3 with an amendment that addresses those concerns.

On amendment 4, I recognise the concerns that the committee and others have raised in relation to the timing of the commencement of the deer provisions. I have listened to those concerns carefully and have decided that the provisions

should be commenced as soon as it is practical to do so rather than, as was originally intended, after we see the outcome of the review. The provisions provide SNH with additional useful powers to intervene in support of sustainable deer management, and it is right that we make those powers available to SNH.

Nevertheless, I resist amendment 4, which would commence those provisions the day after the bill receives royal assent. It is normal practice for certain technical provisions to be commenced at that point, but not for substantive provisions to be brought into force so quickly—certainly not provisions with offences attached. However, as I have made clear, we recognise the imperative to move quickly. We have brought forward the review and, alongside that, I will commit to commencing the deer provisions as soon as is practicable, which will be approximately two months after the bill receives royal assent. I trust that the committee will accept that commitment, and I ask Mr Russell not to move amendment 4.

Claudia Beamish: I thank Scottish Environment LINK and others who have a wide knowledge of the issues. I have also gained some knowledge of the issues through the work of the committee. It is disappointing that my amendment 119 is not going to be accepted. Although I understand what the minister says about its making the code less useful in some way, I think that the time has come for compliance with the code. I do not think that we should wait any longer. Alex Fergusson said—if I have got this right—that he thought that it was too early, but I think that it is too late already. In his remarks, Mike Russell summed up well the reasons for concern across Scotland, both in the Highlands and in the lowlands.

The committee also received evidence that section 8 schemes have been hard to take forward. I know that there has been some movement on that, but that is part of the picture as well. Although I listened carefully to what the minister said, I do not intend to withdraw amendment 119.

I am very pleased with the minister's offer to talk about amendment 120. I understand that there is no point in having an expectation that groups or individuals will comply with something without having any penalties, so it makes sense to have a discussion about that. I hope that we may be able to reach an agreement on that before stage 3.

I highlight the seriousness of the issue. The amendments that I have lodged and the remarks that I have made are in no way intended to disparage those deer management groups that are working well, but are an attempt to get a grip on a very serious situation. Now is the time to make a more robust start on it.

11:15

The Convener: The question is, that amendment 119 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Beamish, Claudia (South Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)

Against

Dey, Graeme (Angus South) (SNP)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Hume, Jim (South Scotland) (LD)
MacDonald, Angus (Falkirk East) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)

Abstentions

Russell, Michael (Argyll and Bute) (SNP)

The Convener: The result of the division is: For 2, Against 6, Abstentions 1.

Amendment 119 disagreed to.

Amendment 1 not moved.

Amendment 2 moved—[Michael Russell].

The Convener: The question is, that amendment 2 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Beamish, Claudia (South Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Dey, Graeme (Angus South) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Hume, Jim (South Scotland) (LD)
MacDonald, Angus (Falkirk East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)

Abstentions

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

The Convener: The result of the division is: For 8, Against 0, Abstentions 1.

Amendment 2 agreed to.

Amendments 120 and 121 not moved.

Section 70, as amended, agreed to.

After section 70

Amendment 3 moved—[Michael Russell].

The Convener: The question is, that amendment 3 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Beamish, Claudia (South Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Dey, Graeme (Angus South) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Hume, Jim (South Scotland) (LD)
MacDonald, Angus (Falkirk East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)

Abstentions

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

The Convener: The result of the division is: For 8, Against 0, Abstentions 1.

Amendment 3 agreed to.

Sections 71 to 73 agreed to.

The Convener: I thank Aileen McLeod for all her efforts on that part of the bill. She can now take a back seat for a short while.

11:17

Meeting suspended.

11:23

On resuming—

Section 74—Modern limited duration tenancies: creation

The Convener: I welcome the Cabinet Secretary for Rural Affairs, Food and Environment and his officials to the meeting.

The next group of amendments is on repairing tenancies. Amendment 154, in the name of the cabinet secretary, is grouped with amendments 159 to 165, 185 to 191, 195 to 200, 210, 211, 219, 227, 229 to 250, 252 to 258, 260 to 262, 268 and 270. Amendments 187 to 191 would be pre-empted by agreement to amendment 298 in the group of amendments called "Retention of existing procedures for variation or review of rent", amendment 188 would be pre-empted by amendment 299 in the group of amendments called "Limited duration tenancies and modern limited duration tenancies: determination of initial rent", and amendment 262 would be pre-empted by amendment 153 in the group of amendments called "Application of repairing standard to agricultural tenancies etc."

The Cabinet Secretary for Rural Affairs, Food and Environment (Richard Lochhead): Good morning, committee.

Although it comes earlier in the bill, amendment 154 is consequential on amendments 159 to 165, which will create a new form of agricultural lease called a repairing tenancy. The amendment will amend section 74 to make it clear in proposed new section 5A(1) of the Agricultural Holdings (Scotland) Act 2003 that a modern limited duration tenancy cannot be a repairing tenancy.

Amendments 159 to 165 provide for the new repairing tenancy, as recommended both by the agricultural holdings legislation review group and by the committee in its stage 1 report. The aim of such tenancies is to give a future to holdings that are in a poor state of repair or which have been abandoned, and to bring them up to a standard that enables them to be farmed effectively. I am sure that we can all think of derelict farms in our constituencies that could, if they were inhabited and managed well, make a real difference and have a positive impact on the communities that surround them. Repairing tenancies have the potential to be one of the keys to releasing a stronger, more vibrant and sustainable future for such communities.

Amendments 159 to 165 will create the structure and key features of the new tenancy. Amendment 159 provides that the tenancy will last for at least 35 years and will begin with what is to be called a repairing period—a period of at least 5 years from commencement of the tenancy. The intention is for the tenant to use the repairing period to bring the holding up to a standard that enables it to be farmed effectively. During the repairing period, the tenant will be exempt from having to comply with the rules of good husbandry. That is out of fairness to the tenant who is taking on the burden of improving a holding that is in bad repair. It will allow them to use that time to bring the holding up to a standard that enables it to be farmed effectively.

Amendment 162 contains provisions that set out the use and treatment of fixed equipment that is present on the holding at the start of the tenancy, and how fixed equipment is to be considered during the rest of the tenancy. During the repairing period, the tenant is, by default, responsible for providing and maintaining the fixed equipment that they need in order to farm effectively, although the landlord can provide fixed equipment if both parties agree. After the repairing period, the tenant is, by default, responsible for maintenance, with the landlord being responsible for renewal or replacement. Again, parties can agree to divide responsibility differently if they prefer. There is also provision to ensure that the tenant is not required to pay the whole or part of a fire insurance premium for fixed equipment, because that should be done by the landlord.

Amendment 161 will allow for repairing tenancies to contain a break clause, which will enable the tenant to terminate the lease at any time up to the end of the repairing period; in other words, tenants will have a get-out option if they decide that the tenancy is not working out for them. At the end of a repairing tenancy, unless the

parties terminate the lease, it will continue for a period of 7 years in the same way that has been proposed for MLDTs under amendment 156.

Amendment 163 will provide some protection for the tenant's investment in the holding by preventing the landlord from resuming the land, or any part of it, during and until after five years after the end of the repairing period.

Amendment 164 will also prevent the landlord, during the repairing period, from irritating the lease on the ground that the tenant is not farming the holding in accordance with the rules of good husbandry. After the repairing period, the landlord will be able to irritate the lease on the same grounds as are provided for in section 78 with regard to MLDTs.

Finally, amendment 165 will give Scottish ministers the power to make regulations to apply to repairing tenancies the compensation provisions of part 4 of the 2003 act, with such changes as are needed.

Those amendments are supported by 54 additional and consequential amendments. I am happy to go through them all if the committee wants me to do so—or I can just skip them and conclude my comments. [*Laughter*.] I do not know whether the convener wants to take a vote on that or whether he will just give me an indication, but I get the impression that the committee is happy for me to skip the speech on consequentials.

The Convener: I presume that there are no other substantive matters to address.

Richard Lochhead: I conclude by pointing out that Rome was not built in a day, and neither will the farms that repairing tenancies are aimed at be. It is going to take hard work, good will and strong business relationships for the tenancies to work, and I do not think that we should underestimate the scale of the effort that lies ahead for the tenants and landlords who take them up. On the other hand, I do not underestimate the positive impact that the new tenancies will have on our tenancy sector and rural Scotland in the future; indeed, that is why I believe that they have attracted widespread support.

I move amendment 154.

11:30

Alex Fergusson: I hope you will forgive me, convener, if at the outset I make a general comment regarding part 10 of the bill. I wish to do so because, as members and the cabinet secretary will be aware, I dissented from part 10 in the stage 1 report, for reasons that I put on the record at that time. As far as I am concerned, those reasons still stand. Not the least of them is that I have always believed that part 10 would have been better as separate legislation that would deliver the entire package of the agricultural holdings legislation review group—the AHLRG. That group, which the cabinet secretary chaired, was at pains to put forward a total package at the time.

I think that there has been a degree of cherry picking within the report's recommendations since then. We have been told that a number of issues have arisen due to time constraints. I see that there have been no time constraints in relation to this group of amendments; I am pleased about that. I wish that those time constraints did not impact on other parts of the bill—but we will come to that in due course.

Although I have dissented from part 10, I fully intend to play what I see as a productive role as part 10 is considered. I will seek to move amendments that I think would improve the bill. I do not expect many of them to be agreed to, but that is what I will do in playing what I hope is a positive role as the debate continues.

That said, I fully support the intentions behind the amendments. We were all happy to see the proposed provisions on repairing tenancies, and although we might have had some debate about the length of repairing tenancies, I will not oppose this group of amendments, but welcome their inclusion in part 10.

Claudia Beamish: I will not take up any more time other than to say that I am positive about this group of amendments. I note that the land reform review group was supportive of the proposals.

I wish to ask the cabinet secretary how the decision was made about the initial five-year period. I wonder whether it might be more appropriate to consider a slightly longer time, in view of some comments that I have heard from the Scottish Tenant Farmers Association about the difficulty of getting a dilapidated holding back into a good state within five years. I just highlight that point.

Richard Lochhead: I thank the committee for its support for our amendments.

On the five-year timescale that Claudia Beamish has asked about, it is open to both parties to agree to a longer timescale if they so wish; we consider five years to be a reasonable minimum period. There are other conditions that provide a lot of flexibility. That is the rationale.

Amendment 154 agreed to.

The Convener: We come to the group of amendments on modern limited duration tenancies and break clauses. Amendment 155, in the name of the cabinet secretary, is the only amendment in the group.

Richard Lochhead: Amendment 155 will have the effect that, when a short limited duration tenancy converts to an MLDT in the various circumstances that are provided for in proposed new section 5A of the Agricultural Holdings (Scotland) Act 2003, which the bill will insert, there is no option of a break after five years. That is because the break clause is targeted specifically at new entrants and not at more established farmers who have already been farming for some time under other leases.

I move amendment 155.

Amendment 155 agreed to.

Section 74, as amended, agreed to.

Section 75 agreed to.

Section 76—Modern limited duration tenancies: termination and continuation

The Convener: Amendment 272, in the name of Claudia Beamish, is grouped with amendment 282. Claudia Beamish will move amendment 272 and speak to both amendments in the group.

Claudia Beamish: Amendments 272 and 282 are on the waygo process. Amendment 272 would require that notices to quit specify the amount of compensation that has already been agreed between the landlord and the tenant, or decided by arbitration. It would also require that the landlord give earlier intimation of his or her proposed amount of compensation and/or his or her intention to refer the matter to arbitration, if agreement cannot be reached. I believe that the option to refer to arbitration and settle on a fair amount when agreement cannot be reached will prevent a situation in which the tenant could block the notice to quit by refusing to agree the amount.

There is already provision in the bill and the 2003 act respectively for the early intimation of MLDTs. The amendments would merely add a new condition about what the intimation must conclude.

The two-stage waygo process would apply only in relation to a notice to quit if the problem that is being addressed is that the tenant is liable to be on the back foot when negotiating waygo because they have already been served with a notice to quit.

I move amendment 272.

Richard Lochhead: Amendments 272 and 282 propose, by including a new section in the bill, changes to both the 1991 and 2003 acts in so far as they relate to the termination of 1991 act tenancies, SLDTs, limited duration tenancies and MLDTs. The amendments propose a two-stage waygo process for 1991 act tenancies and other leases, and an agreement process for compensation for SLDTs.

I agree with the principle that a two-stage waygo process may be beneficial to the parties in some circumstances, but such an amendment would require significant policy development, which I am not in favour of at the moment because we would have to rush the policy-development process. Instead, I would like to make a commitment to the committee to explore the option further in the future and to highlight the areas in the bill that I believe will make the waygo process as fair and transparent as possible.

First, I can already see a problem with the operation of amendments 272 and 282 that have been lodged by Claudia Beamish. The notice to quit would require the landlord to specify an amount of compensation that had been agreed between the parties, but there is no link to assessment of that compensation under part 4. That could allow parties to undercut the statutory minimum level of compensation that is provided for by part 4 and could result in the tenant receiving inadequate compensation for their investment.

Amendments 272 and 282 would also require the landlord to identify a sum for compensation for improvements that had not even happened yet. It is very likely that that would result in a lot of arbitration—with all the cost and delay that that would entail—before landlords could terminate tenancies. Tenancies are entitled to compensation for things other than improvements under part 4, including compensation for what is known as high farming, but the amendments do not cover that, which re-enforces the point that we need time to examine carefully how any new legislation on the issue would cut across existing legislation on compensation, so that we ensure that tenants would not be disadvantaged.

My understanding is that one of the most common problems that are encountered at waygo is that parties cannot agree on what fixed equipment has been provided by each party during the tenancy, which makes it difficult to establish what items are eligible for compensation and therefore leads to compensation disputes. Indeed, during its 18-month review of the issue, the range of potential complexities was examined by the review group, and it concluded that

"effective recording of, and agreement on, a tenant's investment in improvements is central to fair and predictable compensation at way-go".

In acknowledging that, in reality, many tenants and landlords do not have adequate records, the review group recommended a time-limited amnesty process during which tenants could establish what items would be due for compensation at waygo. The bill drives forward that recommendation. It also seeks to address the issue of inadequate record keeping by placing a

requirement on both parties, when entering into an MLDT, to agree a schedule of fixed equipment in writing. That schedule will set out the fixed equipment that has been provided by the landlord and will include provision for the parties to amend the schedule at any time during the lease. That means that parties will have the adequate documentation that is required to enable fairness and transparency at waygo.

Although I am sympathetic to the desire for a two-stage waygo process, significant policy work would be required for it and there is no time for that during the bill process. I believe that the provisions in the bill will alleviate some of the problems that are experienced at waygo, so I urge the committee not to support the amendments in Claudia Beamish's name.

The Convener: I call Claudia Beamish to wind up and to press or seek to withdraw amendment 272.

Claudia Beamish: It is helpful that the cabinet secretary has outlined for the record what is already in the bill. My concern has been to help to facilitate the easiest way for people to leave their farms when they want to do so. This has been a complex issue for many farmers seeking to facilitate new entrants coming into faming, the succession of younger farmers or assignation.

I hear what the cabinet secretary says, but there have been quite a lot of requests—from the Scottish Tenant Farmers Association and others—about two-stage waygo. I am a bit concerned about the lack of a timescale for what the cabinet secretary described. In view of the facts that there has been comment previously and that this is by no means a new idea that I have brought up, I wonder whether it is possible to meet to discuss whether it is realistic to consider the matter at stage 3 or, if a meeting is not possible, to get a more definite timescale.

Richard Lochhead: I give the committee a commitment that we recognise that this is a real issue and we want to work on it. Although it is likely that no amendments will be lodged until the next session of Parliament, given the lack of time for the bill in the current session, the matter has been raised with us by tenant farmers' representatives, as Claudia Beamish said, and we understand that it is a real issue. However, some parts of the bill address some of the concerns that the proposed two-stage process is meant to address, so we have to be careful that we do not rush into something that cuts across other parts of the bill.

I am happy to give a commitment that we will ensure that the issue is addressed as early as possible in the next session of Parliament.

Claudia Beamish: I will seek to withdraw my amendment and to consider whether I should bring back something at stage 3 that is somewhat clearer and more robust. I am listening to what the cabinet secretary is saying.

Amendment 272, by agreement, withdrawn.

The Convener: The next group is on the continuation of modern limited duration tenancies. Amendment 156, in the name of the cabinet secretary, is the only amendment in the group.

Richard Lochhead: Amendment 156 reduces the continuation timescale of an MLDT from 10 years to seven years. During its stage 1 evidence sessions, the committee heard from stakeholders who felt that a 10-year continuation term would be too long, and we have taken those concerns on board. Amendment 156 seeks to balance stakeholders' desire for a shorter continuation term with the need to make sure that we do not prevent tenants from qualifying for Scottish rural development programme grants.

Some of the grant schemes require a tenant to demonstrate that they will have control over the land for at least five years, and we need to factor in the application process, which can take more than a year in some cases. A continuation term of seven years will ensure that tenants will still be able to claim such grants, while giving both the tenant and the landlord the flexibility of a shorter term than the original 10 years.

I move amendment 156.

Alex Fergusson: I support amendment 156.

I hope that the convener will bear with me if I make a comment. If I had been thinking more quickly, I would have moved the amendment that Claudia Beamish has just withdrawn. The cabinet secretary's response exemplified my real concerns about the bill, in that it is time constraints that have prevented that hugely important issue from going forward.

I appreciate that I may be stretching your patience, convener. I will simply say that I very much support amendment 156.

The Convener: We are extremely indulgent.

Amendment 156 agreed to.

Section 76, as amended, agreed to.

Section 77 agreed to.

Section 78—Modern limited duration tenancies: irritancy

The Convener: We move on to modern limited duration tenancies and 1991 act tenancies and the irritancy of a lease due to the non-payment of rent.

Amendment 134, in the name of Claudia Beamish, is grouped with amendment 275.

11:45

Claudia Beamish: Irritancy should not be possible if the landlord has served an invoice and given the tenant a reasonable opportunity to remedy the situation. Amendment 134 relates only to the new MLDTs.

Removal of a 1991 act tenancy due to non-payment of rent is governed by section 20 of the 1991 act and by the terms of some leases, which allow the landlord to irritate the lease—that is a legal term, I think—for non-payment after six months, even if no invoice has been served and no reminder or opportunity to remedy has been offered to the tenant.

Amendment 134 would ensure that a landlord must issue an invoice and the tenant must have a "reasonable opportunity" to pay. I hope that the approach will assuage fears that a landlord might fail to issue an invoice to a tenant in the hope that an accumulation of missed rent payments will give grounds for eviction.

Amendment 275 would ensure that the same applied to limited duration tenancies, short limited duration tenancies and 1991 act tenancies. As irritancy is not covered in part 10 other than in chapter 1, it is necessary to create a new chapter. I propose to put the new chapter after chapter 4, "Rent review", because there is some common ground there.

The degree of protection that is afforded to tenants varies, according to the type of tenancy. Proceedings against a 1991 act tenant can commence only after the rent has not been paid for at least six months. With other tenancies, the lease can be irritated soon after a single rent payment becomes overdue. The difference just reflects length of tenancy and security of tenure.

However, the "reasonable opportunity" provision would apply to all tenancies. Amendment 275 would amend section 20 of the 1991 act to provide that the tenant must have a reasonable opportunity to make payment. That might appear unnecessary: if the rent is six months overdue the tenant must surely have had a reasonable opportunity to pay. However, if the rent is due monthly and five months of payments are overdue, under section 20 as it stands a landlord may commence proceedings the day after the due date of the sixth monthly payment without giving the tenant a reasonable opportunity to make that payment.

I hope that the cabinet secretary will agree my approach.

I move amendment 134.

Michael Russell: I have a great deal of sympathy for the amendments in this group and I will be interested to hear the cabinet secretary's response to them. I was considering lodging an amendment with similar effect.

There are issues to do with presentation of invoices and payment of rent, and there are circumstances in which invoices are not presented, which can lead to confusing and difficult situations for tenants. We need renewed clarity on the exact process that would be followed in the context of irritancy. Although this is a notoriously difficult area and there might be legal difficulties with Claudia Beamish's amendments, the spirit of the amendments is correct and there must be clarity for tenants. If the legal issues are cloudy, perhaps some way can be found to help Claudia Beamish to lodge an amendment at stage 3 that would improve the situation.

Alex Fergusson: I am not as supportive of the proposed approach as Mike Russell is. Any agricultural tenancy that I have ever come across has stated clearly when rent is due—usually Whitsun and Martinmas. I think that amendments 134 and 275 would place an unreasonable requirement on landlords to produce a piece of paper. We all know that there are a multitude of reasons why a piece of paper might not be received or delivered. Although I understand Claudia Beamish's intention in lodging her amendments, I think that the practical difficulties of implementing her proposed approach outweigh the intention and I am not inclined to support the amendments.

Richard Lochhead: Amendment 134 aims to provide protection to tenants of MLDTs by ensuring that a landlord cannot exercise their right to terminate the lease for non-payment of rent unless the tenant has first received an invoice prior to the rent due date and has then been given a reasonable time to pay the unpaid rent. Only if the tenant does not pay the rent can the landlord begin to exercise their right to end the lease.

We support the principle, but the bill already gives tenants in MLDTs the protection that Claudia Beamish is looking for. Under our provisions in new section 18A(6) of the 2003 act, the landlord has to notify the tenant in writing that they have not paid the rent, and the tenant then has at least 12 months to pay. The landlord can irritate the lease only if the tenant still has not paid after all that time. Therefore amendment 134 is not necessary.

Amendment 275 is in two parts. The first part, for 1991 act tenancies, duplicates an effect that the 1991 act already has. The existing process in section 20 of that act already ensures that the tenant is aware of how much rent is outstanding

and has the chance to pay. As such we do not support that part of the amendment.

I support the second part of the amendment—on short limited duration tenancies and limited duration tenancies—in principle and agree that it could be helpful, but it needs redrafting. For instance, the term "reasonable opportunity" is left undefined, and it would have to be defined. I invite Claudia Beamish to not move amendment 275. We will be happy to work with her to bring forward, if possible, appropriate amendments at stage 3.

I ask the committee to reject amendments 134 and 275 on that basis. I hope that Claudia Beamish is willing to work with us on amendments for stage 3.

Claudia Beamish: I will withdraw amendment 134 because of what the cabinet secretary has said. I will try to fathom more of an understanding of how what is in the bill and in the 1991 act gives the protection that is needed.

I would be very pleased to work with the cabinet secretary and officials on amendment 275. Therefore, I will not move it.

Amendment 134 withdrawn.

Section 78 agreed to.

Section 79—Conversion of 1991 Act tenancies into modern limited duration tenancies

The Convener: We move to the conversion of 1991 act tenancies and limited duration tenancies into modern limited duration tenancies. Amendment 157, in the name of the cabinet secretary, is grouped with amendments 291, 158, 226, 228 and 259. Amendments 157 and 291 are direct alternatives.

Richard Lochhead: Convener, as you know, we have planned for some time to replace section 79 of the bill, which currently gives ministers a power to provide, by regulation, for secure 1991 act tenancies to be converted to MLDTs. There are two parts to the replacement of the section. One is the new resumption and assignation process, which amendment 201 introduces and which we will discuss next week. The other is amendment 157, which ensures that 1991 act tenancies can still be converted to MLDTs by agreement, even though the original section 79 is to be removed from the bill.

Specifically, amendment 157 allows a landlord and a tenant to agree to convert a secure 1991 act tenancy into an MLDT of at least 25 years. That is consistent with the existing arrangements in the 2003 act, which states that when a 1991 act tenancy is converted to an LDT, that LDT must last for at least 25 years. Compensation is payable at the point at which the 1991 act tenancy converts to an MLDT. Again, that is consistent with the current arrangements for conversion to LDTs.

The committee will wish to note that, when a 1991 act tenancy converts to an MLDT, the new MLDT will not include the option of a break clause at the five-year point. That is because the break clause is targeted at new entrants and not at established farmers, such as secure 1991 act tenants.

As I have said, amendment 201 will introduce the other part of our replacement for section 79, which is a new process that will let tenants relinquish their tenancies in exchange for compensation or assign them to a new or progressing farmer. We will be able to discuss that next week, but I would like to comment on Alex Fergusson's alternative proposal for replacing section 79, as set out in his amendment 291.

The Government's proposals have been carefully developed to ensure a fair balance between the rights of and opportunities for tenants and landlords, set against the context of the wider public interest. By contrast, Alex Fergusson appears to be cherry picking elements of the former proposals from the review group and the Government in order to skew that balance as far as possible towards the interests of landlords. I know that he accused us of cherry picking, but I make a similar accusation.

Alex Fergusson has opted for a shorter MLDT term than the review group recommended, and he would give the landlord an automatic right to take back full control of the land in perpetuity for the same price as a new entrant would pay to have use of it for just 25 years. Although I welcome his adoption of our approach of targeting new entrants, the practical results of his proposals could be to keep down the price that landlords would have to pay ahead of genuinely increasing access to land for new farmers. Also, we wonder what evidence Alex Fergusson has for choosing 25 years when the review group recommended that the converted lease should be for a period of at least 35 years—a view that is shared by many key stakeholders.

At each stage of the process, amendment 291 appears to narrow the review group's recommendations in the interests of the landlord without providing any counterbalance. That is hardly in the spirit of the review group's recommendations, and nor is it in the interests of the tenanted sector, as it would not provide the balance that the current legislation and the bill offer. I therefore invite the committee to reject amendment 291.

I move on to the consequential amendments. If amendment 157 is accepted, the power that section 79(1) currently contains will be removed

from the bill, because the amendment replaces the original section 79 with full provisions for the conversion of 1991 act tenancies to MLDTs. Amendment 226 therefore removes the reference to that power from the list of subordinate legislation at the end of the bill.

Amendment 158 is another consequential amendment. It will no longer be possible for 1991 act tenancies to convert to LDTs—because they will not exist—so there is no need for the notice-to-quit process in the 1991 act to be disapplied so as to allow speedy conversion to an LDT. However, because amendment 157 effectively introduces an updated version of section 2 of the 2003 act and enables 1991 act tenancies to convert to MLDTs instead of LDTs, the notice-to-quit process needs to be disapplied to allow speedy conversion to an MLDT.

To be clear, existing LDTs will be able to continue. Alternatively, it will be possible to convert them to MLDTs under amendment 158. Amendment 158 allows them to convert without having to go through the lengthy and expensive process of ending the LDT, settling waygo compensation and then beginning an MLDT from scratch. The minimum length of the new MLDT will be however long the LDT had left to run. However, parties will be free to set a longer duration if they wish. The tenant's improvements will carry over into the MLDT, so that the tenant receives the compensation that they are entitled to when the MLDT ends.

Finally, I will cover another consequential issue. The legal definition of a limited duration tenancy in the 2003 act is set out in section 93 of that act, where an LDT is defined by reference to section 5 of that act. However, the bill repeals section 5 of the 2003 act as part of the replacement of LDTs with MLDTs. Because pre-existing LDTs may continue for many years, we therefore need to include a workable definition of LDTs in section 93 of the 2003 act, which amendment 259 does.

I move amendment 157.

Alex Fergusson: Although I accept that amendments 157 and 291 are direct alternatives, there is a difference. The cabinet secretary's amendment 157 is part of a suite of alternatives, some of which we will debate next week, whereas my amendment 291 is not an alternative but a replacement for section 79, for reasons that I will elaborate.

Amendment 291 would replace section 79 with a new section that gives greater clarity and detail on the conversion model. I lodged amendment 291 because the conversion model holds the key to the improvement in landlord-tenant relationships that I hope that we are all seeking to bring about through the bill.

12:00

I can say with absolute certainty that the Government's belated proposals on relinquishment and assignation as part of the available options will, if anything, cause even greater tensions in landlord-tenant relationships and will have the opposite effect to the effect that we want on the availability of land for rent, which is one of the bill's stated intentions.

Members might not be surprised by the opposition of Scottish Land & Estates to the proposal, but I would hope that they are somewhat surprised by NFU Scotland's opposition—certainly on agricultural grounds—to it. Their opposition is not the opposition of landlords and their agents; rather, it is the view mostly of owner-occupiers and small landowners, who see a threat in what the Government proposes.

Unlike assignation and whether it is preceded by an offer to relinquish a lease, conversion to an MLDT can and does meet the policy objectives of the bill and lets the sector move forward on a positive footing. That was the view of the agricultural holdings legislation review group, which, as I have said, was chaired by the cabinet secretary, and it was supported by the committee in its stage 1 report.

A conversion model would provide tenants with an option to retire, while sending a positive message to the industry about fixed-term tenancies. Although in many cases of conversion the landowner's expectation of regaining vacant possession of the holding would be delayed for a significant period—I am open to discussing the length of that period—they would at least have the prospect of regaining possession and then being able to re-let it or to reorganise either their own or their tenant's farming businesses. The model would introduce a measure of flexibility.

The assignation for value model ring fences the secure tenancy, and the owner of the land would have little prospect of ever regaining possession, unless he could afford to exercise his right to buy the tenant's interest by effectively paying a premium for his own property. The conversion to an MLDT model is a less severe breach of a landlord's property rights. That is important, because the less severe any such breach is, the more likely it is that the owner of that land will make it available for rent.

Section 79 was heavily criticised for its reliance on secondary legislation. My amendment 291 inserts a new section 29, based on the existing provision, that adds further detail about what conversion to an MLDT would involve. It includes measures providing that the landlord would be required to match the sum offered by the prospective assignee, meaning that the landlord

would have a true right to pre-emption, while not being required to pay a premium. In addition, potential assignees would be limited to new entrants and farmers who wish to progress in the industry. The provisions are aimed not only at assisting people to exit the sector, which is a problem, but at providing opportunities for those who wish to enter it. That is not skewing the legislation in favour of the landlord; indeed, it does the opposite. It would meet the Scottish Government's policy objectives in a balanced and proportionate manner.

My problem is that my amendment 291 needs to be debated alongside amendment 201, which we are not to debate until next week. However, I will listen to what the minister and other members have to say before I decide whether to press it.

Richard Lochhead: I respect Alex Fergusson's views on those matters. I outlined the Government's position in my opening remarks, and we clearly disagree with his approach.

On NFU Scotland's position, we have had today further representations from some of its members, who support the Government's approach.

Alex Fergusson commented on a guarantee of regaining, as he put it, secure property rights for landowners. At the moment, there is no such guarantee, because if a secure tenant has a successor in place, they will continue to be a tenant on the land—the secure tenancy will continue if there is a successor. The guarantee that I think that Alex Fergusson is chasing is not there.

It is clear that Alex Fergusson's approach is to revert to—or move closer to—the original proposal. We are replacing that proposal with two further measures, one of which we are discussing this week. Next week we will discuss the second measure, on assignation of 1991 act tenancies, which we believe will help to keep land in the tenanted sector. If a secure tenant does not have a successor, the land could be lost to the sector. The Government's new approach will help to keep that land in the sector, which is the ultimate aim that we are trying to achieve.

The Convener: The question is, that amendment 157 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Beamish, Claudia (South Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Dey, Graeme (Angus South) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Russell, Michael (Argyll and Bute) (SNP)

Against

Fergusson, Alex (Galloway and West Dumfries) (Con)
Hume, Jim (South Scotland) (LD)

The Convener: The result of the division is: For 7, Against 2, Abstentions 0.

Amendment 157 agreed to.

The Convener: Amendment 291, in the name of Alex Fergusson, has already been debated with amendment 157. I ask Mr Fergusson whether he wishes to move the amendment.

Alex Fergusson: At this stage I will not move the amendment, but I will come back to it at a later stage.

Amendment 291 not moved.

Section 79, as amended, agreed to.

After section 79

Amendments 158 to 165 moved—[Richard Lochhead]—and agreed to.

Section 80—Tenant's right to buy: removal of requirement to register

The Convener: The next group is entitled "1991 Act tenancies: tenant's right to buy where interposed lease". Amendment 292, in the name of Michael Russell, is the only amendment in the group.

Michael Russell: My contribution will not be lengthy because, under the next group, I want to say a word or two more about the history of land reform in Scotland.

There is an anomaly in the current situation whereby tenants who have 1991 act tenancies and interposed leases cannot exercise a right to buy. An interposed lease is a lease that is put in place between the landlord and the tenant. There can be legitimate reasons for such leases, which are used from time to time for those reasons. However, some landlords may use interposed leases to avoid the tenant having the right to buy. That is extremely unfair, but it is possible at present.

Under the Land Tenure Reform (Scotland) Act 1974, an interposed lease can be put in place without the tenant's consent. As a result, there are tenants who could be unable, for ever, to exercise the right to buy, which they might otherwise have under the circumstances in the bill. That would frustrate the Government's intention and the tenant's legitimate rights and expectations. I seek to ensure that that anomaly, and the injustice to those tenants, is removed and that progress is made to ensure that tenants who have interposed leases can exercise their right to buy.

I move amendment 292.

Richard Lochhead: I am sympathetic to the position of tenants who, without any say in the matter, have ended up as subtenants in interposed leases and who therefore do not qualify for the pre-emptive right to buy, as Michael Russell said. Although there may well be legitimate reasons why a landlord might interpose a lease, it is not right that interposing should be used to deny tenants the right to buy, as Michael Russell said.

We looked at the issue following the review group's recommendation on the right to buy for tenants in interposed leases. The area is complex, and considerable work will be needed to find a solution that is fair and, of course, legal. Therefore, we cannot include the issue in the bill.

Under amendment 292, the subtenant would buy the land, but the land would still be subject to a head lease with a tenant, and that tenant would be controlled by the original landlord. If a subtenant exercised the right to buy, they would not be able to farm the land, because the landlord's interposed tenant would still be there and would have the right to farm the land. Once the dust settled, all that a subtenant could achieve would be that they were the landlord and the landlord was the tenant. There would be nothing to stop that tenant using the right to buy, which would mean that the original subtenant could end up having no land at all.

The area is very complex and quite confusing. We need time to resolve quite difficult questions, such as whether to let the subtenant buy the tenant's interest as well as the land and whether that might make things so expensive that nobody would want to do that in the first place.

I am sympathetic to the issue. The matter is complex, and we need to assess fully all the issues that arise. However, I am happy to say to Michael Russell and the committee that we will, accordingly, plan a consultation on the subject for early in the next parliamentary session. That will enable us to properly assess the situation and address it in a way that works.

In the meantime, I urge Michael Russell to seek to withdraw amendment 292.

Michael Russell: A number of Issues arise in the bill that indicate that further action will require to be taken. This is one anomaly; I will refer to others later. It is a pity that such issues were not considered as the bill was developed, but I accept that the matter cannot be resolved in a few weeks. Given the cabinet secretary's commitment that there is a desire to solve the problem and given the timescale that has been mentioned, which is early in the next parliamentary session—I hope that that would apply whoever was in government—I am prepared to seek to withdraw my amendment, on the understanding that the issue will be resolved in the next session.

Amendment 292, by agreement, withdrawn.

Section 80 agreed to.

After section 80

The Convener: The next group is entitled "1991 Act tenancies: absolute right to buy for certain tenants". Amendment 293, in the name of Michael Russell, is grouped with amendments 293A and 293B.

Michael Russell: I am conscious that I started my contribution on the deer management amendments in the 19th century. I will do the same thing with this group.

Many of the land and land law issues that we deal with in Scotland have their roots in the failure to change at a time when others were changing. It is instructive that, in a period of 40 years in Ireland, there were four significant land reform acts—in 1870, 1881, 1903 and 1909. They arose out of very different political circumstances, but they ensured that tenancy systems that we still have do not exist there. If we look at the history of land reform throughout Europe and further afield, we see that much action was taken in the 19th century and in the early 20th century to recognise the rights of those who work on the land and who have worked land for a considerable time. Virtually no such changes took place in Scotland.

The UK Parliament certainly legislated for land reform progress, and there were ambitious land reform acts, such as those that dealt with the changes to agricultural tenancies in the 1940s—particularly the Agricultural Holdings Act 1948. However, in Scotland the process of considering the way in which the land is used, the relationship of people to land and the use of land as a resource—particularly a community resource—has been slow in coming. It was only with the establishment of the Scottish Parliament in 1999 that the process began to move into something other than a crawling gear. We now have to cope with those changes.

12:15

Land reform has to take account of, for example, the ECHR, which is necessarily hardwired into the Parliament's DNA. The ECHR is a very important part of considering how people should be treated. However, it is much harder to reform the tenure of land with the ECHR in place unless we accept—this relates to the instructive and useful process that we have engaged in with the bill—that people have a variety of rights and that they are defined not in a single European

convention, no matter how important, but much more widely on the international scene.

The bill, which I hope will become an act before the end of this session, will take the understanding of the balance of rights and responsibilities a big step forward. As it does so, we will need to consider some very problematic issues, such as the right to buy. I make it absolutely clear that I am not suggesting an unconditional or absolute right to buy, but there are many circumstances in which conditional rights to buy are not yet provided for in legislation and need to be dealt with. I lodged amendment 293 because I am concerned that there has been a consistent attempt to close down the issue of the right to buy and to say that there is no demand or need for it.

I note that a consistent theme in the lobbying that we have had on the bill is that the issue should be put away not just for discussion but for ever. What we are hearing from some people is that such reform must not be talked about. It is a reform that dare not speak its name. However, what we are talking about is not a particularly radical reform, as is illustrated by amendment 293. What the amendment suggests is very modest; it is not the expropriation of land but the establishment of a right to buy for people who have been working a particular piece of land for half a century. They have put in their effort and time—and often investment—to improve and develop a farm. All that amendment 293 seeks to do is establish a right to buy in those circumstances.

We can define three groups of people by how they look at the bill. There are those who believe that such legislation is no longer relevant because there is a healthy relationship between landlords and tenants and that people should get on with it. I am not averse to that point of view, because there are many circumstances in which it is true, and I am certainly not criticising every landlord.

There are those who believe that rights to property are absolute and can never be interfered with, so no amendment of those rights can be considered. However, that is simply not true. The legislation that the Scottish Parliament has passed under this Government and previous Administrations shows that that is not true.

There are those who need change because of their circumstances. I represent some of those people, who believe that it would be far better if they were able to purchase their land and move ahead to use it. I had a conversation this morning with somebody about the issue. They said, “Surely there is no evidence that, if those who wish to buy their farms did so, they would be better farmers than they were as tenants,” but I can go to many places in my constituency and prove exactly that. There are people who have taken such an opportunity and done things that they could only dream of when they were in tenancies that were not working for them.

I want to take the issue of right to buy forward, but I recognise that the ECHR changes the context. I therefore do not expect amendment 293 to succeed, but I wanted to ventilate the issue of the right to buy and make it clear that it is not over and closed down but that it is one of those issues, like interposed leases, to which we will have to return. I want a debate to take place about the rights that tenants have in the context of not just the ECHR but a much wider view of rights, and in the context that there are people who have worked the land and are passionately devoted to it.

At the weekend, I saw references to the issue in which people said, “If people want to buy a farm, they can go and buy one somewhere else.” That is not the issue. If someone who lives on the island of Islay or the island of Bute has had long-term family connections for generations to a community, they have a right to move forward in that community, having proved their ability, worth and involvement in investment in that community.

I do not regard what amendment 293 proposes as in any sense a radical move; I regard it as a necessary next step. Although that step will not be taken in the bill, I hope that the cabinet secretary will recognise that the land commission will have to consider it, that the extension of the right to buy will need to continue and that that will not destabilise the agricultural market but recognise the modern reality. We should have recognised that reality in Scotland during the 19th and 20th centuries but, unfortunately, we did not have a Parliament to do so.

Although I will move the amendment now, I may withdraw it before we come to a vote. I want to hear what the cabinet secretary has to say.

I move amendment 293.

Claudia Beamish: I support what Mike Russell said. It is important that we acknowledge that those who have worked the land over generations—50 years is a good marker of that—have rights and that not only ECHR rights but other rights need to be recognised. Respect needs to be shown, in a more ethical sense and not just a statutory sense, to those who have worked the land.

My amendments to Mike Russell’s amendment 293 would help to do that by limiting the right to buy in a way that might reassure some who oppose it. I listened carefully to what Mike Russell said, and I suspect that this will not be the time when right-to-buy issues go forward. However, they cannot be avoided or brushed under the carpet. We must face such issues in modern Scotland.

There is a demand for the right to buy to be looked at. An STFA survey recently showed 85 per cent support for a qualified or limited right to buy, and I understand that a Scottish Government survey showed 46 per cent support for the absolute right to buy and 29 per cent support for a conditional right to buy.

My amendment 293B suggests a limited period in which tenants could issue a notice, under proposed new section 38ZB(1) of the 2003 act, of five years from the date that the bill becomes an act. As I said, that might give landowners confidence about letting, while giving those who are in secure tenancies an opportunity to purchase their land, which I believe is the right way forward.

Although I have not put the following points in my amendments, there is also the possibility—it might be helpful to put it on the record at this stage—of a provision to allow the tenant to buy the farm if the landlord was in breach. Perhaps a stage 3 amendment could also be considered—I have written down the phrase "in a state of optimism", although I am not sure that that will be the case—that required a successor of the purchaser to be named, which would prevent a tenant from purchasing a farm at a reasonable price then selling it quickly on the open market. There could be a connected resale provision to prevent an unfair profit from being made.

We have to consider seriously the right to buy, which means not an absolute right but a limited, qualified or conditional right—however one wants to phrase it. To be frank, I am disappointed that some people have shied away from addressing the subject. I would have liked it to move forward at stage 3, having been debated at stage 2, but I will leave it at that for the moment.

I move amendment 293A.

Dave Thompson (Skye, Lochaber and Badenoch) (SNP): The subject is fairly dear to my heart. When I was first selected in 2002 to stand in Ross, Skye and Inverness West, I went along to a meeting in the Tower hotel, which was one of the founding meetings—if not the founding meeting—of the Scottish Tenant Farmers Association. I put forward a motion to the SNP conference later that year that advocated a right to buy—which the conference approved, by the way. That was 14 years ago, and here we are still talking about the issue.

The big problem and issue, which Mike Russell referred to, is to do with the ECHR. That is written into the Scotland Act 1998, which set up the Parliament, and it very much ties the Parliament's hands. There is a difference between legislation having to be ECHR compliant, which is a matter of opinion and is untested in the courts, and people being able to challenge legislation under the ECHR. Those are two different things.

That is a wider issue that will not be dealt with here today. The fact that the ECHR is written into the 1998 act needs to be looked at. That provision needs to be removed so that we have the same freedom in proposing legislation as any other legislature has. Legislation could still be challenged under the ECHR—as, say, UK legislation would be—in the European Court of Human Rights.

The Scottish Tenant Farmers Association wrote to us just yesterday to indicate its support for a conditional right to buy, and Mike Russell's condition is holding a tenancy for 50 years. I will be interested to hear the cabinet secretary's response, but the STFA suggests various conditions that could be applied to the right to buy to ensure fairness for everybody, such as the tenant demonstrating greater investment in the holding than the landlord during the tenancy; evidence of the landlord being in breach of obligations or of farming business being inhibited by the scale of land ownership or the actions of a landowner; demonstration of eligible succession so that a landlord would not expect vacant possession in the near future; clawback in the event of resale within, say, 10 years; and a landlord's right of pre-emption if the farm is sold within 10 years.

I hope that all those things, along with the factors that Mike Russell and Claudia Beamish mentioned, will go into the pot and into the debate when the subject is considered in the future. It must be considered early in the next session. It is a boil that has been festering for many years, and it is souring relationships between landlords and tenants. We need to lance it, and the only way to do that is to bring in a form of conditional right to buy along the lines that we have heard discussed today.

Graeme Dey: I commend Mike Russell for lodging his amendment. My knowledge and understanding of the realities of tenancies, such as it is, is far more recent than that of Mr Russell or indeed Dave Thompson and others, but the more I learn about the tenancy issue, the more I am inclined towards the enhancement of the right-to-buy provisions in certain circumstances. I contend that, in that regard, Mr Russell's amendment should not readily be dismissed, although I cannot help but wonder whether it would sit better in a broader package that the Parliament and stakeholders would have an opportunity to work through, hopefully with constructive intent. We are all only too well aware of the painful consequences that can arise for some from passing legislation that is subsequently deemed to be flawed.

The principles behind Claudia Beamish's amendment could also be considered in that setting although, like Mike Russell's amendment, it would have ECHR hurdles to overcome and it could be subject to challenge by both tenants and landlords.

I look forward to hearing the cabinet secretary's response. I hope that he will recognise that the debate that Mr Russell has so eloquently called for is one that we need to have in the near future.

Alex Fergusson: I have listened to the debate with considerable interest. Mike Russell described three categories of people when it comes to right to buy, but I do not recognise myself in any of them, to be perfectly honest. It is probably a good job that I am retiring in six or seven weeks' time, because it is clear to me that this is going to come back to the Parliament in the next session, although that is the right place for the debate if it has to take place.

I will be very concerned if Mike Russell's amendment 293 is agreed today because if the Government's amendments on assignation are likely to end up in the courts, as I believe that they will—others may disagree—amendment 293 is guaranteed to do so.

12:30

I do not deny that it will be a continuing debate. However, that debate needs the fullness of time if it is not to lead to those who own land and have land available to let putting up the shutters and doing everything that they can to prevent that land from being let. If we rush into this and it is done in a top-down bullying sort of way, that will be the result. If we want a truly invigorated tenancy sector, we have to try to bring as many people with us as we can.

Some members have difficulty believing that I have the interests of the tenanted sector at heart, but I do. I want to see a tenanted sector that is vibrant, modern and dynamic as much as the next person does. However, I am worried that the legislation as it is proposed will not help to achieve that. I am convinced that Mike Russell's amendment—with respect, it is an absolute right to buy, albeit with constraints—would have a huge negative impact.

Given five years of inclusive debate, bringing in all the parties involved, we could possibly reach a solution at the end of the day. However, that is not for the bill or this Parliament to determine. I hope that that debate will be left for the future.

The Convener: I would like to set out some context in the briefings from Scottish Land & Estates and the president of NFU Scotland, Allan Bowie. SLE says:

"We believe that the introduction of this right to buy would not in the long term serve the industry".

Allan Bowie says:

"From an agricultural industry perspective, there appears little justification for an absolute right to buy".

That is an interesting context, because it sets out farming as an industry. As Pete Hetherington summed it up, it is about property development.

Consider the circumstances and the time that it has taken for people to find security. It is surprising over the piece how long many people have had to wait. I want to take you back to the 19th century, to the time of the Crofters Commission report. John MacPherson, the Glendale martyr, told the commission in the 1880s that the people there had told the landlords that

"our forefathers had died in good patience, and that we ourselves had been waiting in patience till now, and that we could not wait any longer,—that they never got anything by their patience, but constantly getting worse."

In 1905, the articles were created by a Conservative Government for the tenants of Glendale to be able to buy their holdings.

We are looking at the need for security for tenants today. We note that 120 secure tenancies are being lost every year. We are in a position to disagree with the idea is that this is about an agricultural industry but to agree that it is about people living on and farming the land. When the NFU president goes on to say,

"it has become clear that many of the calls are coming from a wider land reformist perspective, rather than an agricultural one",

I question what agriculture is for.

I have made that point in Parliament before and the question must be applied to amendment 293. I have a lot of sympathy for what Mike Russell has said. The cabinet secretary must take those things into account, given the historic precedent of the time that it has taken for people to gain security in the past, and the time that it has taken to address the very limited condition where tenants have been tenants for more than 50 years.

I look forward to hearing what the cabinet secretary has to say on that.

Alex Fergusson: Convener, can I come back in first?

The Convener: Erm—yes.

Alex Fergusson: I am sorry that you are so reluctant about it, because I think that we would all agree that this is a hugely important debate.

I hear what the convener says and I can understand it, although I do not fully agree with it. He quoted briefings from the NFUS and SLE. One might argue that they have axes to grind, but I do

not think that they have the same axe to grind as the Royal Institution of Chartered Surveyors. The NFUS and SLE of course have a vested interest, but it is different.

The bill is about creating a viable and active tenanted sector. A report from the Royal Institution of Chartered Surveyors a couple of years ago set out that the introduction of an absolute right to buy would

"increase the costs of purchasing farms ... decrease the quality of farms available to rent; and ... decrease the number of farms available to rent".

We have to bear that sort of thing in mind. If we want to create a vibrant tenanted sector, we have to take those things into account. I am not saying that they are right or wrong, but that underlines the argument that a considerable time needs to be taken over the debate. I am beginning to be sorry that I will not be part of that debate, because it is going to be a good one.

What I am trying to say is that the issues are not black and white. I hope that people will bear that in mind as the debate continues in future years.

Sarah Boyack: To respond briefly to Alex Fergusson, my understanding is that the amendments are not about an absolute right to buy; they are about a limited right to buy in clearly stated circumstances. We need to have a debate about whether the balance is right at the moment. I have read all the briefings that we have received about the need for balance and fairness. My point is that the balance is not right at the moment, and that is what the amendments are testing. There is a difficulty with introducing such measures at stage 2 or stage 3, but the question of where that balance should lie and what is fair is clearly part of the backdrop to the bill and will affect its success.

The debate is important. The amendments are not extreme; they are about shifting the balance, and I think that they are proportionate. That is the spirit in which we should have the debate, and I hope that that is how the debate is viewed outside the Parliament. It is in the context of land reform. It is about how land is used in Scotland, and it is about fairness to the people who farm, look after and invest in it. Over the past few months, we have considered what is happening in the dairy industry and delays in common agricultural policy payments, so we know that this is a tough time. For those who are involved in the process, finances are key, but so is the place from where people start. Some of the amendments that we will come to later about the way in which agricultural holdings operate are key.

Therefore, it is wrong to dismiss the amendments as ones that will completely rewrite the process, because the suggestion is for a shift in the balance. It is legitimate for us to debate that shift today.

The Convener: I will not come back in any way at the moment. However, we should hear from the cabinet secretary before we come back to Mike Russell.

Richard Lochhead: I have listened carefully to members' eloquent contributions and, in most cases, I do not disagree with a lot of what they have expressed. I understand why Michael Russell lodged amendment 293, particularly in light of the circumstances and well-documented cases in his constituency, and in other constituencies in Scotland. However, the agriculture holdings review group carefully considered the issue of the right to buy and the circumstances under which it should apply. Of course, the group was one of many bodies to reject the absolute right to buy, as it does not focus on agricultural contribution or on creating a vibrant tenanted sector.

As many members have done, the review group also recognised that this area of law and its interaction with the European convention on human rights is a legal minefield. The committee has rightly emphasised that it is essential that the provisions in the bill comply with the ECHR and we are all acutely aware of the importance of avoiding another Salvesen v Riddell situation—a point that was well made by the committee in its stage 1 report.

Our view is that the amendment breaches ECHR and is outwith the competence of the Parliament. However, I recognise that there is a widespread belief that a conditional right to buy would be beneficial. The Scottish Government has already begun to establish that in the bill. For example, the bill creates opportunities for tenants to order the sale of—and then buy—their holdings when the landlord is in breach of his or her obligations. Indeed, I think that that addresses some of the STFA's points, which were reiterated by Dave Thompson.

The bill also gives communities a right to buy local land when sustainable development is at risk. In some cases, that should involve tenanted farms. I therefore hope that Michael Russell will withdraw the amendment, but I am also mindful of the fact that this is not by any means a static situation. The debate has certainly moved on over the past few years. As land reform progresses in Scotland, there will be opportunities to consider whether further change is necessary and can contribute to community wellbeing, agricultural progress and the sustainability of rural businesses and communities.

I know that any future cabinet secretary for rural affairs will keep things under review, just as I am

sure that a number of MSPs will continue to press for further change. I have no doubt that the land commission, once established, will be very mindful of the on-going debate in Scotland and the entirely legitimate desire of tenants to have more of a say over their own destiny.

Indeed, in light of the well-known cases in Argyll in particular, including those involving constituents of Michael Russell's to whom he introduced me and whom I have met personally, as well as other cases elsewhere in the country, I agree that it is vital that the next Parliament reviews the extent to which the bill has been able to deliver for such cases and to look at the issues around a conditional right to buy.

In the overriding context of land reform now being an on-going process in Scotland and this Parliament, I hope that that outlines the Government's position.

Michael Russell: There will be people who will be disappointed by this debate, but I do not think that they should feel disappointed. I have been impressed by the high quality of the debate on every side and I think that it has been a serious and well-informed debate.

I want to say at the outset that there is a fourth category that I would put Alex Fergusson into, if I may say so—that is a category of somebody who is immensely knowledgeable and passionate about this subject and who has an open mind about some of the issues but who has reservations because of fears that it will impact adversely on the agriculture sector. I fully understand that.

That is one of the reasons why we have to bring the issue of right to buy back in order to examine it properly. I will explain how I think that should happen in a moment. We need to be very careful, of course, that we do not get it wrong. The spectre of another Salvesen v Riddell situation has been raised around the table and it is right to raise it, not because it is a problem for the Parliament—although it is—but because it has resulted in suffering for individuals. The committee has discussed that on a number of occasions. I do not want to be involved in anything that creates circumstances where individuals suffer as a result of it, so that is a strong reason for me to say that, although I want the right to buy now, let us spend some time on it.

Repeatedly, we have heard during the bill process from ministers that the bill must be watertight. That is true. I understand why they say that—I have been a minister myself. However, I want to say to the cabinet secretary that sometimes, the right position for a Government is to be in the courts defending the decisions that it has made as being the right decisions. Not doing something simply to avoid going into the courts is not enough of a justification because if we accept legal threat as the means by which we will always avoid things, we will make no progress.

I think that we should avoid the Salvesen v Riddell difficulties that are undoubtedly in the amendment, because the amendment was drawn up with the tremendous help of the parliamentary clerks but it was not been drawn up with the help of the Scottish Government's legal side and the experienced parliamentary draftsmen who have done such work for years. To avoid those difficulties, we probably need to do some more work but, in the end, we may have to defend this proposal against those who wish to undermine it because it is the right thing to do.

12:45

The legal issues persuade me that we should not pursue the matter at this stage, but the debate encourages me greatly. I thank the cabinet secretary for his response, because even if there are members here who disagree with my proposal, the debate has indicated that the issue is not dead. It is not done and dusted, and what the land reform review group said was not the final word on the subject. There will have to be progress on a conditional right to buy—what I propose is a conditional right to buy, not an absolute right to buy.

How should we take the matter forward? I make a suggestion. I will not press amendment 293 at this stage, but, in the early days of the next parliamentary session, consideration should be given to how to implement a conditional right to buy. It might be possible to do so in a very simple bill. A problem with agricultural holdings and tenancies legislation is that it is immensely complicated. As the cabinet secretary said, if we change one thing at one end, another thing falls out of the other end.

We might achieve the aims of amendment 293 much more simply. However, whatever is done should be well prepared. I hope that there will be a constructive, national debate on the subject, and I hope that people will realise that a conditional right to buy is a necessary step forward. However, we need to think about it. I will certainly go away from this debate and think about it, because I profoundly believe that it is the right thing to do and is not a threat but the fulfilment of the next stage of enabling people who are engaged in Scottish agriculture to do their best and to benefit themselves and their communities. That is an ambition that we should all have.

I will not press amendment 293, but I am grateful for the debate. We have moved a step on. We have not gone as far as I want to go, by any

manner, but we are still moving, which is important.

Claudia Beamish: My amendments 293A and 293B represented an attempt to find a balance that would give landowners and landlords confidence, because I have so often heard people make the argument that landowners will not want to let land if there is any form of right to buy. The confusion in that regard, even in this debate, has shown that we need to be clear about what we are talking about. We are not talking about an absolute right to buy; we are talking about a qualified, conditional or limited right to buy—whatever term we use.

As someone who is reasonably new to this debate and who, like every member here, has a sense of fairness and justice, I am puzzled as to why the proposal seems to have been kicked into the long grass again. I find that disappointing. Some of us will certainly want to take the debate forward if we are here in the next parliamentary session; I am sure that others will do so if we are not here. On that basis, I will withdraw amendment 293A and not move amendment 293B. However, I think that the words of Mike Russell, Dave Thompson and Rob Gibson were important, as was Sarah Boyack's shorter speech.

Amendment 293A, by agreement, withdrawn.

Amendment 293B not moved.

Amendment 293, by agreement, withdrawn.

The Convener: We will take a short break.

12:49

Meeting suspended.

12:53

On resuming—

Section 81—Sale to tenant or third party where landlord in breach of order or award

The Convener: Amendment 294, in the name of Michael Russell, is grouped with amendment 295.

Michael Russell: The question that I am raising is simply whether the bill might create circumstances in which a tenant will get to the stage of purchase without actually knowing where he or she is in terms of the purchase price. That is issue number 1. The second issue is simply to ensure that the clawback process will be better and more comprehensive than the one that is in the original bill. Clawback will always be controversial and difficult, but it is one of those areas in which the bill must be absolutely clear about how it will work.

My amendment 167 ensures that, if there is clawback after difficulties with a tenancy, the landlord who is in breach should not profit as a result of investment or action that is taken by the tenant. It is a basic principle that those who are at fault should not profit.

The issues are simple and clear. I would be quite happy to discover that I am wrong in terms of the price issue, in which case we need proceed no further. However, I hope that the cabinet secretary will be more sympathetic to the principle behind amendment 167, because it is important that those who have behaved badly do not profit as a result of their behaviour.

I move amendment 294.

Claudia Beamish: I want to speak in favour of Michael Russell's amendment 294, which refers to a scenario in which the landlord is forced to sell the land due to a material breach of the obligations in relation to the tenant. Some tenants have advised me that they can become committed to the sale before the price has been determined, which is a pressure that they do not want to be subjected to. It is a scenario that no one who is seeking to buy a property would normally agree to. My amendment 295 gives the tenant the option to withdraw from the sale during a period of 28 days after the price is known. I believe that that is a reasonable and fair time to allow for consideration of the matter.

With regard to the 28 days to withdraw that are provided for in new section 38F of the 2003 act, my amendment is written on the basis that the tenant would have 28 days after learning the price to withdraw from the offer. However, my understanding is that the offer would not need to be made until the price was known. If the price was not to the tenant's liking, the tenant could give notice under new section 38E, saying that they no longer intend to proceed under new section 38F. I hope that I have got that right.

Richard Lochhead: I am grateful to Mike Russell and Claudia Beamish for highlighting the importance of making sure that a tenant does not have to commit to buy the land before they know what the price of the land will be. I am happy to say on the record that I confirm that, as drafted, the bill already gives that protection. If the tenant decides to buy, they make an offer under new section 38F(1) of the 2003 act, and that offer must be at a price that is arrived at under new section 38F(2), so the tenant cannot make an offer under new section 38F(1) until they know the price.

Once the tenant has found out the price, they are under no obligation to buy. If they decide that they do not want to buy, they need to give notice of that under new section 38E(5) of the 2003 act. However, the tenant will never be in the position of

having to sign a blank cheque. Therefore, the order of events that Mike Russell is looking to make clear is the order that is already prescribed by the bill. His amendment is therefore unnecessary, but I would be happy to consider whether the explanatory notes to the bill could be updated to make sure that the position is unambiguous. If other guidance needs to be published, we will make sure that that happens, too.

Claudia Beamish's amendment could actually confuse matters. Because a tenant cannot make an offer until they know the price, her amendment would mean that a tenant could find out the price, make an offer at that price, but then withdraw the offer, which would not help the interests of any of the parties who are involved in the sale. Further, of course, there are already provisions in the bill that mean that the offer cannot be made until the tenant knows the price.

I ask Mr Russell to withdraw his amendment and urge Claudia Beamish not to move hers.

Michael Russell: I am pleased that amendment 294 is not necessary, so I will seek leave to withdraw it. It was important to have the matter clarified on the record. If it can be further clarified in guidance, we will not get into the trouble that I outlined.

Amendment 294, by agreement, withdrawn.

Amendment 295 not moved.

The Convener: The next group is minor and consequential amendments in relation to agricultural holdings. Amendment 166, in the name of the cabinet secretary, is grouped with amendments 203, 205, 208, 206, 207, 212, 251 and 263 to 265. Amendments 263 and 264 are pre-empted by amendment 300 in the group "Retention of existing procedures for variation or review of rent".

I ask the cabinet secretary to move amendment 166 and speak to all the amendments in the group.

Richard Lochhead: I will take your guidance, convener—I can speak to all those minor and consequential amendments, or I can move them en bloc.

The Convener: We may get to the stage of moving them en bloc if you can explain initially what they are about. We will have to deal with amendment 166 individually, as it is the lead amendment at this stage in proceedings.

13:00

Richard Lochhead: I will speak to amendment 166 and allow the committee to guide me if you want me to go through all the consequential amendments.

Amendment 166 is designed to ensure that a tenant who is exercising the right to buy in an enforced sale does not lose that right to buy if the seller causes a delay.

Under the bill as drafted, a tenant loses their right to buy if they do not pay for the land by the final settlement date. However, the landlord might not be able to transfer the title for the land in time to meet that date, which would mean the tenant would not be able to pay for the land in time. On a potential reading of new section 38J as drafted, the tenant would then lose their right to buy, through no fault of their own. The amendment simply clarifies that the tenant doesn't lose the right to buy in those circumstances. That is also consistent with the provisions for the community right to buy in part 5 of the bill.

Do you want me to go through the other minor amendments, convener?

The Convener: I think that you should leave them just now.

Richard Lochhead: In that case, I move amendment 166.

Amendment 166 agreed to.

The Convener: The next group is on sales where the landlord is in breach, in relation to a restriction on giving notice to quit and so on, where the sale is to a third party. Amendment 273 in my name is the only amendment in the group.

The amendment seeks to protect a tenant from eviction after an enforced sale, by restricting the new landlord's ability to issue him with an incontestable notice to quit. Where a tenant has successfully ordered the sale of his holding because the landlord was failing to meet his obligations under chapter 3 in part 10 of the bill, the amendment seeks to prevent the new buyer from being able to swiftly evict the tenant. The tenant should have a chance to bring the holding back to productivity now that the obstructive landlord has been removed, rather than a new landlord being able to take it out of production for the first 10 years.

Given agricultural timescales, I chose 10 years as a fair amount of time to give the tenant some protection from significant further change that could be damaging. The Land Court will not be able to grant a certificate of bad husbandry, and the landlord will not be able to issue an incontestable notice to quit because he wants to put the land to non-agricultural uses, nor to issue such a notice that relates to permanent pasture.

I move amendment 273.

Alex Fergusson: I would like some clarification, convener. If I understand the matter correctly—it is distinctly possible that I do not—it seems that the amendment could force the sale of the holding to a third party because the landlord had not complied with the lease and would then allow that third party to terminate the lease because the tenant had failed to comply with good husbandry as a result of the original landlord's failure to comply with the lease in the first place. I seek clarification on that if possible, because I do not quite understand the rationale or justification for the provisions in the first place.

The Convener: If no other member wishes to contribute, I ask the cabinet secretary to respond.

Richard Lochhead: I thank you, convener, for lodging amendment 273, which we are happy to support. I welcome the protection that it would give tenants after an enforced sale. It would help to ensure that the tenant has the opportunity to farm the land to a high standard again, which the actions of the former landlord may have prevented them from doing. I do not identify with Alex Fergusson's concerns.

The Convener: I intend to press amendment 273 because I do not think that Alex Fergusson's concerns are material to the protection of tenants' rights and it will be useful for the tenant to have the clarity proposed by my amendment.

Amendment 273 agreed to.

The Convener: Amendment 167, in the name of Michael Russell, is grouped with amendment 167A.

Michael Russell: Clearly, it went unnoticed that I introduced amendment 167 the last time that I spoke because I was getting ahead of myself. I will just say again that I think that it is a jolly good thing and it will work particularly well for those tenants who are put in difficult positions by a landlord who is not fulfilling their obligations. No landlord should profit from their failure to fulfil their obligations.

I move amendment 167.

The Convener: I now call Claudia Beamish to move amendment 167A and speak to both amendments in the group.

Claudia Beamish: I support Michael Russell's amendment 167. I have great respect for Mr Russell and his linguistic abilities, so it might seem like a linguistic quibble but I would like to see the use of the word "must" rather than "may" in the amendment. I will leave it at that.

I move amendment 167A.

Richard Lochhead: We are happy to support amendment 167. The bill already provides that, when a landlord is ordered to sell their holding because they have breached their obligations, the price that the tenant pays for the land excludes the value of the tenant's improvements. It is only fair that the landlord should not profit from improvements if the land is later resold.

Amendment 167 would also let us make sure that the former landlord does not profit from other factors that have increased the value of the land since the former landlord originally sold it, such as diversification. I therefore support the policy behind amendment 167 and, for that reason, we are happy to include the provision in eventual regulations.

We have some concerns about Claudia Beamish's amendment 167A. We appreciate what the amendment seeks to achieve but we do not believe that it is appropriate because it would mean that the regulations would have to include every single improvement of the types that are listed in schedule 5 to the 1991 act, whether it is relevant or not. Michael Russell's amendment 167 will mean that we have to work through the detail of which improvements are relevant to exclude from clawback, but Claudia Beamish's amendment 167A would force us to include things before we have even considered whether they are relevant. I therefore ask the committee not to support amendment 167A or Claudia Beamish to consider withdrawing it.

The Convener: Mike Russell, do you wish to wind up?

Michael Russell: I have said all that I can possibly say about amendment 167. I will press it.

The Convener: Claudia Beamish, do you wish to press or withdraw amendment 167A?

Claudia Beamish: I will withdraw it.

Amendment 167A, by agreement, withdrawn.

Amendment 167 agreed to.

Section 81, as amended, agreed to.

The Convener: I intend to end consideration of the bill at this point, to allow a little more time for members to attend to their business for this afternoon. We will take up consideration again next week from this point. We have made some good progress today on major points and I thank you for your attention.

At the next meeting, the committee will consider several items of subordinate legislation before continuing with our consideration of the Land Reform (Scotland) Bill at stage 2.

As agreed at a previous meeting, the committee will now move into private session to consider draft correspondence to the Minister for Environment, Climate Change and Land Reform

on the “Wildlife Crime in Scotland 2014 Annual Report”.

13:09

Meeting continued in private until 13:14.

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