The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE

Wednesday 10 February 2016

Session 4

Wednesday 10 February 2016

CONTENTS

RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE
5th 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 PARTICIPATED:

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

CLERK TO THE COMMITTEE

Lynn Tullis

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Rural Affairs, Climate Change and Environment Committee

Wednesday 10 February 2016

[The Convener opened the meeting at 09:30]

Subordinate Legislation

Sea Fish (Prohibited Methods of Fishing) (Firth of Clyde) Order 2016 (SSI 2016/12)

Water Environment (Remedial Measures) (Scotland) Regulations 2016 (SSI 2016/19)

Less Favoured Area Support Scheme (Scotland) Amendment Regulations 2016 (SSI 2016/33)

The Convener (Rob Gibson): I welcome everyone to the fifth meeting in 2016 of the Rural Affairs, Climate Change and Environment Committee. Before we move to the first item on the agenda, I remind everyone present to switch off mobile phones and other devices, as they may affect the broadcasting system. However, you may notice some committee members consulting tablets during the meeting; that is because we provide meeting papers in digital format.

Agenda item 1 is consideration of three negative instruments. I refer members to the paper and ask if they have any comments on any of the instruments.

Michael Russell (Argyll and Bute) (SNP): I want to raise an issue in relation to the Sea Fish (Prohibited Methods of Fishing) (Firth of Clyde) Order 2016 with specific reference to the debate that we had on marine protected areas. The map that is provided with the order shows that two of the areas involved cover all of the south Arran MPA.

I had a conversation with the cabinet secretary, as he will recall, along with the Clyde Fishermen's Association, about the desirability of new scientific work being done to assess what the situation is with spawning cod in that area. That suggestion was driven by a skipper from Campbeltown, who was very keen for that to happen. In the papers attached to the order, the argument is made for what has taken place since 2002 to continue, but there is no mention of current science anywhere in the papers.

Has the cabinet secretary had the opportunity to consider the possibility of some small-scale scientific activity taking place during the new closure, during the spawning period, in order to assess what is going on? That offer was made, and an offer was made for boats to be provided essentially free of charge to allow that to happen.

The Convener: Those matters have been noted on the record, so the Government can respond to them in due course. Given that the committee has considered similar orders twice before since 2002, Mike Russell's questions about the order are pertinent and probably need answers.

At the present time, members do not wish to make any other comments. Is the committee agreed that it does not wish to make any recommendations in relation to the instruments?

Michael Russell: I presume that the cabinet secretary will write to me about the matter that I raised.

The Convener: I presume so, as he will receive the *Official Report* of our meeting and he cannot speak at the moment—[*Interruption*.]

All right, the cabinet secretary can respond.

Michael Russell: That would be helpful.

The Convener: I was not sure what the protocol was in the case of negative instruments, but as the cabinet secretary is here, he will respond.

The Cabinet Secretary for Rural Affairs, Food and Environment (Richard Lochhead): Convener, that makes two of us—I am not 100 per cent sure of the protocol. However, given that I am here for the next item, I am happy to put on the record that, after the productive meeting with the Clyde Fishermen's Association that was organised by Michael Russell in the past few days, I welcome the proactive offer to work with the Government on gathering better science on the Clyde. I would be happy to speak to colleagues in Marine Scotland science and write back to the committee about potential future scientific work in relation to that closure and the Clyde generally.

The Convener: Thank you, cabinet secretary.

Are we agreed that we do not wish to make any recommendations in relation to the instruments?

Members *indicated agreement.*

Land Reform (Scotland) Bill: Stage 2

09:34

The Convener: We move on to agenda item 2, about which I have to say quite a bit for the record before we start.

We now move to the fourth day of consideration of amendments to the Land Reform (Scotland) Bill. Today, we will pick up where we left off last week and make as much progress as we can; it is possible that we will conclude our stage 2 scrutiny. If we do not conclude it today, we will pick up where we leave off and complete it at our next meeting on 24 February.

I welcome the Cabinet Secretary for Rural Affairs, Food and Environment and his officials to the meeting. Officials are not permitted to speak on the record in these proceedings.

Everyone should have with them 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 to me or the clerk. If the cabinet secretary has not already spoken on the group, I will invite him to contribute to the debate just before moving to the winding-up speech. There may be times when I allow a little more flexibility for members to come back on points during a debate.

The debate on each group will be concluded by me 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 wishes to press it to a vote or to withdraw it. If the member wishes to press ahead, I will put the question on the amendment. If a member wishes to withdraw their amendment after it has been moved, I will check whether any other member objects. If any member does object, the amendment is not withdrawn and the committee must immediately move to vote on it.

If any member does not wish to move their amendment when it is called, they should say “Not moved”. Any other MSP present may move such an amendment. However, if no one moves the amendment, I will immediately call the next amendment on the marshalled list.

Only committee members are allowed to vote. Voting on any division is by show of hands. It is important that members keep their hands clearly raised until the clerks have recorded the vote.

The committee is required to indicate formally that it has considered and agreed each section of the bill, so I will put a question on each section at the appropriate point.

Section 82—1991 Act tenancies: rent review

The Convener: The first group is on rent review of 1991 act tenancies: rent agreement date. Amendment 168, in the name of the cabinet secretary, is grouped with amendments 169 to 174, 180, 183 and 184.

Richard Lochhead: These amendments are intended to simplify the process around the date on which rent is to be agreed and paid.

Currently, the bill makes provision for two separate dates: a rent agreement date and an effective date. The rent agreement date is the date on which the parties must agree the rent and the effective date is the date on which the new rent is to take effect. However, the Scottish Land Court felt that having those two dates could cause confusion for the parties.

As there is limited difference between the two dates, the amendments will merge the two into a single date. The effect is that the rent agreement date will be the day by which the rent must be agreed and the date from which the new rent takes effect.

Amendment 169 removes the requirement for parties to agree the rent on Martinmas or Whitsunday. We had originally specified those dates to achieve consistency on when rents should be agreed. However, on reflection, they may be restrictive for some types of farmers—for instance, farmers of seasonal products, such as soft fruit or Christmas trees—who follow different seasonal cycles. Therefore, the amendment will allow parties to agree the rent on a date other than Martinmas or Whitsunday if that suits them better.

The bill originally provided that, if the parties failed to reach an agreement on rent by the deadline of the rent agreement date, they would have 14 days to make a referral to the Land Court to determine the rent for them. By giving them the extra 14 days, we were trying to prevent people from lodging an application with the Land Court before the rent agreement deadline and then withdrawing it if they reached agreement in the meantime.

We had hoped that giving people two weeks after the rent agreement date to lodge an application would remove the administrative burden on the Land Court. However, the Land

Court requested that the 14-day period be removed. It believes that the period would not prevent people from lodging applications before they had reached an agreement on the rent. Therefore, amendment 172 would have the effect that, if a landlord and tenant do not reach agreement on the rent, they must apply for a referral to the Land Court by the rent agreement date rather than having until 14 days after the rent agreement date.

Amendment 170 matches that by providing that, when the parties fail to reach agreement on rent and no referral is made to the Land Court, any rent review notice that has been served will cease to have effect the day after the rent agreement date, instead of 14 days after that date.

I move amendment 168.

Amendment 168 agreed to.

Amendments 169 to 171 moved—[Richard Lochhead]—and agreed to.

The Convener: The next group of amendments is on rent review of 1991 act tenancies: powers of tenant farming commissioner and Land Court. Amendment 274, in the name of Claudia Beamish, is grouped with amendments 135 and 136.

Claudia Beamish (South Scotland) (Lab): Good morning, cabinet secretary.

My amendment 274 would allow the tenant farming commissioner to make a declaration or order when a tenant or landlord claimed that the rent review process breached a code of practice. The amendment makes provision for appeals in the interests of fairness, because the tenant farming commissioner is not a judicial authority, and the provision could be open to challenge on European convention on human rights grounds if it gave the tenant farming commissioner power to make a binding decision.

In the proposed order, the rent review could be declared null and void, which would necessitate it being carried out again, which, in turn, would mean that a new notice would have to be served for a rent review the following year. I believe that that would be suitable, because disputes about compliance with the code of practice are likely to be factual and evidence based.

My amendments would serve to avoid cases being referred to the Land Court whenever possible. I believe that they represent an important step forward, because we all know that that can be an expensive and lengthy process that can irreparably damage the relationship between the tenant and the landlord. If the complaint was not upheld by the TFC, the dispute would have to be referred to the Land Court.

Amendment 135 would give the tenant farming commissioner the power to impose wider penalties to cover non-compliance with the codes of practice during the rent review process. I understand that there are existing provisions for the TFC to inquire into alleged breaches of codes of practice, but amendment 135 refers specifically to rent review breaches. Committee members and the cabinet secretary know this, but I want to highlight that rent review is one of those areas that have caused major tensions in the past, so my amendment seeks to keep things as clear as possible. The intention of the amendment is to declare a rent review null and void if codes of practice have been breached and a complaint to the TFC has been upheld.

I move amendment 274.

Alex Fergusson (Galloway and West Dumfries) (Con): I understand where Claudia Beamish is coming from with her amendments, but I have a difficulty with them. I believe that the process of a rent review is an entirely separate issue from adherence with a code of practice. I do not believe that what, in effect, comes down to the relationship between two parties should affect the process of the rent review. On that ground, I am not able to support the amendments.

Richard Lochhead: I say at the outset that I support some elements of Claudia Beamish's amendments, but I am pleased to say that the bill already does some of the things that she is trying to pursue through the amendments. I hope that I can offer some clarity to give comfort to Claudia Beamish on the matter.

Section 25(7) of the bill provides that a code of practice that is prepared by the tenant farming commissioner can be used as evidence in any Land Court proceedings. The bill already lets parties rely on any relevant code of practice in court, not just in the context of a rent review but in other situations.

Section 25(8) of the bill also obliges the Land Court to take into account any relevant code of practice, even if the parties have not drawn it to the court's attention. Subsections (2) and (3) of section 31 also provide that if, following an inquiry, the TFC reports that a code on rent review has been breached, the Land Court must take that into account. Therefore, the bill already provides what amendment 135 is seeking to achieve, as well as some of what amendment 136 tries to do. I hope that that gives some reassurance to Claudia Beamish on those important points.

09:45

It is difficult to support the other things that amendment 136 tries to do. It proposes that the Land Court should be able to seek an opinion from

the TFC on whether a code of practice has been breached. As the Land Court is made up of experts in agricultural law and agricultural matters, it seems unnecessary for it to seek the TFC's opinion on that. As I have said, the bill already provides that a determination by the TFC can be used as evidence in the Land Court. Therefore, if either party feels that the rent review code has been breached, they can ask the tenant farming commissioner to investigate, and the commissioner's determination can be used in any Land Court proceedings. That is a much more sensible approach than introducing the extra step of having the court seek the TFC's opinion.

In addition, the TFC is a public office-holder, which means that they are subject to judicial review. Therefore, it would be possible for their opinion to be challenged before it even got back to the Land Court. As well as blurring the distinction between the TFC and the Land Court, amendment 136 could potentially lead to significant delays in the court's reaching a decision.

The amendment also proposes that, if the Land Court decides that the relevant code of practice has been breached, it can ban the landlord or tenant from asking for a rent review for up to a year. In effect, that would turn the code on rent review into a binding law. Again, I am not convinced that that is a sensible approach in this case for several reasons, which underscore why we have taken the approach that we have taken on codes and the role of the TFC.

First, as with all the codes, it is likely that some of the rent review code's provisions will not be fully relevant to all tenancies. If we made it a legal requirement for parties to comply with the codes, there would not be any flexibility. People could be punished for not complying with a part of the code, even if that part was not relevant to their particular situation.

Secondly, if the codes had the same standing as primary or secondary legislation, they would be a rival and potentially conflicting source of law to the Agricultural Holdings (Scotland) Act 1991, the Agricultural Holdings (Scotland) Act 2003 and the Land Court's judgments. That could cause confusion and disputes and ultimately increase the number of cases that end up in the Land Court.

Thirdly, there would be a delay in developing and implementing the codes, as each one would need to be given an appropriate level of parliamentary scrutiny, and making any adjustments to them in the future would become a slower and more bureaucratic process. Therefore, the codes might be less flexible in responding to the needs and demands of the sector.

For the same reasons, I cannot support amendment 274, which proposes that, if the TFC concludes that the way in which a rent review was conducted breached a code of practice, it can declare the rent review void and ban the landlord or tenant from asking for a rent review for up to a year. The same arguments against that apply. In addition, the amendment would not achieve its aim because, technically, there is nothing in the proposed new section that would make parties comply with a declaration or order on rent review that was made by the TFC under subsection (2) of the new section. Because a declaration or order would not have any legal effect, the parties would have to go to the Land Court to enforce it anyway. There would just be a longer and less convenient route for them to get there.

I hope that that offers some clarity, reassures Claudia Beamish that other provisions already support what she is trying to achieve and explains the reasons why we cannot support aspects of her amendments. Perhaps she will be willing not to press them in light of that.

Claudia Beamish: I listened carefully to what the cabinet secretary said. On the quite straightforward point on amendment 274 about there not being penalties, I thought that I would look at penalties in discussion with the cabinet secretary and others if he thought it appropriate to take forward that issue at stage 3. The amendment is really a probing one.

I understand the point that the cabinet secretary made about the tenant farming commissioner being a public servant. Would one describe them as that?

Richard Lochhead: A public officer.

Claudia Beamish: Sorry—a public officer. They could therefore be subject to judicial review, and that could slow things up.

Points that have been made have clarified the further protections that tenants who have approached me have looked for in the bill. On that basis, I will not press amendment 174 and will not move amendments 135 and 136.

Amendment 274, by agreement, withdrawn.

Amendment 135 not moved.

Amendments 172 and 173 moved—[Richard Lochhead]—and agreed to.

Amendment 136 not moved.

Amendment 174 moved—[Richard Lochhead]—and agreed to.

The Convener: We move to rent reviews of 1991 act tenancies and the procedure for regulation-making powers. Amendment 175, in the name of the cabinet secretary, is grouped with amendments 176, 266 and 267.

Richard Lochhead: The bill gives Scottish ministers the power to define what is meant by productive capacity and the standard labour requirement in an agricultural holding. Those are key terms for determining the fair rent for a holding. Currently the regulation-making powers are subject to the negative procedure but, having listened to the concerns of this committee and the Delegated Powers and Law Reform Committee, I am pleased to have lodged this group of amendments to ensure a higher level of parliamentary scrutiny for the powers, which will now be subject to the affirmative procedure.

I move amendment 175.

Amendment 175 agreed to.

Amendment 176 moved—[Richard Lochhead]—and agreed to.

The Convener: We move on to rent reviews of 1991 act tenancies and the power of the Scottish Land Court to phase in increased rent. Amendment 177, in the name of the cabinet secretary, is grouped with amendments 178, 179, 181 and 182.

Richard Lochhead: The bill gives the Land Court the discretion to phase in a rent increase of 30 per cent or more if it feels that a sudden large increase in rent would cause the tenant particular hardship. The amendments will give landlords the same protection by allowing the Land Court to phase in decreases in rent of 30 per cent or more. The amendments will protect landlords and tenants against large changes in rent, which is fair to both parties.

I move amendment 177.

Amendment 177 agreed to.

Amendments 178 to 184 moved—[Richard Lochhead]—and agreed to.

The Convener: We move on to the retention of existing procedures for variation or review of rent. Amendment 296, in the name of Alex Fergusson, is grouped with amendments 298 and 300. I draw members' attention to the pre-emption information that goes with the grouping.

Alex Fergusson: I am sure that members will recall that the committee's stage 1 report was pretty clear that, while we fully supported the general principle of chapter 4 of part 10, we were concerned that there was not more clarity and detail available on how productive capacity will be defined, calculated and applied and that those details are being left to regulations that are still being worked up, although I appreciate what the cabinet secretary just said about the affirmative procedure.

The Government's response to our report was that it would not be able to provide those details before stage 2, as requested, and that the modelling would take at least another six months of further work. The Government assured us that the move to calculating a fair rent based on productive capacity would result in a more objective and transparent rent review process. However, we cannot know that without the modelling work being completed. Even the Government has said that it is vital not to rush the work and that time needs to be taken to test the impact of the new approach on different farming sectors. The modelling work has been unable to come to any firm conclusions about how the approach would operate successfully, and there has been difficulty coming up with a satisfactory model of rent review based on productive capacity.

We are being asked to take something of a leap in the dark—to pass legislation without any real knowledge of what its impact will be. I find myself wondering what the next Scottish Government might do if the anticipated outcome of the change does not materialise. Surely, in the complete absence of a fully worked-up alternative to the current system, it makes sense to remove section 82 and stick with the status quo until a genuine alternative is identified and is proved to work in a way that is fair to landlord and tenant alike.

I am not proposing a permanent change; I am proposing a temporary reversion to the status quo until we have a genuine alternative about which we know the full details.

I move amendment 296.

Richard Lochhead: The current open-market value test for determining rent reviews, which is in section 13 of the 1991 act, is not fit for purpose. It is extremely complex and is a source of many disputes between tenants and landlords. Between 2009 and 2013, applications to review rent under section 13 of the act accounted for more than 62 per cent of the applications that were made to the Land Court.

Concerns have been raised that the open-market value test can lead to unrealistic and unsustainable rents. In its final report, the agricultural holdings legislation review group concluded that the current open-market approach is not in the public interest, because it does not take account of the productive capacity of the land. The group therefore recommended that the statutory way of setting rents for secure 1991 act tenancies needed to be fundamentally changed to ensure fairness and transparency.

The bill takes forward that recommendation by removing the open-market test and instead proposing to calculate fair rent based on the productive capacity of the holding. It is my view,

and the view of many people, that that will lead to a more open and objective rent review system.

As Alex Fergusson indicated, we have taken steps to ensure that, once the regulations come forward after the modelling has been carried out and so on, the committee and the Parliament will have the chance to scrutinise them. The amendments from Alex Fergusson would be a step backwards, and I invite the committee to reject them.

Alex Fergusson: I listened carefully to the cabinet secretary. I do not disagree at all that we need a new system. I do not even disagree with the suggestion that a rent review based on productive capacity might introduce a fairer system. My point is that we simply do not know, because the modelling has not worked out in the way that people hoped it would in the time available.

We now have a code of best practice on rent review, which I hope is being adhered to by all participants. I hear what the cabinet secretary says about the market system, which has caused a lot of problems, but I hope that they have been addressed to an extent by the introduction of a voluntary code. I hear what the cabinet secretary says but, because I do not like taking leaps in the dark when we do not know what the outcome will be, I will press amendment 296, if it is appropriate to do so.

The Convener: It is very appropriate. The question is, that amendment 296 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

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

Against

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)

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

Amendment 296 disagreed to.

Section 82, as amended, agreed to.

Section 83—Limited duration tenancies and modern limited duration tenancies: rent review

10:00

The Convener: We move on to modern limited duration tenancies—determination of initial rent. Amendment 297, in the name of Michael Russell, is grouped with amendment 299. I draw members' attention to the pre-emption information shown in the groupings.

Michael Russell: I disagreed with Alex Fergusson's solution to a lack of knowledge about exactly how the new system will work, although I agree that some lack of knowledge remains. The question is how to confront that.

It is essential that there is clarity and equity in tenanted arrangements. Both landlord and tenant must know what they are entering into and what the basis of the rent is, and they must see that decision as having been come to equitably and fairly. Amendment 297 attempts to do something difficult—I am sure that there will be lots of legal reasons why it is not possible to do it in this way—which is to establish the principles of clarity and equity in the bill so that there is no room for lack of knowledge or of confidence about how rent has been arrived at.

I lodged the amendment not because I am confident that it will be agreed to but because I want the principles of clarity and equity to be accepted. I also want a solution to be found for the new calculation of rent so that there is no possibility of making what are sometimes good relationships worse or bad relationships even worse.

I move amendment 297.

Alex Fergusson: I understand why Mike Russell did not agree with my solution. In a similar vein, I am afraid that I do not agree with his solution—not out of any vendetta but simply on a point of principle. I find his solution somewhat top down and heavy handed. I hope that the Government will indicate that, while it agrees with the principle that both of us are drawing attention to, this is not the way to go about establishing it.

The Convener: The independent adviser on tenant farming, on behalf of the Government, has been attempting to get agreement from NFU Scotland, Scottish Land & Estates and the Scottish Tenant Farmers Association on a brief guide to rent reviews, which will be updated once the bill becomes an act, if it is passed. However, the adviser is having considerable difficulty in getting Scottish Land & Estates to agree to what I see as a straightforward document.

There was much trumpeting of the way forward for rent reviews under the voluntary process. I am

not pleased that one of the parties that signed up to the voluntary approach seems to be sticking in the mud on the issue of a simple guide that might help the process. The questions that Mike Russell raises are therefore all the more pertinent and I look forward to the cabinet secretary's response.

Richard Lochhead: First, I make it clear that I support the use of the new fair rent approach as widely as possible in the sector. It is right for the sector to move away from using the current open-market value approach to basing rents on productive capacity. We have discussed those issues in previous debates. The bill clearly signals that by providing that tenants and landlords in all types of longer-term tenancy can review their rent if necessary and it can be independently set by the Land Court using the fair rent test. In practice, that is likely to encourage many parties to take productive capacity into account when they agree the initial rent.

However, we do not want to prevent tenants and landlords in modern limited duration tenancies from agreeing rent between themselves if they are happy with a different arrangement. The amendments would remove their flexibility to do that, but MLDTs are all about increasing flexibility for the various parties involved.

There are several practical issues with the amendments. The new fair rent test is based on the productive capacity of the holding and it may be extremely difficult, if not impossible, to calculate that at the start of a tenancy. Calculating productive capacity involves taking into account the fixed equipment that the landlord provides, but the landlord has six months to provide that equipment, so it might not be possible to factor it into the rent at the start of the tenancy.

Because of the way in which they are drafted, amendments 297 and 299 would result in the regulations on productive capacity not being subject to any parliamentary scrutiny. That is why we are reluctant to support the amendments. However, I welcome the confirmation that Michael Russell is in favour of the parties being able to take advantage of the new fair rent test.

Although the bill gives tenants and landlords in modern limited duration tenancies the flexibility to negotiate their own rents, it provides a legislative safety net for all tenancies, so that, if the rent that parties agree between themselves is not fair, it can be reviewed using the fair rent test. I hope that that provides Michael Russell with the reassurances that he seeks.

Michael Russell: I am reassured by the cabinet secretary's remarks. I think that the principles of clarity and equity are accepted and that the fair rent test—provided that it works—should work well. I therefore seek leave to withdraw my amendment.

Amendment 297, by agreement, withdrawn.

Amendments 185 and 186 moved—[Richard Lochhead]—and agreed to.

Amendment 298 not moved.

Amendment 187 moved—[Richard Lochhead]—and agreed to.

Amendment 299 not moved.

Amendments 188 to 191 moved—[Richard Lochhead]—and agreed to.

Section 83, as amended, agreed to.

After section 83

Amendment 275 not moved.

Section 84—Assignation of 1991 Act tenancies

The Convener: Amendment 148, in the name of Claudia Beamish, is grouped with amendments 310 to 313, 192, 149, 150, 314, 193, 315, 316, 194, 317, 151, 318 to 324 and 328 to 330.

Claudia Beamish: These amendments are an attempt to widen the list of categories of people who have assignation and accession rights to include certain categories of people who are currently excluded from it. They concern issues that have come up in committee during the four years in which I have been a member of it and previous to that.

To the "near relatives" category, I propose to add the tenant's cousins, uncles, aunts, the spouse or civil partner of an uncle or aunt, and the spouse or civil partner of a cousin. The amendments also ensure that long-standing employees are treated the same as near relatives in tenancy assignation.

These amendments require that for a person to qualify, they must have been an employee of the tenant, have worked on that holding and have been engaged primarily in farming work, such as a shepherd who has worked on a tenancy for many years. The amendments operate on the assumption that none of the following should qualify: a farm worker who has been self-employed or employed by someone other than the tenant, such as a contractor; an employee of the tenant who, for some reason, has worked elsewhere and so has no particular experience of that holding; and someone employed by the tenant in a non-farming capacity, such as a housekeeper.

The qualifying period can be either a continuous period of 10 years or over, or various periods that amount to 10 years in total. There is no restriction

on when the 10 years were—they could all have been at some time in the past. I have had help with drafting amendments to apply that to the various types of tenancy and, in each case, to assignation and succession. There are amendments on assignation of 1991 act tenancies and succession to 1991 act tenancies, limited duration tenancies and modern limited duration tenancies.

I have not lodged amendments to sections 85 and 86 because I have been advised that there is no restriction on the persons to whom an LDT or MLDT can be assigned.

I appreciate that including such employees as near relatives at this stage might cause a problem, but the proposal is a way of testing the cabinet secretary's interest in the area and testing whether long service and commitment within a tenancy are thought to be important. The matter could be looked at again at stage 3. The proposal in my amendments is the only way that it is possible to find a solution at present. The amendments attempt to provide that the landlord may object only if he or she is not satisfied that the person is of good character, has sufficient resources or has—or is about to get—sufficient training and expertise.

In relation to succession, there is no distinction between types of tenancy according to whether the person who is liable to succeed is a near relative. I think that all that is required is to add long-standing employees to the list of people who may succeed.

On the other amendments in the group, I will be interested to hear what the cabinet secretary says about his amendments on spouses, and of course I will also listen to my colleague Alex Fergusson's arguments for his amendments.

I move amendment 148.

Alex Fergusson: My series of amendments would introduce to the assignation and succession provisions in chapter 5 of part 10 the concept of

"a substantial connection with the holding."

I have always had concerns about the proposed widening of the categories of people to whom a 1991 act tenancy can be transferred. We have a number of amendments in the group that seek to do that. Indeed, as Claudia Beamish has just described, some of her amendments remove any family tie altogether. We have not taken any evidence on that and I am unable to support those amendments.

It is clear that, if all the categories are accepted, they will bring about a major change to the legislation. If we put them together with further restrictions on the grounds on which a landlord can object to a transfer, any expectation of regaining vacant possession at some time in the future, however distant that is, will be severely impacted to the extent that there will really be no such expectation at all. What is more, the change that the amendments and the bill seek to bring about is entirely retrospective in nature. For me, that makes it very hard to ignore the possible ECHR implications of part 10—implications that we, as a committee, drew attention to in our stage 1 report.

Leaving that to one side, I note that we have often spoken about the need for a restoration of trust between landlord and tenant in order to bring about a confidence to let land, and part 10 is important in that regard. I say that because, if we ignore or substantially diminish the rights of those who own land and let it on a long-term basis, why on earth would they choose to let land in future, even on the basis of a fixed-term LDT of some sort?

If possible, I want my amendments to be considered in that context and alongside the cabinet secretary's proposals on conversion and assignation for value, because they all relate to the tenant's ability to retire with dignity when he or she chooses to do so, and they are about the continuation of a family business in the tenanted farm. As I said last week, I find it difficult to debate some of these issues individually rather than collectively.

It is probably no surprise that, in general terms, I oppose in principle the broad widening of succession. I recall evidence that was given to us by, I think, Scott Walker of the NFUS. He highlighted the situation of a tenant's family member who had been actively farming the farm for some years and yet was not entitled to succeed, so I absolutely recognise that there are situations that need to be addressed. However, I believe that my amendments would do that in a more balanced way than what is currently proposed.

10:15

My amendments would retain the widened categories that the Government is looking at but would provide an additional ground for the landlord to object, that ground being that the proposed beneficiary of the transfer does not have a substantial connection to the holding in question.

As the cabinet secretary knows, I have complained previously about how often the bill leaves provisions to secondary legislation—we have joked about the number of times that I have done that. Unfortunately, I have had no time to work out the definition of

"a substantial connection with the holding".

My suggestion would be that it is left to secondary legislation to determine the definition. I hope that members accept that I have had to grit my teeth while saying that.

As the cabinet secretary said last week, time is limited, but the principle is important here. The substantial connection ground for objection that I propose would apply to lifetime assignations and leases transferred by bequest or under the rules of intestacy. However, it would apply only to 1991 act tenancies, given the fixed-term nature of other letting vehicles.

I believe that collectively the amendments would ensure the continuation of the family farming business, which is the issue that was raised with us. The issue of a family member who is involved in the farming business not being able to take over the business has been raised many times with us and indeed has been acknowledged by the committee.

My amendments address the issue in a way that is proportionate, focused and fair, and they deliver a properly balanced outcome for tenant and landlord alike.

Richard Lochhead: I will speak to all 25 amendments in the group—please bear with me—starting with amendment 148. I am pleased to confirm to Claudia Beamish that the bill already allows a tenancy to be assigned to the tenant's first cousin. Under section 84(3), a 1991 act tenancy can be assigned to anyone who is eligible to succeed to a tenant's estate under the Succession (Scotland) Act 1964. That includes first cousins. I would be happy to have the explanatory notes to the bill adjusted to make that clear, given that the matter has been raised. I believe that amendment 148 is unnecessary, so I invite Claudia Beamish to withdraw it.

Part of amendment 151 is unnecessary, because under the provisions of the bill a tenant can already leave their tenancy to a first cousin in their will. Amendment 151 also proposes that a tenant should be able to leave their tenancy to their cousin's spouse or to

"a spouse or civil partner of an uncle or aunt of the tenant".

Before making a recommendation on expanding the class of person who is entitled to succeed to or be assigned a tenancy, the agricultural holdings legislation review group carefully considered the issues involved. Its main focus was on modernising succession and assignation arrangements. It also recognised that significantly widening assignation and succession entitlement could impact negatively on the landlord's property rights and have ECHR implications. That is a point made by Alex Fergusson and on this rare occasion we agree.

The Government's survey of tenant farmers, which was published in 2014, found that around 20 per cent of respondents said that they knew someone who wanted to succeed to their tenancy but was not eligible under the current legislation. Of those, half said that the person was a sibling and a third said that the person was a niece or nephew. Under the bill, siblings, nieces and nephews will now all be eligible to succeed to a tenancy or have it assigned to them, so the bill's provisions will mean that a large majority of respondents who stated that they had no eligible successor will now have one.

In order to expand the classes of eligible people further, we would need to have evidence that there was a case for it. We are not in that position so I cannot support amendment 151 at this time.

The same applies to Claudia Beamish's amendments 310 to 319, which would give a tenant's long-standing employees assignation and succession rights. I of course have sympathy with people who have worked on a farm for many years and who have a deep sense of personal commitment to that farm. We will shortly be discussing amendments on a new process for relinquishing or assigning tenancies, which will have the potential to open up opportunities to those long-term farm workers.

A 1991 act tenant could use the new process to assign his or her tenancy to a long-term employee who was looking to progress in farming. Indeed, the Scottish Tenant Farmers Association said in its evidence to the committee that it was aware of a number of tenants who were hoping to use that new process to do just that, to provide opportunities to long-standing employees on their farms.

That is a much more sensible approach than extending assignation and succession rights to non-relatives of the tenants, which would represent a big step away from the current law and the proposals in the bill and could have a very significant impact on landlords' property rights. There would need to be a very detailed exercise to gather the evidence to prove that Claudia Beamish's proposal is a proportionate and necessary way to address a very clear problem.

The package of provisions in the bill will address the assignation and succession issue in a proportionate and targeted way, and the case has not yet been made for expanding the classes further to people who are not related to the tenants.

I ask the committee not to support amendments 310 to 319.

Claudia Beamish's amendments 149 and 150 propose to add an aunt, uncle or first cousin of the tenant to the near relative list. The bill already

expands the list of relatives that can be classified as near relatives in order to offer those closest to the tenant greater protection from objections from the landlord. A tenant can already pass the tenancy on to a cousin, aunt or uncle.

We do not have any evidence or justification to go further than that by including aunts, uncles and first cousins in the near relative list, so I ask the committee to reject amendments 149 and 150.

Government amendments 192 to 194 add spouses and civil partners of the tenant's children to the near relatives list. They were not included in the list in the bill as introduced. The review group received a number of submissions highlighting that succession and assignation rights can be discriminatory and suggesting that spouses should have the same rights as their partners. As the bill already makes provision for a child of the tenant to be classified as a near relative, it is only right that their spouses, who may be making a significant contribution to the business, are afforded the same rights. The amendments will make sure that the son-in-law or daughter-in-law of the tenant now has the same rights as their partner and is classed as a near relative.

Finally, Alex Fergusson's amendments would let landlords object to a person succeeding to a 1991 act tenancy or having it assigned to them if that person did not have a

"substantial connection to the holding".

The amendments do not define what a substantial connection would be. I take on board Alex Fergusson's wish for secondary legislation to address that.

Alex Fergusson: In this instance.

Richard Lochhead: It would be very challenging to find a definition that worked fairly for different types of farming businesses in Scotland.

Even if we had a clear definition to work with, adding that ground for objection is not warranted. The bill already protects landlords' interests by providing a fair range of grounds on which they can object to a potential assignee or successor. Some are the same as those in the current legislation. They include the grounds that a person is not of good character, or that the person does not have sufficient resources to enable them to farm the land with reasonable efficiency.

The bill adds a new ground for objection. It requires the potential successor or assignee to have suitable training in or experience of farming, to make sure that they can farm the land efficiently. That would prevent a family member who does not have any knowledge of farming from being able to take on a tenancy, which helps to protect landlords' interests.

Crucially, Alex Fergusson's amendments do not align with the realities of modern agriculture. Eligible assignees and successors must often leave the family holding to find work elsewhere, because the holding cannot support all the family. His amendments would place unreasonable and unrealistic burdens on potential successors or assignees, as they would require farming families to find some way to provide additional opportunities on the farm. A son, for instance, who left the farm, could be deemed not to have a substantial connection with it.

Alex Fergusson: Will the cabinet secretary take an intervention?

Richard Lochhead: Am I able to do that?

The Convener: Yes, certainly.

Richard Lochhead: Yes.

Alex Fergusson: I thank the cabinet secretary and the convener for allowing an intervention.

I will make two points. I undertook a national diploma in agriculture. When I was given that certificate, it in no way prepared me for a farming career. Working on the farm was what got me ready for that. I am not convinced by the training qualification that is being brought in.

My other point is that I would have thought that a son who was away for a gap year or whatever would absolutely have a substantial connection to the farm, from the very fact that his father or mother runs it. The fact that he is from that farm gives him that substantial connection, so that is not a valid reason for objecting to the amendment.

Richard Lochhead: I was addressing just one of the many problems with Alex Fergusson's amendments. However, even if we take on board Alex Fergusson's point, "substantial connection" is not defined at this stage and would have to be defined in the future. For all the reasons that I have rehearsed, I urge the committee to reject his amendments.

Claudia Beamish: I seek a point of clarification from the cabinet secretary on my amendments 148 and 151, which he said are unnecessary. I am happy to withdraw amendment 148 and not to move amendment 151 if so, but I do not quite understand why they are unnecessary. Amendment 148 refers to

"a child of an uncle or aunt of the tenant"

and amendment 151 refers to the "spouse of a tenant". Are those amendments unnecessary because of the cabinet secretary's amendments? I am not clear on that.

Richard Lochhead: Amendment 148 is unnecessary because the tenant's first cousin is already a blood relative and is therefore eligible to

succeed to the tenant's estate under the rules in the Succession (Scotland) Act 1964. A first cousin will already be caught by the new section 10A(1A)(a) of the 1991 act, inserted by section 84(3) of the bill.

Claudia Beamish: On that basis, I will seek to withdraw amendment 148 and not move amendment 151.

I have gained some reassurance from the cabinet secretary about how a person who is a long-standing employee of the farm will be considered in another way through the new amendments that the Scottish Government has introduced. I will therefore not move amendments 310 and 312.

I intend to move amendments 149 and 150 in relation to aunts and uncles.

The Convener: We will come to that in a moment, although if you want to say something about those amendments you can.

Claudia Beamish: Amendments 149 and 150 are important to widen succession and do not in any way threaten the rights of landowners—I say that as someone who is not a lawyer.

I cannot consider supporting Alex Fergusson's amendments. I agree with the cabinet secretary's remarks about the modern age in relation to how things work. People might find that they work on a different farm for a considerable amount of time, or may never have worked on the farm in question, but would like to take that opportunity up—that opportunity should be available to them.

Amendment 148, by agreement, withdrawn.

Amendment 310 not moved.

Amendment 311 moved—[Alex Fergusson].

The Convener: The question is that amendment 311 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 311 disagreed to.

10:30

Amendments 312 and 313 not moved.

Amendment 192 moved—[Richard Lochhead]—and agreed to.

Amendment 149 moved—[Claudia Beamish].

The Convener: The question is, that amendment 149 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)
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 149 disagreed to.

Amendment 150 moved—[Claudia Beamish].

The Convener: The question is, that amendment 150 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)
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 150 disagreed to.

Section 84, as amended, agreed to.

Section 85—Assignation of limited duration tenancies

Amendment 314 not moved.

Amendment 193 moved—[Richard Lochhead]—and agreed to.

Amendment 315 not moved.

Section 85, as amended, agreed to.

Section 86—Assignation of modern limited duration tenancies

Amendment 316 not moved.

Amendment 194 moved—[Richard Lochhead]—and agreed to.

Amendment 317 not moved.

Section 86, as amended, agreed to.

After section 86

Amendment 195 moved—[Richard Lochhead]—and agreed to.

Section 87—Bequest of 1991 Act tenancies

Amendments 151 and 318 not moved.

Section 87 agreed to.

Section 88—Limited duration tenancies and modern limited duration tenancies: succession

Amendments 196 to 200 moved—[Richard Lochhead]—and agreed to.

Amendment 319 not moved.

Section 88, as amended, agreed to.

Section 89—Objection by landlord to legatee or acquirer on intestacy

Amendments 320 to 323 not moved.

Section 89 agreed to.

After section 89

Amendment 324 not moved.

The Convener: We move to the group on 1991 act tenancies: relinquishing and assignation of tenancy to new entrants or persons progressing in farming. Amendment 325, in the name of the cabinet secretary, is grouped with amendments 326, 269 and 271.

Richard Lochhead: Amendment 325 introduces a new process that will allow 1991 act tenants to relinquish their tenancies in exchange for payment from the landlord, or to assign the tenancy to a new or progressing farmer. That replaces the conversion process that was originally in section 79 of the bill. We have sought to get to the heart of some of the key issues facing the tenanted sector in Scotland and to tailor our policy to address those as strongly as we can. We all want a vibrant tenancy sector in Scotland that creates new routes into farming and provides the flexibility for businesses to grow. I draw the committee's attention to the ways in which we have developed and strengthened the policy to do exactly that.

First, the review group was concerned that 1991 act tenants could at present be deterred from retiring because, if they do not assign their tenancy to a family member, they face having to give up their farm for only limited compensation. It cannot be acceptable that some tenants feel forced to stay on in their holdings well beyond retirement age because they have no guarantee of being able to get a fair payment for their investment in the farm over the years and have very limited bargaining power. That is not good for the sector either, as it means that the land is not available for the next generation of farmers.

Our policy builds in an independent valuation to arrive at a fair price that the landlord could pay to buy out the tenancy. That provides the clarity and certainty that do not exist at present. The tenant does not have to commit to leaving before they know the price; they can consider the price before they make a final decision on whether they are willing to accept it and then depart.

If the tenant confirms that they would like to leave, the landlord has the option to buy out the tenancy as an alternative to its being assigned to a new tenant. It is important to remember that that is a new opportunity that landlords do not currently have. We have built it in to create a fair balance between the rights and opportunities that the process gives both parties.

I take issue with the suggestion that has been made that the new policy restricts opportunities for landlords. If anything, it does precisely the opposite by providing new opportunities. However, if the landlord chooses not to buy, the tenant can assign the tenancy to a new or progressing farmer for market value. The policy does not involve open assignation, as some have claimed in recent weeks and months; it is clearly limited to those criteria.

One of the key concerns that the review group identified was that there are high barriers to new farmers trying to establish themselves in the industry. We have, after all, to attract the next generation of new blood into Scottish agriculture, which is one of the biggest challenges facing farming in this country—and, indeed, throughout Europe—in the 21st century. Our new policy is therefore targeted at increasing access to land for new and progressing farmers by making them the only—I repeat: the only—eligible assignees. New entrants have previously been cut off, effectively, from 1991 act tenancies, which tend to be passed down within families. The amendment creates an exciting and new opportunity for new entrants to establish themselves and invest in a new, secure holding.

Under amendment 157, which the committee agreed to last week, there will, of course, still be the option for a 1991 act tenancy to be converted

to an MLDT if both the tenant and the landlord agree to that. Therefore, parties who want to benefit from what an MLDT can offer will have the flexibility to do just that.

I should add that creating new options for 1991 tenancies should not pose a threat to let land—I have read about such a threat in reports from certain parties to the debate—because new 1991 act tenancies are no longer being created. It is difficult to ascertain the exact figures but it is generally accepted that they have not been created for many years. Given that the proposed measure applies to 1991 act tenancies, it is difficult to see how it could prevent new 1991 act tenancies from being created, because they are not being created anyway. That is an important point to put on the record.

In developing and thinking carefully about the policy, we have explored the relative merits of a range of assignation and conversion models. We have worked to achieve a fair balance between the interests of tenants and those of landlords while having regard to the wider public interest.

We have kept in mind the whole time the overarching objectives, which I think we all share, of creating secure routes into retirement for existing tenants and accessible routes into farming for newer tenants. Given the challenges facing the tenanted sector in particular and Scottish agriculture more widely, it is essential that we find a way to enable tenants to retire with dignity while opening up new opportunities for newer tenants.

We invited input from stakeholders during the policy development process. The amendments incorporate feedback and suggestions from representatives of both tenants and landlords. I am extremely encouraged by how well the policy has been received, particularly by tenant farmers. Therefore, I commend it to the committee.

Amendments 326, 169 and 171 are consequential. Does the committee want me to talk through them or should I stop at this point?

The Convener: Amendments 326, 269 and 271 are part of the group, so you may wish to comment on them.

Richard Lochhead: I merely say that those amendments are consequential modifications to the 1991 and 2003 acts. They also create new subordinate legislation-making powers that will allow provision to be made as to whether or how the new provisions apply to tenants who are in certain partnerships.

Amendment 169 makes the regulation-making power conferred on Scottish ministers by amendment 326 subject to the affirmative procedure. I am aware that the committee will support that approach.

Amendment 171 inserts in the long title of the bill a reference to the process for relinquishing or assigning tenancies.

The Convener: You should be referring to amendment 271.

Richard Lochhead: I am talking about amendment 171.

The Convener: No, I think it should be amendment 271.

Richard Lochhead: Can you say that again?

The Convener: You should be commenting on amendment 271. The amendments in this group are 325, 326, 269 and 271.

Richard Lochhead: I am sorry; I read out the wrong amendment numbers. You are right. Let me clarify that I was talking about amendments 269 and 271 rather than 169 and 171.

I move amendment 325.

The Convener: No problem. Thank you very much.

Alex Fergusson: I am taken back to the early days of the debate, when we took evidence from representatives of the rent review group. As a result of their investigations, they put it to us that, if we got the rent review process right and sorted out waygo, most of the problems in the tenanted sector would be solved. We then heard from the agricultural holdings legislation review group—I again point out that that group is chaired by the cabinet secretary—which reported that it had looked long and hard at assignation but rejected it because it did not believe that assignation for value would be in the public interest. My first question, which I ask the cabinet secretary to address when he winds up, is this: what has changed since the publication of the reports from the rent review group and the AHLRG that has persuaded the Government that assignation for value is now in the public interest?

10:45

Stakeholders worked for months, if not years, to develop the conversion model, and I really believe that progress was being made towards an agreement that could and would have delivered the bill's stated policy intentions. I have said before that the proposal on relinquishing an assignation, which I do not believe the committee has scrutinised properly, will have the opposite effect to the stated policy objectives, because it will greatly reduce the amount of land available for let.

The AHLRG saw sense in allowing secure tenancies to die out gradually and over time through conversion and other means—through

natural wastage, if you like—which would have allowed the introduction of dynamic new letting vehicles. I do not think that the committee really picked up on the potential of conversion, but that is what I think the AHLRG was talking about. The proposal that we are discussing will preserve secure tenancies for all time while, practically, reducing the amount of land available for rent, and I just do not see how that fits with the bill's policy objectives. We have talked about restoring confidence, but this will, I am afraid, destroy it—and that is why it will not bring any more let land on to the market.

Conversion as originally envisaged could work, but conversion as a suite of options, one of which will essentially force landowners to pay a premium to regain their own property, will not. I have little doubt that these amendments will end up being challenged in the courts; I do not welcome that, and I do not want it to happen. For that reason, if for no other, I will not be supporting this group of amendments.

Michael Russell: These amendments have, I think, been the ones that have been lobbied on the most, particularly over the past few days; indeed, committee members will have had dozens, if not hundreds, of emails about them. I welcome that, because it is very good to have an active debate about land reform in Scotland. Some contributions have been slightly unconventional, and I would ask the factor who sent six or seven in his name for a variety of companies that own the same estate whether that proved the case for having simpler and more transparent land ownership.

The basic question is whether the measure in question will discourage people from letting land, and I have to say that I think that it will. I have said several times in the committee that I do not believe that the bill's two declared objectives of providing greater security and more opportunity for tenants and of giving reassurance to landlords can go together in the same package, and I agree that there will be a problem of landlords being less willing to put land on the market.

However, that will not stop me voting for these amendments—quite the reverse, in fact. It will prove to me and, I hope, to many other people that the current system is broken. It is not broken everywhere, but it is broken. We need a fair and equitable system of letting land, but we do not have that at the moment because of our history. I feel strongly—I said this twice at last week's committee meeting—that we are trying to do something in the modern age that requires us to overcome problems that were made a lot further back down the line. This is not a proposal for expropriation, and any such reaction is nonsensical; in fact, the proposal is not that radical, given the very small number of tenancies to which it will apply in the end. This is not Armageddon, by any manner of means.

The right thing to do with tenancy would be to have freedom of contract and to allow people to be quite free in how they let land, but we cannot do that because of the present system and its history and because of practices that are sometimes carried out by landlords and others. There is an old-fashioned paternalism in some land letting, and there are also very doubtful practices by land agents to which we will come later when we discuss a code of practice for such agents.

How do we move from where we are to a much better situation? There are two possible ways. First, we can look at what happened in the late 19th and early 20th centuries in crofting, when the state had to intervene and become a landlord in order to create opportunities for people to let land. Such an approach will be very difficult, given the state of the public finances and how the state itself views such things. However, it is not impossible, and with the land commission coming into existence, there needs to be a discussion about whether that is a way forward.

Secondly, landlords themselves could recognise that there is a need for change, that Scotland itself has changed profoundly and that simply saying that property rights are absolute and cannot be interfered with is the wrong thing to do.

The bill is helping with that too, because it puts the issue of human rights into the debate—and it is a wider view of modern human rights than existed in the debate previously. I am hopeful that, over time, the issue will be resolved, but I do not think that the bill will resolve it. Inevitably, and regrettably, we are going to have to come back to the issue in the next session of Parliament.

The measure is a step in the right direction for tenants, but it will not resolve the issue of tenanted land. We will have to address that issue in the future, but I have no doubt that the minister is doing the right thing here and I am very happy to support it.

Claudia Beamish: Like other members of the committee, I speak in support of the amendments. There have been many emails, the majority from landowners, and Mike Russell made the valid point that some have come through from the same source for different estates. Be that as it may, I have also had some emails from tenants, who are very supportive of the proposal, and the STFA stressed in a press release of 9 February the need to

"take advantage of this opportunity to breathe new life into our ailing tenanted sector."

Another reason why I am supportive of the amendments is that they will create opportunities

for new entrants, which is a matter that has come before this committee many times in the four years that I have been on it.

I understand that there are concerns from landowners, but if we are going to have a vibrant tenanted sector we need to move in this direction. I think that a lot of the fears that are going around in the sector are perhaps overblown, but that is just a personal view.

Sarah Boyack (Lothian) (Lab): Like others, I am conscious that we are discussing amendment 325 pretty late on in the process. I have a plea for the cabinet secretary: I ask that his officials double check before stage 3 and run right through amendment 325 and other significant amendments. This is a substantial and important change, and in the light of previous changes to legislation on agricultural holdings and tenancies, it is really important that what goes through at stage 3 is effective and holds together legally.

I welcome the fact that amendment 325 refers not just to new entrants, but to progressing farmers. In discussions that I have had in my region, I have been made aware that once somebody becomes a new entrant they have tipped over the threshold and it is quite difficult for them to take the next steps. A recognition in law of the importance of progressing farmers is really important.

The third point that I want to make concerns the importance of monitoring and review. This is new. I take Mike Russell's point; we will have to see exactly how it will play out in the future. However, the monitoring issue is important because of the points that Claudia Beamish made about the significant change that is coming.

It is particularly important that there is widespread debate on any statutory instruments, so that people understand the principles behind them and can check the detail. Once such instruments come to the committee, we—or whoever is on the committee—do not get to amend them. Expertise has been built up on the committee over the past few years, and it will be important to make sure that, post-election, people are properly involved in discussions and that those discussions continue to be held on the record.

I welcome the inclusion of progressing farmers. I am particularly keen that the provision is monitored and that work is done with the new tenant farming commissioner. The role of the commissioner and of the land commission itself will be important in ensuring that tenanted land is still available and that there are no unintended consequences.

On accuracy and detail, which are not easy for committee members to scrutinise today, I hope that the minister and others who will check the legislation in the few weeks before stage 3 will make sure that we get any detailed amendments for stage 3 in good time.

Dave Thompson (Skye, Lochaber and Badenoch) (SNP): I want to pick up on a specific point to do with the conversion of 1991 act tenancies to MLDTs. It is a point that we have not heard much about up until now. I believe that there is already a process under the Agricultural Holdings (Scotland) Act 2003 that allows for a similar conversion. In chapter 1 of part 1 of that act, section 2 provides for the tenant and landlord of a 1991 act tenancy to terminate the lease and enter into an LDT of not less than 25 years, but I believe that that provision has never been used, or been used only very rarely. The existence of that provision calls into question the value of having the ability to convert to MLDTs. That is an important point that we should bear in mind in this debate.

In the past few days, as other members have done, I have received many emails from landowners and so on. There was a very interesting article in *The Scotsman* that Scottish Land & Estates tweeted, which I read with some incredulity. It is clear that there is on the part of landowners a misunderstanding about what the provisions will do. Simon Houison Craufurd, who wrote the article, compared what is proposed—in doing so, he must have frightened the life out of every flat owner in Edinburgh—with an owner of a flat in Edinburgh letting it to someone and that person being able to stay in the flat for ever more and pass it on to their kith and kin. I do not know whether there are many Edinburgh flats that are subject to the 1991 act—there might be some that Mr Houison Craufurd knows about. That is an illustration of some of the nonsensical and hysterical misinformation that is flying around. If Mr Houison Craufurd truly believes that, I am afraid that Scottish Land & Estates has not been doing its job in informing its members about the reality of the bill.

Land is not being let at the moment. Mike Russell is quite right that what is proposed might well not improve that situation, but what we are seeing at the moment is a constant reduction in the number of 1991 act secure tenancies—every year, the number of such tenancies is reducing by more than 100. Alex Fergusson said that he felt that that was required to happen and that that was what the AHLRG was talking about when it discussed the gradual decline and eventual disappearance of 1991 act tenancies. I do not think that that would be a good thing; people who have secure tenancies and who have occupied farms for many generations have added massive value to those farms.

I think that it was Alex Fergusson who mentioned that a landowner would have to pay a premium to regain their property, but that property will have been hugely improved by the work of the tenant and their ancestors for many hundreds of years, so it is only right for the tenant to get the benefit of that if they are moving on.

Alex Fergusson: I hear what you say, but such improvements are already recognised through the waygo process and would have been further recognised if we had implemented the recommendations of the rent review group. I suggest that having to pay an extra premium to get vacant possession if the tenant asks to relinquish the lease is a different thing altogether.

Dave Thompson: I am not sure that I agree with Alex Fergusson on that.

I have received information—I am sure that other members have, too—on recent cases in which tenants have had the temerity to make known their views on such issues and have had visits from factors and others, who have questioned their right to do that and have given them a hard time. That is totally unacceptable in this day and age.

11:00

Jim Hume (South Scotland) (LD): I agree that that is unacceptable. I have concerns about some of the amendments: amendment 325 is about 13 pages long. Sarah Boyack also has concerns that rushed legislation might be legislation that we regret in the future.

We all want let land and are concerned that it has been 12 years since there was a new act, so there has been a decline in the amount of such land. I believe that that is because there is a lack of trust between landlords, tenants and potential tenants, and the Government. I will therefore not support the amendments at this stage, but before I vote either way, I would like to hear from the minister what specific legal advice he has had, and from whom, on the human rights issues that have been raised in the committee's deliberations. As the cabinet secretary knows, the 2003 act was successfully—if you can call it that—contested, so I am interested to hear from the cabinet secretary about the legal advice that he has had on that.

Graeme Dey (Angus South) (SNP): Last night I sat reflecting on the past months of evidence that the committee has taken and what it amounted to. As others have, I did so in the midst of a barrage of emails from landowners telling me how amendment 325 would be bad for their businesses. I came to the conclusion that we should support the measures without a shadow of a doubt. I have given considerable thought to this and what clinched it was a couple of emails that I received—not from landowners but from two tenant farmers in my constituency. One said:

> "I have seen successive generations of my family retire with very little to show for a lifetime of endeavour and pride in their work. This will balance the equation between landlord and tenant whilst not infringing on the landlords human rights."

The other said:

> "I believe this would be good for 91 Act tenancies, allowing the farmer to invest in the holding for future generations whilst allowing tenants who are looking to better themselves to buy on to a secure tenancy to provide security for their family. I know the landowners are totally against this but you only have to look at the dwindling number of tenants on our estate over the past 20 years to see they are not willing to let land in any case!"

For those reasons and others that have been put forward by tenants from whom the committee took evidence in other parts of the country, I will support the Government's amendments.

Richard Lochhead: I will do my best to respond briefly to two or three points from around the table on what is clearly an important amendment that has attracted strong views from various sectors as well as from members around the committee table.

It is probably worth reiterating the primary purpose of the agricultural holdings legislation, which is to create a vibrant sector. That was also the focus of the review group's work.

Our country faces some huge challenges. We do not have enough opportunities for the next generation of farmers to farm our lands. We have a concentrated pattern of land ownership that influences what land is available to rent in the first place. However, we also have several thousand 1991 secure tenancies and the review group looked at how to find opportunities for new entrants to secure land that they can farm and rent because they cannot afford to buy. At the same time, we have farmers who are looking to leave their tenancies with some dignity. If that is enabled or incentivised, it will open up opportunities for new entrants. That is what the review group, the Government and the committee have been looking at. It has, for everyone involved, been a huge challenge that has Scottish agriculture's interests at heart.

The review group looked at 1991 tenancies and ruled out open assignation, so the proposal is for targeted assignation as part of creating a balanced set of proposals. Essentially, we are talking about 1991 tenancies that have no successor in place, so that land could be lost to the tenanted sector. We are trying to find balanced ways of ensuring that that land can be kept in the tenanted sector and offer opportunities. As I have said, there will also be opportunities offered to sitting tenants to leave with adequate compensation and dignity, as opposed to the position when there is no

successor in place when an elderly man or woman tenant dies.

As I have said, amendment 325 could open up opportunities for landlords, because otherwise there would be no incentive for sitting tenants to leave. We have a balanced set of proposals in which the landlord will have the first option of taking back the tenancy—that opportunity has not existed before for landlords.

Equally, there will be new options and opportunities for progressive farmers. Sarah Boyack highlighted the importance of recognising progressive farmers as well as new entrants. If we do not pass amendment 325, those opportunities will not exist.

I should also make the basic obvious point that at the moment secure tenancies are secure and therefore not available to the landlord. Amendment 325 will give landlords rights to take back the land if they want to bid to take over the tenancy and pay the amount that is set by the independent valuer.

If the committee passes amendment 325, we will of course monitor implementation of its provisions and their impact on Scottish agriculture. As Mike Russell said, we have to continue to look for radical options to free up land, otherwise future generations will not have access to land that they can farm to put food on the table and look after the environment. All of us who represent rural constituencies are aware of young people in particular in our constituencies who simply cannot find a farm to rent.

Many other measures have to be taken as well as those in amendment 325, which is part of an overall package. Other amendments to the bill will give more security for tenancies and tenants, and give tenants more confidence.

We are also looking at making publicly owned farms available for rent in Scotland. The Scottish Forestry Commission has been working on that over the past few years, and 10 new starter units have been created on publicly owned land. I absolutely agree with Michael Russell that we have to explore that much further and develop more opportunities on publicly owned land. We have a working group that will report soon on how that approach could be extended in the future.

I hope that the committee recognises the importance of amendment 325. I simply make the obvious point to Jim Hume in response to his question that we lodge amendments that are legal and within the law; that applies to all the amendments that come before the committee. We think that amendment 325's proposals will provide a good balance between the rights of landlords and the rights of tenants. However, most important, we think that its proposals will help to create a vibrant tenanted sector in Scotland.

The Convener: The question is, that amendment 325 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)
Russell, Michael (Argyll and Bute) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (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 325 agreed to.

Amendment 326 moved—[Richard Lochhead].

The Convener: The question is, that amendment 326 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)
Russell, Michael (Argyll and Bute) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (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 326 agreed to.

Section 90—Amnesty for certain improvements by tenant

Amendment 203 moved—[Richard Lochhead]—and agreed to.

The Convener: Amendment 204, in the name of Richard Lochhead, is grouped with amendments 209 and 301.

Richard Lochhead: Chapter 6 of part 10 of the bill introduces an amnesty period during which a tenant can obtain clarification of the improvements for which they will receive compensation at waygo. We had initially provided that the amnesty period would be two years. However, I am happy to say that amendment 204 will, in the light of the views

of stakeholders and a recommendation by the committee, extend the amnesty period from two to three years.

Amendment 301 is consequential on that, and will update the long title of the bill to reflect the fact that the amnesty period will now be three years.

Amendment 209 will protect tenants if they have not been told that their landlord has changed and, as a result, they have served an amnesty notice to the wrong landlord. The amendment will mean that, in such cases, they are still deemed to have served the notice correctly. The 1991 act already gives that protection to tenants serving written notices such as rent notices, who are unaware that they have a new landlord. The amendment will ensure that tenants issuing amnesty notices have the same protection.

I move amendment 204.

Jim Hume: I am supportive of the amendments. I have been calling for some time for the amnesty to be extended to three years, so I am happy with that.

Amendment 204 agreed to.

The Convener: The next group is entitled "Amnesty for tenant's improvements: no amnesty where improvements not consented to". Amendment 276, in the name of Angus MacDonald, is grouped with amendments 277 to 281 and 327.

Angus MacDonald (Falkirk East) (SNP): My amendments are designed to enable improvements to which a landlord gave oral consent to be included at amnesty and therefore to attract compensation at waygo.

Currently under the amnesty provisions, there are a number of circumstances in which a tenant will not be able to serve a valid notice to their landlord. That includes where the tenant has sought consent for an improvement, as required under section 37 of the 1991 act, and

"the landlord did not give such consent".

The 1991 act states that the landlord's consent must be written, so if the landlord consented to the improvement orally, the improvement could not be included, under the bill as drafted. As we know, many interactions between tenants and landlords occur verbally, so where oral consent has been given for an improvement, it is only right and fair that that improvement be eligible for inclusion at amnesty. My amendments would deliver that.

Amendment 281 would ensure that tenant farmers who have carried out an improvement in a manner that was not significantly different from what they had originally proposed, and to which the landlord consented, will not be disadvantaged by the new provisions.

Section 90(5) of the bill sets out the circumstances in which a tenant cannot serve notice under the amnesty provisions. One of those circumstances is where the improvement was

"carried out ... in a manner different to the manner"

that the landlord "consented to".

Amendment 281 will make the provisions less restrictive by changing the wording so that the improvements are excluded only if the tenant carried them out

"in a manner substantially different to"

the way that the landlord consented to.

I move amendment 276.

Claudia Beamish: I wish to speak in support of Angus MacDonald's amendments and to highlight my amendment 327.

A tenant is currently prevented from giving notice under the amnesty where the landlord withheld consent to an improvement in the past. In section 90(5), there is a specification that the tenant may not serve a notice of his relevant improvement under the amnesty arrangement where he has already sought consent under the 1991 or 2003 acts and it has been refused, and where he has served a notice under same acts and the landlord has objected. Such notices may have been served many years ago, when it was common practice for the landlord to object to improvements, and either the tenant accepted the objection or, as I understand was sometimes the case, he or she went ahead and made the improvement. In many cases, the notices will have been verbal. Although the tenant could challenge the landlord's objection through the Land Court, that rarely, if ever, happened, for reasons including those to do with costs, which have been well rehearsed.

Amendment 327 would ensure that a landlord would have to show proof of withholding consent or objection to a notice in writing, demonstrating a justifiable reason why consent was withheld or the notice was objected to. If he cannot, the tenants should be able to claim the improvement under the amnesty.

I also highlight the fact that amendment 327 would put the onus on the landlord to prove what happened and would allow a copy of the contemporaneous written notice to serve as such proof. That means that, if consent was refused or the objection was made in writing and the landlord kept a copy, that would be sufficient to prevent the tenant from claiming the amnesty, but would not prevent the landlord from proving the point in other ways, perhaps by having third parties vouch for what had been said.

11:15

Alex Fergusson: I have no difficulty at all with amendments 276 and 279 to 281, but I have an issue with amendment 277 because I do not find an oral agreement sustainable in a debate or dispute unless it has been properly recorded. An oral agreement is incredibly difficult to prove. It is vague and does not carry the same weight as the current requirement in legislation for agreement to an improvement to be given in writing.

There is also a conflict between amendments 277 and 327. If amendment 277 is rejected, agreement to an improvement will still have to be given in writing. If a tenant has agreement in writing, we do not need amendment 327, which I would not support anyway. As the landlord would have to give his consent in writing, the tenant would have that consent; if they did not have that consent, they would not have agreement. There is a conflict between amendments 277 and 327 and I will not support either of them.

Jim Hume: I am minded to support Angus MacDonald's amendment 277. An agreement in law can be in writing or oral. Of course, it is far more difficult to prove that there was an oral agreement—it would be necessary to have a third party to do that, or perhaps a recording of the agreement—but I disagree with Alex Fergusson. I will support amendment 277 but not amendment 327.

Richard Lochhead: I support amendments 276 to 281, which were lodged by Angus MacDonald. As we are all aware, a lot of communication between tenants and landlords takes place verbally around the kitchen table, so I agree that it is right that a tenant should be able to serve an amnesty notice for an improvement to which the landlord consented orally.

I also recognise that there are many practical reasons why a tenant might need to carry out an improvement in a way that is not exactly the same as the one to which the landlord agreed. Angus MacDonald is right that we should not penalise tenants in those circumstances and that, as long as the difference is not significant, they should still be able to include those improvements at amnesty.

I am happy to support amendments 276 to 281, but we have significant concerns about Claudia Beamish's amendment 327. The amnesty provisions let tenants claim for improvements for which they do not have records, and most people support that principle. We must also acknowledge that it has been good and encouraging to see the broad consensus on the amnesty provisions across the sector, and we do not want to jeopardise that. However, the amnesty is not intended to let tenants claim for improvements to which the landlord did not consent or to which they objected.

Amendment 327 would mean that the landlord would have to prove that they had not consented to, or had objected to, an improvement, and that they had given reasonable grounds for doing so. It suggests that the landlord should do that by providing a copy of a written notice that they gave the tenant at the time. However, there is no legal requirement for a landlord to give a tenant a notice—written or otherwise—that explains their reasons for not consenting to an improvement. Therefore, the amendment would retrospectively hold landlords to a higher standard than the law held them to at the time. That would not be reasonable or in the spirit of the amnesty. Changing the law retrospectively is possible only when there is a very strong justification for it, and that case has not been made.

I invite the committee to reject amendment 327 if Claudia Beamish insists on moving it.

Angus MacDonald: I am pleased that the cabinet secretary is prepared to take my amendments on board. I remind Alex Fergusson that, under Scots law, an oral agreement stands, albeit that it is usually accompanied with a handshake. I stress that point.

I will press amendment 276.

Amendment 276 agreed to.

Amendment 277 moved—[Angus MacDonald].

The Convener: The question is, that amendment 277 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)

Against

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

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

Amendment 277 agreed to.

Amendments 278 to 280 moved—[Angus MacDonald]—and agreed to.

Amendments 205 and 208 moved—[Richard Lochhead]—and agreed to.

Amendment 281 moved—[Angus MacDonald]—and agreed to.

Claudia Beamish: I do not intend to move amendment 327, but I will have further discussions with the Scottish Tenant Farmers Association and tenants about whether it could be slightly altered for consideration at stage 3.

Amendment 327 not moved.

Amendments 206 and 207 moved—[Richard Lochhead]—and agreed to.

Section 90, as amended, agreed to.

Section 91 agreed to.

Section 92—Amnesty notice

Amendment 209 moved—[Richard Lochhead]—and agreed to.

Section 92, as amended, agreed to.

Section 93 agreed to.

Section 94—Referral to Land Court

The Convener: The next group is on dispute resolution in agricultural tenancies. Amendment 137, in the name of Claudia Beamish, is grouped with amendments 138, 302, 116 and 308. Amendments 137 and 138 are direct alternatives.

Claudia Beamish: Arbitration is not currently an option for disputes over improvements under section 39 of the 1991 act. That is a deterrent to tenants contesting a landlord's objection, as the process of going through the Land Court can be costly, time consuming and damaging to tenant-landowner relations.

Under amendment 137, the parties would agree to a third-party arbiter. Under amendment 138, in cases of dispute over a tenant's improvements, the tenant farming commissioner would be required to set up an arbitration or expert determination service to assess and adjudicate over a landlord's refusal of consent or objection to notices.

There are already arbitration provisions in the 1991 act, and I understand that the Arbitration (Scotland) Act 2010 would also apply. Lord Gill states:

"certain cases are exclusive to other jurisdictions. ... the Land Court have exclusive jurisdiction in, for example, ... applications for approval of proposed improvements under section 39".

The point is that, in the view of the STFA and some others, the need to apply to the Land Court when a landlord objects to a notice to carry out an improvement has always deterred tenants from contesting an objection, and that will inevitably be the case when the amnesty takes place.

I believe that my amendments are important to the success of the amnesty. The reference to the 2010 act may not be necessary, but I understand that it makes provision for more flexible arbitration. Decisions on whether an improvement is appropriate for a holding will be, by and large, technical judgments, and it is therefore important that an arbiter's decision can be appealed only on a legal error.

I move amendment 137.

Sarah Boyack: I lodged amendments 302 and 308 to ensure that we had a decent discussion about dispute resolution at stage 2. Over the past couple of weeks, we have agreed to significant amendments to key aspects of the bill, and it would be useful to clarify where different types of dispute resolution come in.

My amendment 302 was inspired by discussions with the Scottish Agricultural Arbiters and Valuers Association and the Central Association of Agricultural Valuers, both of which are concerned that more could be done to set out access to dispute resolution. I think that we all know how expensive it is to go to the Land Court. The time factor is significant and so is the financial factor. For many people who are involved in agriculture, it is not a realistic option to go to the Land Court. Even if someone does so, it will not automatically be the end of the story, as they could end up in the Court of Session, so the process can be hugely expensive. We need to explore any ways in which we can divert people from that process and give them better options, and the various amendments in the group look at different ways in which we could do that.

I note that Alex Fergusson's amendments refer to mediation, which is another form of dispute resolution. The point is that not all of the dispute resolution options will be right in all circumstances. It is about finding out the best way to proceed, which can be challenging.

Amendment 302 focuses on arbitration. Given that we now have the 1991 act, the 2003 act, the bill and the Arbitration (Scotland) Act 2010, one challenge is to know what the different options are. Going to the Land Court is adversarial, expensive and time consuming. The 2010 act promoted a modern statutory framework to give people alternatives to going to court. The questions in my mind are how that links to the bill and what practical changes the bill will deliver.

In the response to our consultation at stage 1, there was general support for greater use of arbitration. I hope that the series of amendments in the group will give us more clarity on where arbitration is appropriate and the different systems that people could use.

When we come to pass the bill at the end of stage 3, where among its provisions will there be something that is easy to read that sets out the

options so that people can understand, given the various sections, where mediation might be worth pursing, where arbitration is important, where the services of arbitration experts might be useful and where the Land Court is appropriate as a backstop? I do not have a clear sense of that and I suspect that it would be useful for others to know how the bill will relate to the previous legislation including, crucially, the 2010 act.

Amendment 302 is primarily a probing amendment, but there are things that I would like to achieve as a result of having lodged it, and the key one is clarity on all the amendments in the group. I think that they all try to do the same thing, which is to promote a better, more accessible approach rather than people automatically resorting to the law in all cases, which we know is expensive and not necessarily the best way forward.

11:30

Alex Fergusson: First, I should say that I, too, was working on amendments of the sort that Sarah Boyack and Graeme Dey have lodged, but when I realised that we were all working towards the same end, I was happy to leave the matter to others. I support their amendments and the principle that they embrace.

This committee, of all committees, is only too aware of the need for alternative dispute resolution measures in relation to landlord-tenant relationships. Fortunately, the need for such services is rare, but the current situation, which emanates from legislation that the Parliament passed in 2003, highlights that such services, when required, can play an enormous role in bringing about a resolution where one previously seemed impossible to reach.

Personally, I have no doubt that the bill will lead to an increase in demand for such services, but that debate is for another time and place. The sad fact is that the need for mediation and arbitration is not going to go away, and I think that we should address it. My amendment simply seeks to add to the list of functions of the tenant farming commissioner the power

"to provide or secure the provision of services of mediation or arbitration between landlords and tenants of agricultural holdings"

as the commissioner deems appropriate. That seems to me to be an entirely logical part of the commissioner's role, and such a power will make the role easier to undertake. As I said, we have seen all too recently the difference that mediation can make to seemingly irresolvable cases.

I will be interested to hear the Government's view on amendment 116. Sarah Boyack made the good point that the issue is complicated and there is a lot at stake. I think that we are all coming at this from the same angle, but I am not at all sure that a lot more work does not need to be done on the matter. The area is too important for us to rush into legislation. As I said, though, I am keen to hear what the cabinet secretary has to say before I decide whether to move my amendment 116.

Graeme Dey: I am pleased to speak in support of Sarah Boyack's probing amendment 302. It is clearly desirable to resolve disputes without the need to enter formal legal settings, with the costs that that can entail. In addition, I am conscious that we as a committee and the cabinet secretary, Richard Lochhead, have been responsible for adding to the Scottish Land Court's workload throughout the current session of Parliament. It is therefore incumbent on us today to explore where it might be possible and appropriate to provide increased opportunities for arbitration, which, as well as providing an alternative vehicle for settling disputes, will lighten the court's load.

I understand that section 61 of the 1991 act and section 78 of the 2003 act provide scope for a landlord and tenant, if they so agree, to seek dispute resolution in a number of areas through arbitration or any other method. However, there is also a list of exclusions, and having looked through it, I cannot help but think that two or possibly three might easily be open to settlement in the alternative setting of arbitration. The three are disputes that arise from a record of fixed equipment; decisions on whether to give consent to a tenant carrying out an improvement that the landlord has objected to and whether to attach any conditions to that; and finally—although I am not sure how common an occurrence this might be—directions that a holding is to be treated as a market garden, which brings with it a distinct legal status.

I guess that what I am suggesting is that, given that the list of terms to be considered for waygo is going to be updated, it might be worth looking at that other list in consultation with the Land Court to see whether, 13 years on—I suspect that the list in the 2003 act might simply reflect what was drawn up in 1991—it needs to be updated, preferably before stage 3 but certainly as soon as is practicable.

Dave Thompson: I am going to step on to dangerous ground here by agreeing with Alex Fergusson.

Alex Fergusson: There is nothing dangerous about that, Mr Thompson.

Dave Thompson: Alex Fergusson made the point about mediation very well. It is something that I very much support in principle, and I, too, look forward to hearing what the cabinet secretary has to say about it.

Arbitration is fine but, as with legal proceedings in the Land Court and so on, it can be a fairly expensive business and it can involve lawyers. On the other hand, mediation is much simpler; it is all about getting people round the table and getting them to talk, and it can often lead to problems being resolved. In principle, therefore, I would always push towards mediation to make things as simple, cheap and quick as possible.

I just wanted to put that on the record. As I said, I look forward to hearing what the cabinet secretary has to say.

Richard Lochhead: I will kick off by responding to Claudia Beamish's amendments 137 and 138, which are direct alternatives. We cannot support amendment 138—and I will explain why in a second or two—but I support amendment 137 in principle.

As the amnesty provisions stand, if the landlord objects to an amnesty notice that has been submitted by the tenant, the tenant can apply to the Land Court for approval of the relevant improvement. Amendment 137, for which I thank Claudia Beamish, seeks to give the tenant an alternative option for settling the dispute, which is to ask the landlord to take part in arbitration. Like other members, I agree that parties should be able to settle the matter by arbitration if they would rather do that than go to the Land Court.

However, we believe that there is a simpler and clearer way of achieving that. The 1991 and 2003 acts already let parties agree to have matters determined by arbitration instead of by the Land Court, and they also set out the process for arbitration. I therefore invite Claudia Beamish to withdraw her amendment and, in doing so, I offer to work with her on considering whether an amendment can be lodged at stage 3 to ensure that the existing arbitration provisions in the 1991 and 2003 acts apply to the bill's amnesty provisions. If they were to do so, parties could use arbitration to settle disputes on amnesty instead of going to the Land Court, without people having to work with lots of different arbitration provisions in different places.

On amendment 138, we are not convinced of the benefits of placing a duty on the tenant farming commissioner to select an arbiter. It would be a significant departure from the current situation, which leaves the parties free to agree an arbiter themselves. There are also practical issues to consider. For example, amendment 138 neither sets out a timescale for the commissioner to select an arbiter nor makes it clear whether the parties would actually be bound by the decision of an arbiter who had been appointed by the commissioner. I therefore invite the committee to reject amendment 138, but as I have said, we would be pleased to consider lodging an amendment at stage 3 to deal the aspect highlighted in amendment 137.

I thank Sarah Boyack for lodging amendments 302 and 308. I have heard and support the strong calls from this committee and some stakeholders for wider access to statutory arbitration as an alternative to taking disputes to the Land Court. Again, I will outline the provision that already exists.

Under the 1991 and 2003 acts, landlords and tenants are already free to agree to settle any matter by arbitration, mediation or any other method of resolving the issue instead of going to the Land Court, unless the matter is one of a handful of things that, as Graeme Dey set out in his remarks, are specifically excluded under the 1991 and 2003 acts. Most of the things that are excluded from arbitration are to do with fundamental rights in relation to the tenancy, including whether the tenancy can be terminated completely, and it is extremely important that, if all else fails, landlords and tenants still have the right to go to the Land Court to have such fundamental issues decided.

However, in light of the comments made by Sarah Boyack and Graeme Dey, I am happy to give a commitment that we will look carefully at the list of exclusions and consider whether we could sensibly remove any items from the list, so that disputes on them could be decided through arbitration or mediation instead. I am very much in favour of anything that we can do here to reduce the burden on the Land Court and give tenants and landlords more flexibility, without damaging their rights and interests.

I understand the desire to resolve disputes without having to go to court, and we all want that to happen more. However, as I have said, parties can already agree to use arbitration instead of the Land Court to come to a settlement on most issues. Let us also remember that the tenant farming commissioner's central role is to improve relationships between landlords and tenants and to promote good practice, and we hope that that in itself will reduce the number of cases that have to go to the Land Court or indeed to arbitration. I hope, therefore, that Sarah Boyack will not move amendments 302 and 308.

On amendment 116, in the name of Alex Fergusson, landlords and tenants can, as I have mentioned, already agree to settle most matters by arbitration or some other means instead of going to the Land Court. If the parties agree to go to, say, arbitration, they are free to appoint the arbiter themselves; alternatively, they can nominate someone to appoint an arbiter for them. The same goes for other forms of dispute resolution such as mediation. As a result, we do not see the benefit in giving the tenant farming

commissioner the function of providing or procuring arbitration services, as proposed in amendment 116. That would change neither the parties' existing ability to go to arbitration nor the range of issues that they can choose to have settled by arbitration.

Additionally, it is not clear what the financial implications of Alex Fergusson's amendment would be. Like parties across all sectors of society, landlords and tenants currently meet the costs of arbitration themselves. However, if Alex Fergusson would have it that the TFC provided arbitration services, it raises the question whether public funds would be required to pay for those services. It is difficult to see the justification for that in this case, given that the same does not apply to other sectors in Scotland. Moreover, if the public purse was called on to fund those services, that could raise state aid issues. I therefore invite the committee to reject amendment 116, if Alex Fergusson insists on pursuing it.

The Convener: I call Claudia Beamish to wind up and to indicate whether she wishes to press or withdraw amendment 137.

Claudia Beamish: In view of the cabinet secretary's remarks about working towards an appropriate arrangement prior to stage 3, I am pleased to withdraw amendment 137.

Amendment 137, by agreement, withdrawn.

Amendment 138 not moved.

Section 94 agreed to.

Section 95 agreed to.

After section 95

Amendment 282 not moved.

Section 96—Notice required for certain improvements by landlord

Amendments 210 to 212 moved—[Richard Lochhead]—and agreed to.

Section 96, as amended, agreed to.

Section 97 agreed to.

After section 97

The Convener: The next group of amendments is on application of repairing standard to agricultural tenancies etc. Amendment 152, in the name of Claudia Beamish, is grouped with amendment 153, and I also draw members' attention to the pre-emption information shown in the groupings.

Claudia Beamish: Amendment 152 applies to all types of tenancies, and amendment 153 seeks to amend the schedule to ensure that MLDTs are treated the same as the other three types of tenancy.

Amendment 152 seeks to insert a new chapter into part 10 of the bill and to remove the exemption for MLDTs. Under the Housing (Scotland) Act 2006, a tenancy includes

"any occupation of living accommodation by a person under that person's terms of employment, but does not otherwise include any occupation under an occupancy arrangement",

and an "occupancy arrangement"

"means an arrangement other than a lease under which a person is entitled, by way of contract or otherwise, to occupy any land or premises".

To simply remove the existing exemption would benefit only those tenants who lived in so-called tied accommodation, not tenants who had a separate arrangement with the landlord to occupy a house on the land. Together, amendments 152 and 153 would ensure that, for all four types of tenancy, the repairing standard would apply. That does not affect other exemptions under section 12 of the 2006 act, which I understand relates to crofts.

11:45

Yesterday, I received an email from Louise Ker, a tenant farmer, on the repairing standard. She wrote:

"The farmhouse that my family currently resides is damp, and water comes in through the roof and windows regularly during bad weather. The windows are single glazed and rotten. There are alarming cracks over the upstairs ceilings and there is no central heating. It very often falls to low single figure degrees celsius inside during the winter. The annual fuel bill has accounted for as much as a third of the farm's income in the past. The land agent who we deal with has shown no interest in this. I cannot emphasise enough the difference that having 1991 Act tenancy properties fall within the basic housing repairing standard would make to my family's quality of life, conditions that most people in Scotland now take for granted."

Although many homes on tenanted land are in reasonable repair, that case is not an isolated one, as the Rural Affairs, Climate Change and Environment Committee, of which I have been a member for four years, has heard on the visits that it has made throughout this session of Parliament.

I have carefully read the letter of 9 February from the cabinet secretary's official, and it is helpful in setting out where we are now on this important issue. It says:

"given the mix of existing arrangements, the complex interfaces with other areas of legislation and policy, and the potential scale of the issue, thorough research is needed in order to build up a clear and comprehensive picture of the problems facing agricultural housing and the solutions needed to robustly address them."

I understand that, but I take issue with the suggestion in the letter that the house falls into the

category of "fixed equipment" and that, therefore, will be the subject of possible compensation at waygo. I do not believe that that is the solution.

There is also the issue of energy efficiency. The regulation of energy efficiency in the private sector housing—or REEPS—consultation has been delayed. I put forward arguments on that issue in relation to the Housing (Scotland) Act 2014; I will not go into them now, but I understand that that consultation must take place early in the next session of Parliament.

We must work towards legislative change. My amendment is a probing one, but it is important that people can live in homes that meet the standards to enable them to have a decent quality of life.

I move amendment 152.

Jim Hume: I will support Claudia Beamish if, as I hope, she presses this amendment, because it concerns an issue that I have brought up previously and of which I have heard many cases across the south of Scotland, which is an extremely rural area. I am sure that it affects other areas, too.

Some 51 per cent of rural households are in fuel poverty, and I think that we all know of places that are not up to standard. As we know, homes within tenancies are deemed to be commercial property, but they are still people's homes. Waygo compensation is fine and dandy, but it might be 50 or 60 years before someone leaves their home, and they might have to spend all that time living in a cold and draughty house. Given that the idea of acceptable standards applies to residential tenancies and short assured lets, I cannot think of any reason for not bringing properties that are part of a tenancy up to the same standard that people with the same tenancies in urban parts of Scotland get.

Michael Russell: I have the greatest sympathy for amendment 152, which tackles an important issue that the committee has discussed at some length. Indeed, we have seen evidence of the issue in places that we have visited, and I have further evidence and experience with regard to a range of tenancies throughout Argyll and Bute.

That said, I suspect that the issue requires a more detailed and considered legislative response than can be provided by amending this bill. I hope that the cabinet secretary will, at the very least, indicate that agricultural housing and housing on tenant farms must be considered as a priority. I seem to recall that on one of its visits the committee was told by a factor that a house was simply a benefit that was added to the lease, with no obligation on the landlord. That bizarre view needs to be overcome, through legislation if necessary.

Alex Fergusson: I absolutely agree with every word that Mike Russell has just said, and I should make it clear that what I am going to say does not in any way undermine where Claudia Beamish is coming from or what she seeks to achieve. There is a problem that needs to be addressed, but I am afraid that I agree that a lot more preparatory work and consultation are needed.

I just wonder whether there are easier ways of solving the problem. One way might be to remove the house from the agricultural tenancy and let it separately as a private residential tenancy, which would bring it under the legislation that provides for a decent standard.

I absolutely sympathise on this matter, and I accept that there is an issue that should be addressed, but I think that that needs to be done with a little more thought and preparation.

Sarah Boyack: As members have said, during our visits last summer as part of our stage 1 discussions, we saw people living in farm properties that were just not acceptable—and which would certainly not be acceptable in an urban situation. The issue affects farmers, their families and the people who work on the land. As Claudia Beamish has said, fuel poverty is particularly acute in rural communities, and there is an issue with the condition of buildings and the cost of heating them.

Moreover, there is a lack of choice. Many tenant farmers and people who work on the land do not have a lot of options, and for many, the choice of housing is unsatisfactory. That, too, is not acceptable.

This is not a new issue; indeed, we were really struck by that at stage 1. I accept that there are issues with the wording of amendment 152—there are always such issues with amendments—but how long must tenant farmers and workers in our rural communities wait? When will legislation on the issue come over the horizon? Where is it on the list of the Scottish Government's priorities? The standard of agricultural housing is an important issue to raise in the context of this bill, but, as I have said, it is not a new issue and I would like the cabinet secretary to say something a little stronger than, "It's something we're aware of and we accept that something needs to be done."

Richard Lochhead: I fully understand why Claudia Beamish wanted to highlight issues to do with agricultural housing by lodging amendments 152 and 153.

Currently, housing provided under tenure for tenant farmers, crofters and small landowners has to meet the tolerable standard that is set out in housing legislation. To meet the tolerable standard, housing must be structurally stable and

free from rising damp, and it must have satisfactory lighting, ventilation, heating and thermal insulation and a hot and cold water supply. I hope that we can get to a position where people are not leasing out homes on farms that they would not be prepared to live in themselves. Houses should reach the tolerable standard.

However, the tolerable standard is lower than the repairing standard, which amendments 152 and 153 would apply to SLDTs, LDTs, 1991 act tenancies and the new modern limited duration tenancies. It is worth noting that Claudia Beamish's proposed approach would discriminate against tenants with the proposed new repairing tenancies and against crofters and small landholder tenants who have a house as part of their tenure. There are other people to consider in the situation that Claudia Beamish wants to address.

Currently, unless a house on a tenanted farm is let out separately on a short assured tenancy under general housing legislation, houses that form part of an agricultural tenancy are taken to be part of the fixed equipment on the holding, and that includes all the farm cottages included in the lease and not sublet under housing legislation. That is important, because it means that the houses are part of the rent review system, and it affects how they are looked after.

In many agricultural leases, the tenant farmer is responsible for maintenance and repair and the landlord is responsible for replacement and renewal. In theory, the tenant should maintain the house and the landlord should replace worn fittings such as central heating, bathrooms and windows. Of course, as members have highlighted, we all know that the situation is much more complex than that. I am sure that we all know of cases—I certainly know of some in my constituency—where neither party has met their legal requirements and as a result the house has suffered. We have seen tenants' farmhouses in a terrible state—indeed, in a state that we would not want our own families to live in. I reiterate: no one should be leasing out a home that they would not be prepared to live in themselves.

The new rent review system and the bill's amnesty provisions will provide the important first steps in clarifying responsibilities and investment in the houses on the holdings. By using those tools, tenant farmers and their landlords will be better able to consider how houses should be treated within the tenancy.

However, I fully accept that those are only first steps, and I agree that we need to address the state of repair of housing that forms part of an agricultural holding. As members have suggested, in order to do that properly, we need to thoroughly research the number of those affected and the scale of problems facing the houses. A number of steps need to be taken to achieve the successful and sustainable solutions that we want in relation to the quality of agricultural housing in Scotland.

We need qualitative and quantitative research to enable the Scottish Government to assess the range of issues, including costs, that must be addressed if we are to bring houses affected up to the same standard as other rural housing across Scotland, and we should then consult on the range of possible solutions. That will enable us to bring forward legislative change that is fair and equitable to all of those affected by the current exclusion from the repairing standard and to ensure that their homes are fit for the 21st century.

Those are significant steps, and delivering such commitments will, as has been said, require both time and resources. However, I agree that this is something that we have to do in the short term, and I am therefore happy to take away today's comments and meet the housing ministers to find out how we can put in place an action plan to address the quality of agricultural housing in Scotland early in the next session. I am also sure that other committees in the Parliament will want to take a close interest in the quality of agricultural and rural housing in Scotland.

That is the commitment that I am making today. This important subject needs to be higher up the agenda, and the work that I have referred to must be kicked off pretty quickly so that we can consider the potential solutions sooner rather than later.

In that context of our working together to take the issue forward, I invite the committee to reject amendments 152 and 153.

Claudia Beamish: I seek clarification from the cabinet secretary on whether, if I withdraw amendment 152 and do not move amendment 153—and given the points that have been made about the need for further research to find the best way of taking the matter forward—primary legislation would have to be introduced. How does the cabinet secretary see the matter being addressed after the consultation early in the next session of Parliament?

Richard Lochhead: It is too early to say whether primary or secondary legislation would be required and where that legislation would need to be brought forward. What is important is that we have a road map of the work that has to be carried out. I had the sense that the committee was looking for assurance that the research work will be addressed pretty quickly. As I have said, I am happy to speak to the housing ministers to mutually agree the best way to take the matter forward as quickly as possible, and the outcome of

that work will determine what legislation will have to be amended or created to deal with the issue.

Claudia Beamish: Before I make a decision, I want to ask another question. Does the cabinet secretary agree that committee members with an interest in the matter who are returned in the next session should be involved in the discussions with the housing minister?

Richard Lochhead: I will certainly give that some thought. It would be my intention to write—no doubt jointly with the housing ministers—to the committee on the way forward.

Claudia Beamish: Thank you.

As other committee members have agreed, the current situation is completely unacceptable. At this point, I should thank Jim Hume for being prepared to support amendment 152, although I think that I will withdraw it. That said, before stage 3, I will have further discussions with those who have serious concerns, not least those living in properties of a completely unacceptable standard, and I look forward to the road map for the future of tenant farmers that the cabinet secretary has mentioned.

12:00

Alex Fergusson suggested that the house be removed from the tenancy, but I would argue that a house is not fixed equipment—it is someone's home. As Sarah Boyack has said, these houses are often in isolated areas where there might be no other opportunities. It has also been highlighted to me that the security of the farm could be jeopardised if no one lives there. There are many issues to take into account, and I am determined to resolve the issues for the future of the tenanted sector.

Amendment 152, by agreement, withdrawn.

The Convener: The next group of amendments is on the use of agricultural land: diversification. Amendment 283, in the name of Graeme Dey, is grouped with amendment 284.

Graeme Dey: I will speak to the amendments in reverse order, convener, if I may.

Section 40 of the Agricultural Holdings (Scotland) Act 2003 sets out the procedure whereby a tenant with a 1991 act tenancy or limited duration tenancy may notify the landlord of their intention to use the land for a non-agricultural purpose—that is, their intention to diversify.

The agricultural holdings legislation review group found that landlords can severely delay approval of a tenant's diversification request by making repeated requests for additional information. As diversification cannot begin until 70 days after the landlord's latest request, it can be postponed indefinitely if he or she makes repeated requests. The review group recommended:

> "If objecting to a diversified activity on a tenanted holding, the process should be limited to only one notice of objection by the landlord".

Amendment 284 seeks to address that by limiting the landlord to just one request for additional information.

The objection process also slows down diversification. Under the 2003 act, if a landlord objects to a tenant's notice of diversification, the land cannot be used for the diversified purpose. However, the act does not specify a time period that would oblige the landlord then to proceed promptly to the Land Court to have his or her objection considered valid or not. In practice, that can mean that the burden of court proceedings falls on the tenant, who has to raise appeal proceedings against the objection in the Land Court in order to have a chance of being allowed to diversify.

Amendment 283 shifts the responsibility to the landlord. Under the amendment, if the landlord objects to the diversification, he or she must take that objection to the Land Court within 60 days, otherwise their objection falls and the tenant can then proceed to diversify.

I move amendment 283.

Alex Fergusson: I wish to make a brief request for clarification. I am fairly sympathetic to where the member is coming from, and the idea of a landlord being able to indefinitely postpone any request by continually asking for information or whatever is wrong. However, I can envisage a situation where the original request for information leads to a further request, but that would not be able to happen if the landlord were allowed to request information only once, which is what I think the member is stating. In his summing up, will Mr Dey say whether that is his intention?

Richard Lochhead: I welcome amendments 283 and 284, which should help to avoid unnecessary delays to a tenant's ability to diversify. It does not seem right that a tenant must go to court to try to prove that the landlord's objection to diversification is unreasonable. I agree with Graeme Dey's proposal that the onus should be on the landlord to justify their objection and to take the matter to the Land Court within a set timeframe.

Graeme Dey's second amendment is, of course, based on a recommendation made by the agricultural holdings legislation review group, which recognised the severe—even indefinite—delays that can be caused by the current process, and limiting the landlord to one request for

information should streamline the process for a tenant who applies to diversify.

We support amendments 283 and 284.

The Convener: I call Graeme Dey to wind up and to indicate whether he wishes to press or withdraw amendment 283.

Graeme Dey: As we all know, it can be hard enough for tenant farmers to finance diversification projects without their being further hindered by unreasonable delays in seeking agreement from their landlords.

On Alex Fergusson's point, my amendments are not designed to create difficulties; indeed, I suggest that accepting the amendments will lead to a better environment for tenants and landlords. One would of course hope that a reasonable request for additional information would get a reasonable response. The aim is not to prevent something like that; instead, it is to prevent delay after delay from occurring and derailing the diversification project. That is what the amendment seeks to achieve.

Alex Fergusson: There will be unintended consequences.

Graeme Dey: Mr Fergusson talks about unintended consequences. Given the Government's indication that it will support the amendments, I am sure that it will also consider the potential for such consequences. However, I do not think that there will be any.

I press amendment 283.

Amendment 283 agreed to.

Amendment 284 moved—[Graeme Dey]—and agreed to.

Amendment 302 not moved.

The Convener: That takes us to the end of part 10 of the bill. We will have a five-minute break, after which we will press on and try to complete our work today if at all possible.

12:06

Meeting suspended.

12:13

On resuming—

Section 22—Functions of the Tenant Farming Commissioner

The Convener: The next group is on functions of the tenant farming commissioner: promotion of good relations between landlords and tenants. Amendment 304, in the name of Claudia Beamish, is grouped with amendments 214 and 306.

Claudia Beamish: Amendment 304 creates a duty for the tenant farming commissioner to create codes of conduct. Amendment 306 gives details to govern how the codes of conduct might be implemented. I note that the cabinet secretary has lodged alternative amendments and I will listen with care to what he says on them.

I move amendment 304.

The Convener: Thank you. I call the cabinet secretary. [*Interruption*.] Pardon me.

12:15

Richard Lochhead: Claudia Beamish's amendments 304 and 306 would require the tenant farming commissioner to prepare codes of conduct on eating at committee meetings and various other standards of behaviour—[*Laughter*.]

I revert to the serious topic of the amendments. Amendments 304 and 306 would require the tenant farming commissioner to prepare codes of conduct on the standards of conduct that landlords and tenants can expect from each other. Claudia Beamish suggests that the codes could include, for example, "politeness and mutual respect". I appreciate the sentiments behind her amendments, but it would be challenging for the Parliament to legislate on such topics. We have to hope that landlords and tenants can work together and treat the issues seriously, and where there are exceptions to that, the tenant farming commissioner's work on encouraging good relations and supporting best practice in the sector is already aimed at addressing some of those issues.

On a practical note, the amendments do not provide for parties to be able to report breaches of the codes of conduct or for the commissioner to investigate breaches, so there would be no consequences of parties ignoring the codes, although it is difficult to see how we could enforce some of the things that Claudia Beamish suggests should be subject to codes. I invite the committee to reject amendments 304 and 306.

I move on to my amendment 214. The bill proposes a range of radical changes to land reform and agricultural holdings. It encourages and supports responsible and diverse land ownership; increases the transparency of land ownership; helps to ensure that communities have a say in how the land in their area is used; addresses issues of fairness, equality and social justice around access to land and the use of land in our country; and takes action to underpin a thriving tenanted farming sector, which is the main topic of the amendments in the group.

Encouraging good relations between landlords and tenants is central to making sure that the

sector thrives, and that is the fundamental purpose behind the establishment of a tenant farming commissioner. That was the vision of the review group, and it is one that we share.

Amendment 214 builds on a suggestion that the Community Land Advisory Service made in its written evidence at stage 1. It said that we should make it explicit that encouraging good relations will not just be something that the commissioner does as part of promoting the codes of practice, but will underpin everything that they do. The amendment requires the commissioner to exercise all their functions

"with a view to encouraging good relations between landlords and tenants of agricultural holdings."

It also means that, if the commissioner is given new functions in future, they will need to be consistent with the objective of encouraging good relations between landlords and tenants.

Alex Fergusson: I do not intend to oppose amendment 214, but I think that I am right to say that, in a previous debate this morning, the cabinet secretary said that it is already a core purpose of the tenant farming commissioner to promote good relationships between landlords and tenants. I agree with that, but surely encouraging good relations between landlords and tenants is an objective and an aspiration. I find it difficult to see how it could be enforced through legislation.

If we are talking about building a vibrant sector, which the cabinet secretary mentioned in the debate on the current group, I do not see how drafting a code on people being polite to each other would necessarily help in that regard. I will not oppose amendment 214, but I find that a strange thing to legislate on. The cabinet secretary may or may not wish to comment on that in summing up.

Richard Lochhead: I clarify that I am suggesting that the committee does not support Claudia Beamish's amendments 304 and 306. My amendment 214 is more about being explicit about the purpose of the tenant farming commissioner, as was suggested to the committee and the Parliament by the Community Land Advisory Service at stage 1.

Sarah Boyack: It is good that we have had a discussion on the issue at stage 2. We have two alternatives ways to go here. I do not know whether we would want to have "politeness and mutual respect" in the bill, but we certainly seek to achieve those things. Discussions about good relationships, power relationships and mutual respect have been the backdrop to our consideration of the bill, and it is useful that Claudia Beamish has specified those things because it means that we can have a debate on those aspirations. The provision in amendment 214 means that the matter will be in the bricks of the tenant farming commissioner's work, which is really helpful.

Encouraging good relations is a good aspiration. We all know that, where good relationships have been lost, it becomes really hard to rebuild them. We had a discussion this morning about arbitration and mediation, but it is much better if we do not need those because there is a good relationship between the two parties. The amendments are helpful in getting the debate going and making sure that the issue is on the record.

Claudia Beamish: Amendments 304 and 306 were probing amendments. I acknowledge that it would be difficult to identify the level of politeness and mutual respect that there should be, although we all know what it should be in all sorts of relationships—especially, as Sarah Boyack touched on, those in which the balance of power favours one side over the other.

I will seek to withdraw my amendments. I am reassured by the cabinet secretary's amendment 214, on encouraging good relations. Although it is not always enough just to encourage good relations, I do not see how we could enforce the code of conduct. If somebody breaks the law by using offensive language or in any other way, that is a separate issue.

Amendment 304, by agreement, withdrawn.

The Convener: The next group is on functions of tenant farming commissioner: review of schedule of improvements. Amendment 285, in the name of Rob Gibson, is grouped with amendments 288 to 290.

The tasking of the tenant farming commissioner to recommend an updated list of improvements that will be eligible for compensation and the making of consequential amendments to the schedule updating the list can apply to all tenancy types. Section 5 of the 1991 act sets out a list of the improvements that are eligible for compensation at waygo, but stakeholders agree that the list is out of date and should be modernised. The agricultural holdings law reform group believes that further work should be undertaken with relevant industry bodies to revise the current list of improvements.

We want to make sure that, once an updated list has been agreed, it can be enacted as soon as possible. Under the existing legislation, ministers can already make orders to update the list for 1991 act tenancies, LDTs and SLDTs, and the repairing lease provision will give them the ability to update it for repairing leases. Amendment 285 provides that ministers will also be able to update the list for the new type of lease—the MLDT.

To provide a clear and fair process for agreeing an updated list of improvements, the amendment also gives the tenant farming commissioner the function of working with stakeholders to agree the new list before submitting that list to ministers, who will be able to implement it through secondary legislation. It is important to note that, once the list has been updated, it can apply only to improvements made from that point onwards; it will not be possible to apply it to improvements that have already been made, as that would be retrospectively changing the terms of the lease and agreement, and it would breach the ECHR.

I move amendment 285.

Richard Lochhead: I thank the convener for lodging the amendments in this group, which I support. It is important that agricultural holdings legislation is fit for the 21st century, yet the list of improvements that are eligible for compensation at waygo has not been updated since 1978. The approach of asking the tenant farming commissioner to work with tenants and landlords to agree a modernised list is a sensible way forward. As the Scottish ministers will then be able to update the list through orders, we will not need to wait for suitable primary legislation before we can put in place a new list for all types of lease, and the sector will be able to benefit from the updated list sooner.

Amendment 285 agreed to.

The Convener: The next group is on codes of practice published by tenant farming commissioner: enforcement. Amendment 305, in the name of Claudia Beamish, is grouped with amendments 147, 223, 224, 286, 225, 287 and 307.

Claudia Beamish: Amendment 305 is an advanced consequential amendment to tee up the new role of the TFC in section 22.

Under the bill as introduced, the TFC's inquiry function is limited to cases in which an application is made to him or her, usually by a landlord or tenant. It is for the TFC to decide how many inquiries to carry out, and how frequently to report. The reports would be published, but there is a provision to ensure that individual landlords and tenants cannot be identified, to promote their co-operation with the TFC.

Getting tenants to come forward with complaints has been a major problem. Andrew Thin is acutely aware of that and has found it frustrating that, even though he is well aware of what is going on, encouraging a tenant to complain has often been difficult.

Providing the TFC with the means to initiate random audits on the way in which rent reviews and other practices are carried out would help immeasurably.

I move amendment 305.

Richard Lochhead: Unfortunately, I do not believe that Claudia Beamish's amendments 305 and 307 would be workable. There are no powers attached to the audit function that her amendments would create, so people would not be under any obligation to provide the TFC with information to enable him or her carry out an audit. More fundamentally, I do not believe that an audit function is necessary, because the bill contains provisions that will ensure that progress in the sector is kept under review and that individual cases can be investigated where there are issues.

Under section 18, the TFC is required to report every year on performance in carrying out his or her functions. Those functions include promoting observance of the codes of practice and inquiring into alleged breaches of the codes, so the TFC is already required to report on the outcomes of exercising those functions. That report must be published and laid before the Parliament.

Under section 27, parties can report breaches of the codes and ask the TFC to inquire into them. The TFC can then conduct an investigation and publish a report setting out his or her determination. If nobody is alleging that a code has been breached, it is difficult to see the justification for the TFC auditing parties' behaviour.

The TFC is not intended to be an auditor: his or her core function is to promote good relationships in the sector, as we have just discussed with regard to the previous amendments. However, I hope that I have given Claudia Beamish some assurance that the bill already provides for problems to be investigated and reported on, and that she will be persuaded to withdraw amendment 305.

Claudia Beamish's amendment 147 proposes that any person to whom a code of practice applies has a duty to comply with it. That is a blanket and hugely wide-ranging provision. A person would have to read all the codes before they could know whether they were under a duty to comply with them. It will not be clear to people whether they are actually subject to the duty. If it is not clear to them, it probably will not be clear to the party who wants to hold them to account for breaching the code. Even if they know, the requirements that the codes contain might not apply to everyone in every situation.

To top it all off, amendment 147 is not workable because it does not contain any way in which the duty could be enforced. I invite Claudia Beamish not to move amendment 147.

Jim Hume's amendments 286 and 287 seek to enable the TFC to impose a monetary penalty for breach of a code of practice. That would have the effect of turning the codes of practice into binding law. I have outlined the reasons why that would not be a sensible approach. I can assure the committee and Jim Hume that we thought long and hard about the issues at the heart of both Jim Hume's and Claudia Beamish's amendments before the bill was introduced.

Jim Hume's amendments would also create the odd situation in which a tenant could be fined for not complying with a code, but could go to the Scottish Land Court and win against the landlord on the issue that underpinned the dispute in the first place. That seems to be quite complicated, to say the least, when the Scottish Land Court is already there to perform the judicial function.

I invite Jim Hume not to move amendments 286 and 287, and ask the committee to reject the amendments if they are moved.

As I have said, the aim is not for the TFC to be another regulator. It is to promote and encourage good relationships and behaviours in the sector, underpinned by codes of practice. We need to give that a chance to work. That is why I lodged amendments 215 and 216 to enable a review of the TFC's powers and duties to be carried out after three years. We will then be in a position to evaluate how the role of the TFC is working in practice and to decide, based on evidence, whether change is needed at that point.

12:30

I will now talk through the Government's amendments in the group. The bill states:

"A person may apply to the Tenant Farming Commissioner to inquire into a breach of a code of practice".

Of course, when someone asks the commissioner to investigate, they do not necessarily know that there has definitely been a breach. They may have very good reason to believe that there has been a breach, but it is for the commissioner to inquire into that and reach a decision.

Amendment 223 modifies the wording slightly to make it absolutely clear that an applicant does not need to know there has been a breach before the investigation into that breach has been carried out. Instead, they are asking the tenant farming commissioner to inquire into an alleged breach of a code of practice. The Community Land Advisory Service suggested that change in its stage 1 evidence. We agree that the change is sensible, so we have lodged amendment 223 to implement it.

Section 28(1)(b) says that the tenant farming commissioner can investigate an alleged breach of the code of practice only if they can satisfy themselves that the application to investigate contains

"the details of each person with an interest in the relevant tenancy".

The intention behind that was to ensure that the commissioner had all the information that they needed to proceed with their inquiry. However, in its stage 1 evidence, the Community Land Advisory Service made the point that the wording of that section could cause difficulties. The person making an application might not be aware of every individual with an interest in the tenancy and so would not be able to include their details. Similarly, the commissioner might not know of everyone with an interest in the tenancy and so could find it challenging to satisfy themselves that the details of every relevant person were included in the application.

The simplest way to address that concern is to remove section 28(1)(b) from the bill, which is what amendment 224 will do. Section 28(1)(c) requires the commissioner to be satisfied that an application

"contains sufficient information to proceed to an inquiry".

That will already include the details that the commissioner thinks are necessary on those people who have an interest in the tenancy, so amendment 224 will not compromise the commissioner's ability to get all the information that is needed for an inquiry.

As the bill stands, there is a double sanction on someone who asks the tenant farming commissioner to investigate a breach of the codes of practice but then does not provide additional information that the commissioner requires. The first sanction is that the commissioner can dismiss their application for an investigation; the second is that the commissioner can fine them up to £1,000.

That doubling up of sanctions was not our intention and is unfair, so amendment 225 removes the financial penalty on applicants who do not provide information that is requested by the commissioner. Under section 29(2), the commissioner will still be able to fine other parties who do not provide the information that they request or who fail to provide a response to the application, but the important difference is that the fine is the only sanction in those cases. Amendment 225 ensures that there is, likewise, only one sanction against applicants who do not comply with the commissioner's requests.

Jim Hume: I heard the cabinet secretary's views on amendments 286 and 287. We agree that the TFC must be proactive and ensure that there are real remedies that prioritise an early

resolution to bad practices, where they exist. Amendment 286 was intended to tie in the TFC's essential role in providing support and assistance to individuals who are involved in disputes and to provide additional information. It would give the TFC more powers.

Amendment 287 would mean that land agents would have to be properly regulated, as in the private rented sector under legislation that is coming through. Previously, only landlords were regulated but it looks as though, in the future, letting agents in that sector will be regulated, too. That has been warmly welcomed, even by the letting agents.

Most land agents abide by the codes of practice and amendment 287 would give them nothing to worry about. Therefore, I saw no problem with it. We have already heard the cabinet secretary's views on it: he is pushing members not to support it. Therefore, I will not move it at this stage but I reserve the right to bring it back at stage 3 after some deliberations.

The Convener: If no one else wants to comment, I call Claudia Beamish to press or withdraw amendment 305.

Claudia Beamish: Thank you. In view of the cabinet secretary's comments, I seek to withdraw amendment 305.

Amendment 305, by agreement, withdrawn.

The Convener: The next group is on tenant farming commissioner: functions under other enactments. Amendment 213, in the name of the cabinet secretary, is the only amendment in the group.

Richard Lochhead: Earlier, the committee agreed the new process for tenants to relinquish or assign their tenancies. Amendment 213 arises from that and will ensure that the tenant farming commissioner's functions will include the ability to appoint a valuer as part of that process. We might well want to give the TFC other functions in future, and it seems sensible to be able to do that without having to alter the list of functions each time. Amendment 213 therefore provides that the TFC's functions will include

"any other functions conferred on the Commissioner by any enactment."

I move amendment 213.

Amendment 213 agreed to.

Amendment 116 not moved.

Amendment 214 moved—[Richard Lochhead]—and agreed to.

The Convener: The next group is on review of tenant farming commissioner's functions. Amendment 215, in the name of the cabinet secretary, is grouped with amendment 216.

Richard Lochhead: The committee has emphasised the importance of ensuring that the tenant farming commissioner has the powers that they need to carry out their work effectively. The TFC's central role, as I have said many times, is to promote good relationships and behaviour in the sector. The powers that the bill gives the TFC are appropriate and proportionate in that regard. However, in light of the committee's concerns, I have lodged amendments 215 and 216 to provide for a clear, early review point, at which we can assess how well the office of TFC is working in practice and whether additional powers are required.

Amendments 215 and 216 provide for the commissioner's functions to be reviewed within three years, rather than the five years for which the bill currently provides. As part of the review, the commissioner will report on whether they have enough powers to be able to carry out their work effectively. The proposed approach will enable us to evaluate the position when there is evidence on how the role of the new commissioner is working and then take action if necessary.

I move amendment 215.

Michael Russell: I am glad that there is some movement on the matter. The belief that the tenant farming commissioner will be able to do everything that is expected of them is, as I said the other day in the words of Dr Johnson, the triumph of hope over experience. The reality is that the tenant farming commissioner will find that people who do not want to behave in a reasonable fashion will go on behaving in an unreasonable fashion.

I give the cabinet secretary notice that I think that further amendment will be required at stage 3, because it is not just the views of the tenant farming commissioner that will be important in the review. Amendment 216 provides for the Scottish ministers to

"invite the Tenant Farming Commissioner to give views on the operation of the Commissioner's functions and, in particular, on whether the Commissioner's powers are sufficient",

but there are other players in the field, and it will be important to hear what a wider group of stakeholders, including tenants themselves, think of the powers of the tenant farming commissioner. I ask the cabinet secretary to consider whether the provision will need to be amended at stage 3. I will be happy to discuss that with him.

Richard Lochhead: On Michael Russell's point, we envisage that there will be an opportunity for all stakeholders to input to the process. I will reflect on whether that needs to be provided for in the bill.

Amendment 215 agreed to.

Amendment 216 moved—[Richard Lochhead]—and agreed to.

Section 22, as amended, agreed to.

Sections 23 and 24 agreed to.

Section 25—Tenant Farming Commissioner: codes of practice

The Convener: We move to amendments on the tenant farming commissioner: code of practice for land agents. Amendment 217, in the name of the cabinet secretary, is grouped with amendments 218, 220, 221 and 222.

Richard Lochhead: I have listened to the concerns of stakeholders—and, of course, the committee—about the behaviour of some land agents. I have lodged these amendments to send a clear message to the industry that land agents are not exempt from the tenant farming commissioner's code of practice.

The amendments add a code on agents' conduct to the list of the commissioner's codes in the bill. They also make it explicit that all the codes are directed at not just landlords and tenants but agents.

Members will have noticed that all the amendments refer to "agents" rather than "land agents". That is consistent with existing legislation, but it also means that the amendments will cover other people who act on behalf of landlords or tenants, such as surveyors and solicitors.

I want this set of amendments to signal a step change in the relationship between tenants, landlords and land agents. I know that that is an issue that many committee members feel strongly about. Many agents are, of course, doing an excellent and professional job, but it has been concerning to hear about widespread dissatisfaction with the conduct of agents in some cases. Making sure that the commissioner's work extends to land agents is an important measure that will help to change the culture and that situation.

However, it may well be that we need to go further, and I plan to lodge a stage 3 amendment to require the commissioner to look carefully into the issues that the sector experiences with land agents and to report on what action is needed to ensure that there is meaningful oversight of agents' conduct, including effective procedures for addressing problems that arise. We can then potentially take those forward appropriately in due course.

I move amendment 217.

Graeme Dey: I welcome these much-needed amendments, and I welcome even more the commitment to lodge a further amendment at stage 3. That is very much needed.

Michael Russell: Yes, it is very important that the sector sees that there will be a code of practice for agents. However, the question of further enforcement of that code of practice may lie with people other than the tenant farming commissioner, because the tenant farming commissioner will not have the statutory powers of enforcement.

Therefore, I hope that, as part of any review of those circumstances that is carried out under the amendment that we have just considered, it will be possible to review the involvement of other bodies in the process, because it is absolutely essential that the malpractice and abuse from some few agents is stopped. The way to stop it is to have not just a code of practice, but one that has legal enforceability.

The Convener: As there are no other comments, I ask the cabinet secretary to wind up.

Richard Lochhead: I think that I have made the case for amendment 217. I know that the conduct of land agents is an issue that is of concern to many people in Scotland, and I will reflect on the comments that members have made.

Amendment 217 agreed to.

The Convener: The next group is on tenant farming commissioner: requirement to prepare codes of practice on certain topics. Amendment 139, in the name of Claudia Beamish, is grouped with amendments 140 to 146.

Claudia Beamish: Members will be relieved to hear that, although there is quite a string of amendments in my name in this group, I will be fairly brief, because I want to make a general point of principle. My argument is that I would like it to be the case that the tenant farming commissioner "must"—as opposed to "may"—prepare codes on certain aspects of the bill.

I have asked for that because I believe that rent reviews, tenants' improvements, succession and assignation, and waygo compensation are all possible flashpoints. Therefore, I think that it is very important that the tenant farming commissioner is obliged to prepare codes on those matters. Amendments 143 to 146 seek to remove those codes from the list of voluntary codes, and amendments 139 to 142 seek to make preparation of those codes compulsory.

I move amendment 139.

12:45

Richard Lochhead: As the committee knows, under the bill, the tenant farming commissioner must prepare codes of practice to provide practical guidance to landlords and tenants—and now land agents as well. We have not dictated what the codes should be; instead, we have set out key areas that the codes should cover, but we have left the commissioner with the flexibility to decide exactly what codes they prepare. That approach means that the commissioner can prepare codes to respond to the top priorities of the industry, some of which may require immediate attention, instead of being bound to prepare a set of prescribed codes.

I do not dispute that the areas that have been identified by Claudia Beamish are important, but I am reluctant to create a two-tier hierarchy of codes, with the commissioner required to prepare some but not others. I cannot see a clear rationale for such a hierarchy of codes, and I feel that we should not be too prescriptive.

The commissioner and the stakeholders they work with will have first-hand experience of the topical issues affecting tenants, landlords and agents. They will be best placed to decide what codes of practice should be produced and what priority should be given to each of those.

I invite Claudia Beamish not to press her amendment 139 and not to move her other amendments in the group. If there is a vote, I urge the committee to reject those amendments.

Claudia Beamish: I have listened carefully to what the cabinet secretary has said, but I disagree because I believe that there is a clear rationale for having a hierarchy whereby the tenant farming commissioner must prepare codes on the four areas that I have highlighted. Those have been flashpoints in the past, and that would send a clear signal to landowners and tenants that those issues will be robustly dealt with by the tenant farming commissioner. The other issues on which he or she may develop codes are not such potential flashpoints and are perhaps not quite as complex as something like a rent review.

I press amendment 139.

The Convener: The question is, that amendment 139 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)
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 139 disagreed to.

Amendments 140 to 144 not moved.

Amendment 218 moved—[Richard Lochhead]—and agreed to.

Amendments 145 and 146 not moved.

Amendment 219 moved—[Richard Lochhead]—and agreed to.

Section 25, as amended, agreed to.

Section 26—Tenant Farming Commissioner: promotion of codes of practice

Amendments 220 to 222 moved—[Richard Lochhead]—and agreed to

Section 26, as amended, agreed to.

After section 26

Amendments 147 and 306 not moved.

Section 27—Application to inquire into breach of code of practice

Amendment 223 moved—[Richard Lochhead]—and agreed to.

Section 27, as amended, agreed to.

Section 28—Procedure for inquiry

Amendment 224 moved—[Richard Lochhead]—and agreed to.

Section 28, as amended, agreed to.

Section 29—Enforcement powers

Amendment 286 not moved.

Amendment 225 moved—[Richard Lochhead]—and agreed to.

Amendment 287 not moved.

Section 29, as amended, agreed to.

Sections 30 to 33 agreed to.

After section 33

Amendment 288 moved—[Rob Gibson]—and agreed to.

Amendment 307 not moved.

Section 34 agreed to.

Before section 98

The Convener: The next group of amendments is on the right to buy for small landholders. Amendment 303, in the name of Michael Russell, is grouped with amendment 309.

Michael Russell: This particular matter has been on the Parliament's agenda for a considerable time. Small landholders, who are defined in statute, have great difficulty in exercising any rights at all and indeed have found themselves in the position of having their landholdings extinguished or finding them almost impossible to pass on. As I have said, this is a long-standing problem, and it is time to do something about it. I have raised this issue at committee before, and I have been assured that consideration will be given to it in future; however, I think that it has been going on for too long now, and I am now looking for a specific timetable for action.

I believe that amendment 303 can be agreed to as it is, and it will at least begin the process of change. However, if there are reasons why it cannot be agreed to, I want the minister to give, if he possibly can, a commitment to put in place a timescale for action with regard to those small landholders and some indication of what will take place over the next few months to ensure that they, at last, get the benefits and rights that accrued to crofters well over 100 years ago and which are now accruing to tenant farmers. Small landholders are being left out in the cold, which is wrong and unfair and is something that we should take action on without further delay.

I move amendment 303.

Alex Fergusson: Without even going into the rights and wrongs of this debate, I have to say that the issue is not one that the committee has worked on or taken evidence on. What amendment 303 seeks to provide is a right to buy, full stop. I think that we agreed at last week's meeting that discussions about any further right to buy should be left to the next session of Parliament. That is where I believe that that debate belongs, and for that reason, if for no other, I will not support these amendments.

The Convener: As a Highlands and Islands member—but less so as a constituency member—I have been involved with small landholders, who missed out on crofting status because of the change in the Crofters (Scotland) Act 1955 that constrained crofting to the crofting counties. They have therefore been losing out for a long time now, and their condition has got worse.

I should also say that this is not the first time that the issue has been discussed, and it certainly needs to be tackled. Small landholders are people who can make a contribution to farming. Previous Parliaments have tried, without much success, to find a route to help them by moving small landholdings into the crofting legislation. We need to take this further, and I therefore back what Mike Russell has just said.

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

Richard Lochhead: I absolutely agree with Michael Russell that action is needed to address the issues that are faced by small landholders in Scotland. Clearly, the current situation is not good for individuals or their local communities. It has been more than 80 years since the legislation for small landholders was updated, so it is sorely out of date.

Only a limited number of tenancies that were established under the Small Landholders (Scotland) Act 1911 remain across Scotland. The agricultural census and the recent Scottish Government survey of small landholders that was undertaken in response to the review group's comments have highlighted that some small landholding tenants are still unclear as to whether they have a small landholding or another type of tenancy. Our most recent estimate is that there are around 74 small landholders remaining. I know that other people think that there are more than that, which indicates that there is a need for more work to be done to identify how many small landholders there are.

Those landholders who are within the crofting areas can convert their holdings to crofts, but in practice they have not been able to do that, because—as committee members have previously pointed out—the conversion process is too bureaucratic. They also do not have a pre-emptive right to buy, so they are disadvantaged compared to other types of tenant. I am determined that small landholders should enjoy equal rights and treatment.

In our response to the committee's stage 1 report, we said that we needed to fully explore the issues that small landholders face and how we can best address those issues. There is a range of possible solutions that the sector and the Scottish Parliament need to consider, and they need to do that soon. The review group recommended that consideration should be given to giving small landholders a pre-emptive right to buy their holdings if they come up for sale. That is certainly one option. Another option would be to give small landholders the ability to convert their tenancies to another type of agricultural tenancy so that they would gain the rights that go hand in hand with such tenancies. There will undoubtedly be other alternatives that are worthy of consideration.

Whatever solutions come forward, we need to work in a way that is fair to all the small

landholders across the country, from Aberdeenshire to Arran and everywhere in between. Subject to the election, we will carry out a consultation on the issue in the new session of Parliament, later this year. If the consultation confirms that the solutions that small landholders need require legislative change, we will do our utmost to bring forward such legislation as quickly as possible and deliver the fairness that Michael Russell and others want to see delivered for that group of people.

Michael Russell: I am reassured that there is an intention—subject to the election—to have a consultation and then legislation. I do not have a Pavlovian response to the issue of right to buy. I think that right to buy is perfectly reasonable, and that it would be perfectly reasonable in these circumstances. However, given that the cabinet secretary says that there are other options—and I accept that—I think that a further year might be tolerable.

I draw attention to one thing that the cabinet secretary said: it is 80 years since the legislation was looked at. In that time, a great deal has changed, which means that certain individuals—I think that most people accept that there are more than 74 of them—are being badly disadvantaged. As long as we redress that in a reasonable period of time, I think that we will have made some progress.

Amendment 303, by agreement, withdrawn.

Section 98—General interpretation

The Convener: Amendment 96, in the name of Michael Russell, was debated with amendment 15 on day 1 of stage 2 consideration.

Michael Russell: In so far as I remember that debate, I will not move my amendment.

Amendment 96 not moved.

Amendment 97 moved—[Michael Russell].

The Convener: Amendment 97A, in the name of Sarah Boyack, was debated with amendment 15 on day 1.

Sarah Boyack: We had an excellent discussion about my amendment 97A on that day, and I received some very positive responses from the minister. Therefore, I hope that it will be supported today.

Amendment 97A moved—[Sarah Boyack].

The Convener: The question is, that amendment 97A 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 97A agreed to.

The Convener: The question is, that amendment 97, as amended, 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 97, as amended, agreed to.

13:00

The Convener: Amendment 117, in the name of Sarah Boyack, was debated with amendment 15.

Sarah Boyack: I will not move amendment 117. I got the clarification on the record that I was seeking from the minister.

Amendment 117 not moved.

Section 98, as amended, agreed to.

Section 99—Subordinate legislation

The Convener: Amendment 69, in the name of Graeme Dey, was debated with amendment 103 on day 1.

Graeme Dey: My memory is slightly better than Michael Russell's, and I am definitely moving amendment 69.

Amendment 69 moved—[Graeme Dey]—and agreed to.

The Convener: Amendment 98, in the name of Michael Russell, was debated with amendment 14 on day 2.

Michael Russell: I have absolute clarity of recall on this amendment. I remember that the minister gave a commitment to ensure that the guidance could be opened up to take account of the issues.

Amendment 98 not moved.

The Convener: Amendment 118, in the name of Alex Fergusson, was debated with amendment 114 on day 2.

Alex Fergusson: I have absolutely no recollection of it at all, convener—[*Laughter*]—but I will not move it.

Amendment 118 not moved.

The Convener: Amendment 132, in the name of Sarah Boyack, was debated with amendment 128 on day 3.

Sarah Boyack: Again, I will not move the amendment because I have arranged a meeting with the minister to take the matter further.

Amendment 132 not moved.

Amendment 226 moved—[Richard Lochhead]—and agreed to.

Amendments 308 and 309 not moved.

Section 99, as amended, agreed to.

Sections 100 and 101 agreed to.

Section 102—Minor and consequential modifications

Amendment 70 moved—[Richard Lochhead]—and agreed to.

Section 102, as amended, agreed to.

Before schedule

Amendment 71 moved—[Richard Lochhead]—and agreed to.

Schedule—Agricultural holdings: minor and consequential modifications

Amendments 227 to 250 moved—[Richard Lochhead]—and agreed to.

Amendments 289 and 290 moved—[Rob Gibson]—and agreed to.

Amendments 251 to 261 moved—[Richard Lochhead]—and agreed to.

Amendment 153 not moved.

Amendment 262 moved—[Richard Lochhead]—and agreed to.

Amendment 300 not moved.

Amendments 263 to 265 moved—[Richard Lochhead]—and agreed to.

Amendments 328 to 330 not moved.

Amendments 266 to 269 moved—[Richard Lochhead]—and agreed to.

Schedule, as amended, agreed to.

Section 103—Commencement

Amendments 133 and 4 not moved.

Section 103 agreed to.

Section 104 agreed to.

Long title

Amendment 99 not moved.

Amendments 270, 271 and 301 moved—[Richard Lochhead]—and agreed to.

Long title, as amended, agreed to.

The Convener: That ends stage 2 consideration of the bill.

At the next meeting of the Cabinet—I mean committee—[*Laughter*.] It is the kitchen cabinet, perhaps. At the next meeting, we will consider several items of subordinate legislation and some responses to correspondence. I thank members for their perseverance and co-operation.

Meeting closed at 13:08.

Published in Edinburgh by the Scottish Parliamentary Corporate Body

All documents are available on
the Scottish Parliament website at:

www.scottish.parliament.uk

Information on non-endorsed print suppliers
Is available here:

www.scottish.parliament.uk/documents

For information on the Scottish Parliament contact
Public Information on:

Telephone: 0131 348 5000
Textphone: 0800 092 7100
Email: sp.info@scottish.parliament.uk