JUSTICE 2 COMMITTEE

Tuesday 29 October 2002
(*Afternoon*)

Session 1

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CONTENTS

Tuesday 29 October 2002

JUSTICE 2 COMMITTEE
† 37th Meeting 2002, Session 1

CONVENER

Pauline McNeill (Glasgow Kelvin) (Lab)

DEPUTY CONVENER

*Bill Aitken (Glasgow) (Con)

COMMITTEE MEMBERS

*Scott Barrie (Dunfermline West) (Lab)
*Mr Duncan Hamilton (Highlands and Islands) (SNP)
*George Lyon (Argyll and Bute) (LD)
*Mr Alasdair Morrison (Western Isles) (Lab)
*Stewart Stevenson (Banff and Buchan) (SNP)

COMMITTEE SUBSTITUTES

Roseanna Cunningham (Perth) (SNP)
Lord James Douglas-Hamilton (Lothians) (Con)
Donald Gorrie (Central Scotland) (LD)
Dr Sylvia Jackson (Stirling) (Lab)

*attended

THE FOLLOWING ALSO ATTENDED:

Mr Jamie McGrigor (Highlands and Islands) (Con)
Allan Wilson (Deputy Minister for Environment and Rural Development)

CLERK TO THE COMMITTEE

Gillian Baxendine

SENIOR ASSISTANT CLERK

Irene Fleming

ASSISTANT CLERK

Richard Hough

LOCATION

The Chamber

† 36th Meeting 2002, Session 1—joint meeting with Justice 1 Committee.

Scottish Parliament

Justice 2 Committee

Tuesday 29 October 2002

(*Afternoon*)

[THE DEPUTY CONVENER *opened the meeting at 14:19*]

Land Reform (Scotland) Bill: Stage 2

The Deputy Convener (Bill Aitken): Good afternoon, ladies and gentlemen. I ask people to ensure that they have turned off mobile phones, pagers or any other apparatus that is likely to interrupt the meeting. We have received apologies from Pauline McNeill.

I welcome the minister and his team. This is the ninth stage 2 meeting on the Land Reform (Scotland) Bill. The committee will start from the beginning of part 2 of the bill. Members should have copies of the bill, the marshalled list of amendments and the groupings of amendments with suggested debate timings. The timings are not inviolable, but it would help if we adhered to them.

Section 30—Registrable land

The Deputy Convener: Amendment 321 is grouped with amendments 341, 414, 307, 308, 396, 309 and 310.

The Deputy Minister for Environment and Rural Development (Allan Wilson): The two Executive amendments in this grouping that relate to part 2—amendments 321 and 341—will simply clarify the wording in part 2. Amendment 321 makes it clear that salmon fishings or mineral rights that relate to excluded land cannot be acquired. Amendment 341 corrects a grammatical error in section 35(1)(c)(ii).

Executive amendment 414 is essentially technical. Part 3 has no definition of inland waters and the phrase's definition in part 1 applies to that part only and does not suit the needs of part 3. The definition that will be incorporated in part 3 derives from legislation on salmon fishing and is relevant and well understood by all parties.

I will now deal with Jamie McGrigor's amendments. Amendment 307 is not needed. The provision that ministers may consent to an application only if it delivers sustainable development—we will discuss that this afternoon—and is in the public interest is sufficient to prevent a right to buy from causing unsustainable exploitation of a salmon stock. I suspect that preventing that is one of Jamie McGrigor's objectives, which I share from a conservation perspective.

Given the relative benefits that a local community might derive from angling or netting, it is irrational to assume that a crofting community would purchase salmon fishings to reintroduce netting. In any case, the principal difficulty is that it is unclear whether netting rights can be separated from salmon fishings, so amendment 307 might preclude the purchase of any salmon fishings that were associated with historic netting rights, which I am sure is not Jamie McGrigor's objective. That would be a sound reason for rejecting the amendment. I invite Jamie McGrigor not to move the amendment.

As members have heard, employment law gives workers adequate protection. The special protection for river workers that amendments 308 and 309 propose is unnecessary and would convey additional rights that other workers do not enjoy.

In deciding on a crofting community right-to-buy application, ministers must be satisfied that the public interest would be served by the granting of an application. That is a principal criterion. Any impact on people who are employed to manage a property that is the subject of an application will need to be considered when a view is reached on the public interest.

I submit that amendments 308 and 309 would add needless and complex hurdles to the right-to-buy process. I therefore ask Mr McGrigor not to move amendment 309 and I ask any member who might wish to take up amendment 308 on behalf of Mr Stone not to move that amendment.

The purpose of amendment 310 is contrary to the aim of the bill. I should explain to Jamie McGrigor that we want to extend opportunities for crofting communities to acquire salmon fishings associated with their croft land where that will contribute to the sustainable development of the crofting community. The question whether that resource is or is not already being sustainably managed should not be a factor in the equation. On the basis that amendment 310 runs completely contrary to our aims and aspirations under the bill, I invite Mr McGrigor not to move it.

If salmon fishing interests feel that the conservation of salmon stocks is threatened by simple changes in ownership of salmon fishings or of land adjacent to salmon fishings, the proper place for measures to protect those wild salmon stocks—I share the general view about the importance of that—would be in salmon

conservation legislation or in more general wild fish conservation legislation. It is not long since the Parliament passed just such legislation.

During consideration of the Salmon Conservation (Scotland) Bill, the idea was mooted that owners of salmon fishings and of land adjacent to salmon rivers should prepare management proposals, but that was rejected as unworkable. I do not believe that anything has changed since the Parliament passed the bill at the start of 2001 to make that idea any more workable or advisable. There are some classic examples of the genre in my constituency. Not all salmon fishings are controlled by a district salmon fishery board. What is to happen in areas where there are no boards? Those areas would presumably be excluded from the right to buy.

Amendment 396 is discriminatory in effect and reflects a profound distrust of local communities on the part of salmon fishing interests. It is also unnecessary. There is adequate provision in the bill to ensure that ministers cannot consent to a right-to-buy application unless it is compatible with the sustainable development of the property being acquired and is in the public interest. Those two important caveats are sufficient to preserve the conservatory interest.

Amendment 396 could be viewed as an attempt to add another hurdle to the process—the question whether it is such an attempt, or was intended as such, is an interesting one. It appears to try to make it more difficult to exercise the right to buy and to widen the opportunities for subsequently challenging any consent that might impact on salmon fishings. For that reason, I invite Stewart Stevenson not to move amendment 396.

I move amendment 321.

Mr Jamie McGrigor (Highlands and Islands) (Con): As the Deputy Minister for Environment and Rural Development knows, salmon stocks are under tremendous pressure at the moment. No one should be fooled by the fact that there were better catches last year; the general trend is downwards. This season has been an unmitigated disaster and, in all probability, may go down as one of the worst on record. It is unwise to take one year's figures in isolation. There is no doubt that the long-term trend is one of falling stocks.

The problems mainly occur at sea and include illegal high-seas netting, lack of feeding for smolts and predation. It is vital that as far as possible we conserve salmon returning to their native rivers. The anglers are certainly playing their part. In 2001, 38 per cent of rod-caught salmon were released. Of spring fish, 49 per cent were released. The Executive recently announced a ban on the sale of rod-caught salmon.

14:30

As part of that conservation drive, the number of salmon netting stations has been drastically reduced over the past 10 years. Although some stations have been bought out and formally closed down, many others have become dormant, as conservation has become the overriding priority. There is little doubt that, given the premium price on wild salmon, some of those dormant netting stations could, if reactivated, be quite profitable in the short term—although, of course, they would be providing not rod-caught but netted salmon. However, the short-term gain would be short lived because most rivers no longer have a surplus of spawning stock.

Additional netting effort would inevitably reduce future numbers of salmon going to the spawning grounds. Reopening dormant netting stations would also impact adversely on the beats upstream. A salmon caught on rod and line is worth several thousand pounds to the local economy, whereas a netted salmon contributes no more than the actual value of the fish for food.

Amendment 307 simply seeks to remove the possibility of dormant netting stations being reopened. It is important that such an amendment is made to the bill. Fishery boards and fishing syndicates have made so much effort recently to remove netting that it would be a tragedy if the bill meant that the netting effort was increased.

I will also speak to amendment 308 in the name of Jamie Stone, who is not present. Amendments 308 and 309 go together. The amendments would have no impact on community applications to acquire salmon fishings that have no employees. From what we are told, such fishings are the most likely to be the subject of applications to buy.

Although the bill includes numerous safeguards, it offers no protection for existing employees on salmon beats. We have been told that the legislation will not put at risk employment levels, but no mention is made of what would happen to existing employees. It is worth stressing that some river workers have held the same job for decades—in some instances for four decades or more. It is quite common for a private sale of a river or beat to include a stipulation that the new owner must guarantee the job of the existing employees.

If amendments 308 and 309 were adopted, that would go a long way towards reassuring river workers that their jobs would be secure in the event of a community bid. It would also help to prevent accusations that the bill is benefiting one section of the community that might wish to give the jobs to its own members at the expense of the existing employees. Moreover, the existing employees have the knowledge that will benefit

any community that takes over the fishings to make those fishings more profitable.

The vast majority of salmon river owners in fact lose money. Fortunately, most of them have resources from other means to make up the losses, but a crofting community might not have such resources. One of the easiest ways for it to increase its income would be to cut employment, which is the major expense on any well-run river.

It is worth stressing again that providing for continuity of employment would also benefit the crofting community, which would be able to draw on the existing knowledge and professional expertise. It would also help the crofting community to maintain the existing angling tenants. Many of the ghillies and river workers are old friends to the tenants and it is that relationship that draws the tenants back year after year.

Let me make another point to answer the question why a community should be burdened with the requirement to offer contracts to the existing employees when a private open-market purchaser would not be required to—although, as I said, there is often a stipulation that he is required to do so. The answer lies in the compulsory-purchase nature of the transaction. The current owner of the fishings will have no power to negotiate the terms of a deal with the community, but he would have such a possibility with a private buyer in an open market. In the case of compulsory purchase, he will be denied the right to insist that the existing employees be retained. As members know, at the moment it is common for a seller to insist on that. Ownership of estates or fishings may change hands several times without that having a material effect on employees.

We have been told many times by ministers and others that salmon rivers and fishings that are well run on a sustainable basis have nothing to fear from the bill. However, the bill does not include any such assurance. The effect of that omission is to deter investment by river owners, which is vital to conserving salmon stocks for the future. Investment has been made in the many trusts that have been set up in the past few years to improve stocks of wild salmon and sea trout in rivers that have lost them. The seven trusts that have been set up on the west coast are now engaged in discussions with the Scottish Executive, under the tripartite agreements. That is a very encouraging development.

Amendment 310 is designed to get the best out of our salmon rivers. The incentive for river owners to invest in salmon conservation projects is inevitably reduced if there is a possibility that communities may seek to acquire fishings by compulsory purchase. The amendment would offer some security to river owners who invest considerable sums with the aim of improving salmon stocks in the medium and long terms.

Stewart Stevenson (Banff and Buchan) (SNP): The minister suggested—rather cheekily—that I was putting up another hurdle. That was certainly not my intention in lodging amendment 396.

I acknowledge that the amendment springs from work that the Association of Salmon Fishery Boards is doing. I declare that 34 years ago, I used to earn £12 a week as a summer student working for the Tay Salmon Fisheries Board. I do not know whether that means that I still have a vested interest in the activities of salmon fishery boards.

The objective of amendment 396 is to ensure that, when there is a change of ownership in an area where a salmon fishery board and a management plan exist, the work of the board and the plan are complemented by the work of the new owners. If the minister can assure us that, when reaching a decision on the basis of public interest and the other criteria that are set out in section 71, he and his successors will have due regard to whether the community that is buying a salmon fishery has, is developing or must develop a plan to sustain the fishery, I will not feel emboldened to press amendment 396. The minister may be able to give me such an assurance.

I have no problem with the amendments in the minister's name. On amendment 307, in the name of Jamie McGrigor, can the minister or his legal advisers inform us whether there is special or other provision that would prevent the reactivation of salmon nettings that have not been used for five years? I gather that there is some legal doubt and different opinions about that issue. It would be useful for the committee to hear what officials have to say about the matter.

I turn to Jamie Stone's amendment 308. It would be useful if the minister could indicate what provisions currently exist for protecting employees of salmon fisheries, bearing in mind the fact that they are often only small groups of two, three or four people and not necessarily those to whom some of the legal protections might apply when the companies or operations that are involved are larger.

Amendment 309 follows the same trail. I am in favour of protecting employees' rights, but the drafting of the amendment may present some difficulties. For example, it would protect only employees who are employed by the owner of a salmon fishery rather than by the lessee of a salmon fishery or a company to which services might be contracted. Nonetheless, the point that I made in relation to amendment 308 is worthy of consideration in this context.

On amendment 310, it may be useful if the minister could indicate how the investment that may be being made in fisheries at present would be protected by a purchase before the benefits of that investment had crystallised. At stage 1, ministerial reassurances were given on that and this might be the time to repeat them. I invite the minister to agree that the bill is likely to create a wider market for salmon fisheries by bringing more people who may buy salmon fisheries to the market, through giving communities the opportunity to buy, and that the effect of the bill could be to increase the marketability and value of salmon fisheries rather than—as much of the scaremongering in the press and elsewhere has suggested—to diminish and restrict their value.

Mr Alasdair Morrison (Western Isles) (Lab): It will come as no surprise to Jamie McGrigor that I will not support his amendments. He is absolutely right to claim that wild salmon stocks are under threat. However, we all noted with interest that this year's return represented a 15-year high and one of the best returns since records began in the early 1950s.

I fully understand Jamie McGrigor's perspective. He is opposed to community ownership. He was nobly opposed to it at stage 1 and he will obviously stay opposed to it at stage 2. He asked how a crofting community could have access to resources to invest in a salmon fishery. Why should not a crofting community access resources to invest in a salmon fishery? We have seen that already up in Assynt, where a dormant trout fishery has been revived to the extent that last year it made a profit. The issue of salmon conservation is important. However, in general, parts 2 and 3 of the bill represent a redistribution of rights in favour of the community. If that means that there are losers and winners, so be it—provided that the community is in the pre-eminent position.

I agree whole-heartedly with what Jamie McGrigor said about workers' rights. Of course workers should enjoy protection, and the Executive and its counterparts in the UK Government have taken many steps to ensure that workers enjoy greater protection. However, what protection currently exists for such workers? The reality is that there is none. Estates and fisheries can be bought and sold within days. During the stage 1 debate, there were people protesting outside who were concerned about their jobs. By the time that they had returned to their estates, those estates could have been sold and they could have found themselves unemployed. It would be unthinkable—and it would not satisfy the purchase criteria that are laid out clearly in the bill—for such workers to be thrown on the scrap heap of unemployment. As Stewart Stevenson said, to suggest that that could happen under the bill is scaremongering of the worst sort.

14:45

Allan Wilson: I will take the last point first. As I said when I spoke to and moved the Executive's lead amendment 321 and amendment 414 and responded to Jamie McGrigor's amendment 310, the purpose of amendment 310 is completely contrary to the aim of the bill, which is to expand opportunities for crofting bodies to acquire the salmon fishing that is associated with their croft land where it contributes to the sustainable development of the crofting community. Members, including Mr Morrison, have acknowledged that that is the case.

That point brings us back to the assurances that Stewart Stevenson sought from me. I am happy to give them. The intention behind amendment 396 may not have been for its provisions to act as a hurdle, but including the provisions in the bill would widen the scope for those who wished to challenge or appeal against consent to an application. They could also make a challenge about the adequacy of the management plan that Stewart Stevenson proposes. The corollary of that is that, if a crofting community body did not produce a reasonable management plan for its fishery stock, we would be unable to support the application. We have a public interest requirement to ensure that the sustainable development of the fishery takes place. I trust that that gives Stewart Stevenson the assurance that he sought.

As I said in relation to the legal point that Jamie McGrigor raised, it seems to me that amendment 307 is based on an assumption that netting rights are distinct from salmon fishing rights. Our legal advice is that that is not the case. Ownership of the salmon fishings gives the owner the right to take salmon by any legal method, which includes certain types of netting. As I said, the effect of amendment 307—intentional or otherwise—would be to prevent the purchase of all salmon fishings except those in which netting had been practised in the past five years. That would prevent the purchase of most of the salmon fishings in the crofting areas. I am sure that that is not what Jamie McGrigor envisaged.

Stewart Stevenson: May I ask for a quick point of clarification?

The Deputy Convener: Please make it brief.

Stewart Stevenson: Are stake nets included?

Allan Wilson: I understand that all forms of netting are included. My point in respect of amendment 307 is that the amendment would have the opposite effect to that which was intended in respect of widening ownership.

Alasdair Morrison, rightly, made a point about the legal framework for additional employment protection. It seems to me that there is no clear justification for creating a legal framework of additional protection for a small group of workers. However, where the exercise of the right to buy resulted in a situation that was covered by the relevant employment law, the workers involved would be no less favourably treated than any other worker in any other similar circumstance.

In my former employment, I could have quoted verbatim from the Transfer of Undertakings (Protection of Employment) Regulations—TUPE—or even from the relevant European directive. Even when those did not apply, the ambit of employment law would do so. I think that I have covered all the points that were raised.

Amendment 321 agreed to.

Section 30, as amended, agreed to.

Section 31—Community bodies

The Deputy Convener: Amendment 178 is in the name of Roseanna Cunningham. As she is unable to be present, Stewart Stevenson will speak to and move amendment 178 and speak to the other amendments in the group, which are 400, 401, 405 to 408, 254, 415 to 417, 420 to 423 and 429 to 431, on her behalf.

Stewart Stevenson: One of the things that the committee discovered on its visit to Lewis was that the Gigha company that had been established for the purposes of the buy-out of the island of Gigha and associated undertakings had successfully registered as a charity. It had taken the company considerable time and effort to draw up its articles of association in such a way that it could be a limited liability company at the same time as fitting within the strictures for registering as a charity. I understand that that transaction alone enabled the company to save a substantial six-figure sum in stamp duty. That illustrates one of the advantages of achieving charitable status that accrued to the Gigha community.

Amendment 178 is directed at removing a barrier to achieving charitable status, which would exist if "the main purpose" of the company that was established for a buy-out had to be the sustainable development of the community. I am given to understand that the substitution of "a purpose" for "the main purpose" would ease the way for such companies to become charities. The minister's advisers will be able to inform us more fully. That is the sole purpose of the amendment.

I move amendment 178.

Allan Wilson: That is a helpful clarification. Amendment 178 is one of a series of amendments that have the same objective. Serious difficulties are associated with that objective, not least in view of charity law, which I will discuss later. Although I might not have a problem with the intent behind amendment 178, we will have to contend with the small print and the effect of what it proposes.

The other amendments in the group are in part a response to the committee's stage 1 consideration of the bill. They deal with references to sustainable development in parts 2 and 3 of the bill. We think that the definition of sustainable development on which the bill depends is possibly too inflexible to cover the range of circumstances in which local communities will operate. We have considered alternative definitions but, as always, there are problems of legal terminology in defining the balance between economic, social and environmental benefits.

Any definition in the bill would restrict the courts' interpretation of the meaning of sustainable development. As we all know, sustainable development can mean different things to different people and I am concerned that opponents of the right to buy could use a restrictive definition of an objective to frustrate communities' attempts to buy land. I am sure that the majority of members have similar concerns.

Rather than define sustainable development in the bill, we propose that we should cover those issues in guidance to communities on how to prepare applications for registration or for exercising the right to buy. We propose to refer to existing, more general Executive guidance on the achievement of sustainable development in Scotland. Most members will be familiar with "Meeting the needs… Priorities, Actions and Targets for sustainable development in Scotland". Our approach is also consistent with that taken in other legislation, most notably the Building (Scotland) Bill, which is before Parliament.

The bill as revised by the amendments would contain the same number of references to the achievement of sustainable development as it does at present, but it would no longer rely on a definition that relates to sustainable development in a community. Instead, references to the achievement of sustainable development would apply generally and would not be confined to a community and the land that it seeks to register or buy. In addition, by using the wider definitions that are in use in the Executive's publications on achieving sustainable development, we can better emphasise the need to balance economic progress and social and environmental justice, which is a concurrent aim.

It might be best to give the committee an example. Before a community interest is registered under part 2, section 35 requires ministers to be satisfied that acquisition of the land is compatible with the achievement of sustainable

development—we talked about that in relation to salmon fishings—and that registration is in the public interest. If a community's acquisition of land or the land's subsequent use by that community could lead to irreversible damage to the environment, ministers could decide not to register the interest. Similarly, a community body must obtain ministers' consent under section 47 to buy land. Before giving such consent, ministers must be satisfied that what the community proposes to do with the land is compatible with the achievement of sustainable development and that the proposed purchase of the land is in the public interest. Two clear tests must be passed pre-registration.

A similar procedure for the crofting community right to buy is set out in section 71. In providing information to ministers about the use to which land is to be put, a community body or crofting community body will need to explain in detail how its plans are compatible with those requirements. That is not dissimilar to the salmon fishing situation that we debated. We will cover that matter in the guidance that will be issued to coincide with the bill's implementation. That is a better way of dealing with the issue.

Amendments 400 and 401 revise the definition in section 31(1)(b) of the main purpose of the company set up by the community body, to bring it into line with current thinking on sustainable development. A point was made about that. Amendments 405 to 408 make similar changes to sections 35 and 47. In part 3, amendments 415 and 416 revise the definition in section 68, and amendments 417, 420 to 423 and 429 to 431 make similar changes to sections 70, 71 and 74.

I was concerned about how such amendments might be portrayed. None of those changes should be seen as weakening our overall commitment to the achievement of sustainable development, which has been present since the draft bill. The reasons for the changes are to reduce the scope for legal challenge to the right to buy and to move the emphasis on sustainable development away from the community itself and set it in its broader context. That can be better achieved by removing the existing definition, which could be very inflexible in this context.

15:00

On amendments 178 and 254, sections 31 and 68 as presently drafted require sustainable development of the community to be the main purpose of the company. Amendments 178 and 254 seek to reduce the importance to be given to sustainable development. However, in the light of what Stewart Stevenson said about the reason for amendment 178, I now know that his aim is to help the community body to achieve charitable status. Although that is an important consideration, such status would be governed by other legislation, which we are in the process of reviewing. Amendment 178 would not have the intended effect and should be seen in the context of that wider review. Sitting in this seat, I cannot second-guess the outcome of that review nor, indeed, can any of us, because the review will be subject to the will of Parliament.

I accept the basic point that the company may have other important purposes. The Executive amendments propose that the objective that should be highest on the agenda of the community or crofting community body should be the development of the community, rather than sustainable development per se, and they take a different approach to get to where Stewart Stevenson wants to go. I therefore ask Stewart Stevenson to withdraw amendment 178 and George Lyon not to move amendment 254, which is not dissimilar to amendment 178.

George Lyon (Argyll and Bute) (LD): Amendment 254 is virtually identical to amendment 178, the case for which was eloquently put by Stewart Stevenson. The minister has in fact dealt with my other concern, which was about the interpretation of

"sustainable development of the community"

and what that would mean in practice. Different people could interpret the phrase in different ways, depending on whether they took an economic or environmental view. The two interpretations of the phrase could be used to argue against each other.

I therefore welcome amendment 400, which seeks to clarify section 31(1)(b). Given the minister's explanation, I am minded not to move amendment 254 and to back amendment 400, which goes a long way towards clarifying the issue and reassures about section 31(1)(b).

Mr Morrison: I totally supported amendment 178 when I first read it, but I have listened carefully to the minister's detailed explanation and I want to ask him one question. He made the point, which I had not thought of, that opponents could use the terms of amendment 178 to frustrate community buy-outs. Can he give an example of that?

Allan Wilson: The best example is the one that was given by George Lyon on the potential for conflict between economic and environmental interests. The argument could then ensue that a prospective community land buy-out would damage the environment and the buy-out could consequently be perceived as being contrary to the main purpose or interest of the community body concerned. We must be alive to that consideration. Our approach, which is preferable, requires that regard must be given to the

overriding guidance and principles on sustainable development but it does not restrict that to the community body or the land in question.

On Roseanna Cunningham's amendment 178, the mere removal of the words "the main" would perhaps go some way to permitting community bodies to achieve charitable status, but there are many other obstacles to overcome before that status can be achieved, some of which we will discuss. Not the least of those is the reversion of the land to the state in the event of failure of a community body. I assure Stewart Stevenson that we are aware of the issue and that we will give it further consideration. If, like me, he wants to open up opportunities, rather than place obstacles in the way of greater community ownership of land, it would be advisable to withdraw amendment 178 and to support our general change in emphasis on the sustainable development issue.

Mr Duncan Hamilton (Highlands and Islands) (SNP): I disagree with the minister on the position of sustainable development in the Executive amendments. He has said several times that committee members' amendments are well intentioned, but that they achieve the opposite result from the intended one. I suspect that that is what has happened with the Executive's amendments. I tried to follow the logic of his argument on the lack of a definition of sustainable development, but I do not begin to understand it.

The bill as it stands makes a clear attempt to define sustainable development, but the minister suggests that that definition might leave the door to legal challenge open. His solution is to relax the definition and introduce a wider understanding of sustainable development, which, he said, will leave the matter open to the courts. I have two problems with that approach. First, I am unclear why the courts, in coming to a decision, will be in a better situation than the Parliament or the minister when defining sustainable development. In short, if we cannot do it, how will the courts do it? I understand that arriving at a definition is difficult, but I do not understand why the courts are in a better position to do so.

Secondly, the purpose of the Executive's amendments is to reduce the likelihood of legal challenge and to take away barriers, but is not it true that the wider the definition, the greater the potential for legal challenge? I believe that the absence of a definition would create more challenges. On the face of it, a body of case law is more likely to build up if there is no definition. The minister might wish to remove the possibility of a challenge, but the Executive's amendments will increase it. The minister cited George Lyon's example about the potential impact on the environment. I would have thought that the looser the definition is, the more likely a challenge on such grounds becomes.

Allan Wilson: I disagree fundamentally, and I have explained the reasons for that. We are not replacing the definition with a looser definition; we are moving away from a definition and applying the general principles of what constitutes sustainable development in its widest context. The reason for that is to mitigate the possibility of future legal challenge. A legal challenge might arise, but the courts will be in a better position than we are to determine whether a development in a certain locality and circumstances contravenes the principles of sustainable development. We cannot do that in this meeting. If, like me, Duncan Hamilton shares the objective of widening community ownership, he will agree that our approach is preferable.

The Deputy Convener: I call Stewart Stevenson to wind up. He should bear in mind the consensual nature of the debate and indicate his intentions with respect to amendment 178.

Stewart Stevenson: Thank you, convener. I suspect that that is as close as a convener gets to giving instructions about what to do.

It is important to return to the intention behind Roseanna Cunningham's amendment 178. By itself, the amendment would not enable a company to achieve charitable status—very far from it—although it would remove one of the barriers to such status. I note the minister's comments about the intention to reconsider charity law, on which I have views regarding other matters. My commitment, and that of my colleague and others on the committee, is to widen ownership substantially. Therefore, any amendment that could help to achieve that will get our support.

I shall break the consensus for a minute by saying that, on 20 March, I was heartened that Murray Ritchie wrote an article in *The Herald* under the heading "Tories attack land reform as redistribution of wealth". That is why I support the bill. Although Duncan Hamilton and I may part company when we come to vote on amendment 400—thus illustrating that the party whip is not operating in the committee—I am content to seek to withdraw amendment 178 with the committee's consent on the basis that I will investigate further the effect of the minister's amendments in relation to ensuring that there are no barriers to charitable status. If, at stage 3, the minister wishes to do more than that, I may be minded to support him.

Amendment 178, by agreement, withdrawn.

The Deputy Convener: I make it clear to Stewart Stevenson and other members that my present role inhibits me in what I may have to say with regard to matters of general discussion. However, I shall certainly revisit the matter that he has raised at stage 3.

Amendment 400, in the name of the minister, has been debated with amendment 178.

Amendment 400 moved—[Allan Wilson].

The Deputy Convener: The question is, that amendment 400 be agreed to. Are we agreed?

Members: No.

The Deputy Convener: There will be a division.

FOR

Barrie, Scott (Dunfermline West) (Lab)
Lyon, George (Argyll and Bute) (LD)
Morrison, Mr Alasdair (Western Isles) (Lab)
Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST

Aitken, Bill (Glasgow) (Con)
Hamilton, Mr Duncan (Highlands and Islands) (SNP)

The Deputy Convener: The result of the division is: For 4, Against 2, Abstentions 0.

Amendment 400 agreed to.

The Deputy Convener: Amendment 179, in the name of Roseanna Cunningham, is grouped with amendments 205, 185, 186 and 372. I assume that, in the absence of Roseanna Cunningham, Stewart Stevenson will speak to the amendment.

Stewart Stevenson: Amendment 179 is a simple amendment that would further reduce to 10 the number of members that will be required for a community body. Members will recall that, in the original draft, the number was 30. The drafters and the Executive recognised that that was rather a large number. However, in many small and remote rural communities, even 20 people would be too many. On that basis, I point to the bodies in Eigg and Knoydart, where membership of a community body may consist of organisations and individuals. Allowing for only 10 members on a community body would give more flexibility. Section 31(2) gives ministerial discretion; nonetheless, it is worth sending a more favourable signal to communities by reducing the number to 10, lest some people be put off. For the same reasons, I am happy to support amendment 205.

I move amendment 179.

The Deputy Convener: I call George Lyon to speak to amendment 205 and the other amendments in the group.

George Lyon: Amendment 205 concerns the definition of a community body. The land unit of Highlands and Islands Enterprise foresees two particular problems arising from the bill's definition of a community body, because community bodies exist that could be used as vehicles for community buy-outs. For example, in my constituency there is the Colonsay Community Development Company and in Alasdair Morrison's constituency there is Harris Development Ltd. It would be logical to use either of those bodies in a community buy-out. However, there is concern that they would have to change to meet the bill's definition of a community body, which is a company limited by guarantee.

15:15

That concern lies behind amendment 205; I would be interested in hearing the minister's response. If we are to encourage communities to participate in community buy-outs, one would expect an existing community body, such as the Colonsay Community Development Company, to be considered as a vehicle for a future community purchase.

I have some sympathy for Roseanna Cunningham's amendment 179 because a balance must be struck, but if we have carte blanche to reduce to 10 the number of members on crofting community bodies, the system could be abused because community bodies could be unrepresentative of their communities. Therefore, on reflection, section 31(2) is perhaps the better approach because it gives the minister powers to intervene and change the definition that is contained in section 31(1)(d). I have some sympathy, however, for Roseanna Cunningham's position and I would also be interested to hear the minister's response to amendment 179. We want to encourage, and make it as easy as possible for, communities to go down the buy-out road. However, we must also ensure that safeguards are in place that prevent those who do not genuinely represent the community from hijacking the legislation. Perhaps section 31(2) is the right way to address that concern.

The Deputy Convener: I call Alasdair Morrison to speak to amendment 185 and other amendments in the group.

Mr Morrison: I move amendment 185.

The Deputy Convener: You cannot move the amendment at this stage, but you may speak to it.

Mr Morrison: I do not have to do so.

The Deputy Convener: Right. I call the minister to speak to amendment 372 and the other amendments in the group.

Allan Wilson: I will be brief because we will need to address several issues in the debate. Amendments 179 and 185—curiously, in the names of Roseanna Cunningham and Alasdair Morrison, respectively—would reduce from 20 to 10 the number of members that will be required to form a community or crofting community body. For the reasons—to an extent—that George Lyon has just outlined, I submit that amendments 179 and 185 are unnecessary because section 31(2) provides that ministers may disapply the provisions of section 31(1)(d) when they deem it to be in the public interest so to do.

Executive amendment 372 is a technical amendment that will allow in part 3 of the bill a provision similar to that in section 31(2). That means that in exceptional circumstances—I think that we all agree that they would be exceptional—in which a realistic and, importantly, a viable community right-to-buy bid is put together by what is by any terms a small community, ministers can agree that the community or crofting community body can have fewer than 20 members. Therefore, I reassure members that provision exists not to disenfranchise such communities. The provision would apply in the exceptional circumstance of a community's being constituted by fewer than 20 members. An extended family could comprise at least 20 individuals, but it would obviously not be the intent to provide for such a circumstance in the bill. With that assurance, I ask Stewart Stevenson—on behalf of Roseanna Cunningham—and Alasdair Morrison to withdraw and not to move amendments 179 and 185 respectively.

Amendment 205, in the name of George Lyon, would allow ministers discretion to disapply the requirement in section 31(1) for a community body to be a company limited by guarantee. I understand the member's reasons for lodging the amendment, which he has explained. However, the amendment is in a way perverse. One of the criticisms of the draft bill was that it provided for too much ministerial discretion. For that reason, before introducing the bill we reduced the amount of discretion that it will give ministers. If the committee agrees to amendment 250, that will mean our reverting to the previous position, in which ministers were given the widest possible discretion—even the carte blanche that we have famously been accused of seeking. Ministers would be able to accept literally any body as a community body for the purposes of part 2 of the bill.

I understand the rationale behind amendment 205, which is well intentioned. It attempts to widen the scope of the bill, so that other bodies can make use of it. However, it is vital—I use the word carefully—that community bodies that seek to register an interest in land should have serious intent. The best way in which they can demonstrate that is by securing company status. There is openness and transparency in companies that are limited by guarantee; they are registered under the Companies Act 1985 and documentation on that is available and publicly accessible at Companies House.

Companies that are limited by guarantee have other advantages. They are run on democratic principles and their members and directors are protected from liability. They are required to publish properly audited accounts and may establish subsidiaries for more conventional trading. They cannot be companies limited by guarantee for charitable purposes—an issue on which we touched recently.

Any registration or purchase under the bill should be led and driven by the community, as that is defined. The bill will not allow councils, local enterprise companies or representative organisations per se to register an interest. However, we appreciate that those groups can and will play an important role in embracing the plans of the community body. They would probably be central to the body, reflecting its genuine community status, and we would encourage them to be represented on it. Anyone who has experience of establishing companies limited by guarantee—as I have—will know that that is possible, provided that local community members retain overall control of the company.

However, we believe that allowing groups that do not have broader community support to own land would mean that we were departing to an unacceptable extent from the ethos of the community right to buy that we seek. That point is made in the policy memorandum to the bill. By converting to companies limited by guarantee, organisations would demonstrate their serious intent and embrace the wider community interest. The arrangement will ensure that in every instance—it is to be hoped—the community interest will be represented by a single body. It is important that two or more bodies should not vie to represent the community interest. I therefore believe that it is necessary to retain the requirements of section 31, so I ask George Lyon not to move amendment 205.

I will conclude on Alasdair Morrison's amendment 186. It is implied that crofters need the degree of control that would be afforded by the amendment to protect their interests, but I argue that that is not the case. In addition to the extensive protection of crofters' interests in the Crofters (Scotland) Act 1993, there are specific protections for their interests in the bill as introduced. Crofters have, through crofting tenure, effective control over the land resource in a crofting community. A crofter controls not only their own croft but the common grazings, through their participation in grazings committees.

If crofters were also given total control of the crofting community body, it might be envisaged that they would end up with more power over their community than the original landowner had. It is hard to demonstrate that a right to buy is in the public interest if total control of the land resource is, in effect, to be vested in a small group that has no real democratic credentials, to the exclusion of the wider local community.

Amendment 186 is further flawed because its effect would be to exclude from the right to buy

crofting communities that do not have grazings committees. I am sure that that is not Alasdair Morrison's intention, but that would be the effect of agreement to amendment 186. Because the interests of the crofting community and individual crofting interests are already well protected in the bill and in existing legislation, I ask Alasdair Morrison not to move amendment 186.

Mr Hamilton: I have two points to raise with the minister. First, I accept broadly what he said in relation to amendment 179. The requirement for a community body to have a minimum of 10 members, which the amendment would include in section 31(1)(d) is, in a sense, as arbitrary as one for a minimum of 20 members, which is what is contained in the bill.

Section 31(2) says:

"Ministers may, if they think it in the public interest to do so, disapply the requirement specified in subsection (1)(d)".

Could the minister say a bit more about what criteria he would apply in such cases? Is the minister thinking in terms of percentages of populations, rather than absolute numbers? Are we missing some factors? It would be useful if the minister could read into the record some of the factors that will be taken into account when the provisions of section 31(2) come into action.

Secondly, on amendment 205, I welcome the minister's conversion to giving away any power that we are trying to give him—perhaps the committee system is working at last. Although I welcome that conversion, I note the difference between the nature of a body that wishes to register and that of a body that wishes to buy. The minister has perhaps fallen into the trap of putting those two types of body together. I think that there is still a strong argument for amendment 205, on the basis that we are trying to make registration as easy as possible. If there is an added complication in buying, and if bodies are required to be companies at that stage, that strikes me as being perfectly reasonable. Does the minister see the distinction between registration and buying?

The Deputy Convener: I invite the minister briefly to respond to that.

Allan Wilson: I have two things to say. First, Mr Hamilton referred to exceptional circumstances in which a community comprises fewer than 20 people. A reasonable representative spread from such a community would of course be sought on the body to which the provisions would be applied. A prerequisite to that would be involvement of other community interests, which would ensure that there were no vested interests but rather that a broad spectrum of community interest would be represented in the application concerned.

I have drawn the distinction to which Mr Hamilton referred and have gone over the matter at length. It is possible for very little cost to get off-the-shelf companies limited by guarantee, and any genuinely representative community body with serious intent should not be put off either registering or pursuing its interests by virtue of the stipulation that is proposed in the bill. That would demonstrate serious intent. The system is open, democratic and transparent, and the appropriate safeguards are inherent in that model in order better to ensure that the wider community interest is represented. Some of the obstacles that may have existed in years gone by to establishing community companies under the Companies Act 1985 no longer exist, with regard to the termination of appropriate memorandums and articles of association, which can be amended to suit the circumstances of a particular community.

Taking all those things into account, I am convinced that that is how to demonstrate serious intent, to ensure that the democratic and accountability controls are present, and to ensure that matters such as charitable status can continue to be pursued in that context, with all the difficulties that are inherent in that, which I do not minimise.

15:30

Mr Hamilton: I think that the minister and I will just not agree on amendment 205. On amendment 179, the minister said that he would not examine only vested interests but wider community interests, which does not take us an enormous amount further. I made a suggestion—it is purely a suggestion; it is not thought through—with regard to minimum percentages rather than absolute numbers. Could that be taken into account? Could the minister reassure us on that? What does he mean by the wider community interest? It is important to have that on the record.

Allan Wilson: It is difficult to define wider community interest for the record. To an extent, you would know what it was when you saw it. It is like an elephant—it is difficult to define, but you know what it is when you see one.

Stewart Stevenson: Is the minister trying to bluff the committee?

Allan Wilson: Absolutely not. I take the question in the spirit in which it is intended. I do not think that we are at cross-purposes. I believe that a community would be represented by a diverse range of wide interests.

Mr Hamilton: As opposed to a diverse range of narrow interests?

Allan Wilson: I hope that people would be pulling in the one direction, although that is not always possible. I expect that that would be the majority interest in any given situation.

The Deputy Convener: I found that extremely interesting, minister. It highlighted the difficulties that—you may recall—I anticipated some months ago. In any event, I call on Stewart Stevenson to wind up and say whether he will press or seek to withdraw amendment 179.

Stewart Stevenson: On the example of a whole family becoming the 10 members of a company, has the minister taken note of section 47(3)(e), which hangs off section 47(1)(b) and which determines that the minister has to give consent for the exercise of the right to buy? Of course, section 47(3)(e) covers the extent to which such an exercise would not be in the public interest and so on and there is a requirement under section 47(2) for the community to vote in favour. If a community wants a community body that comprises all the members of a family, and it is prepared to go along with that, so be it. However, I note what the minister said—I was just teasing, minister—in relation to section 31(2). On that basis, I seek the committee's consent to withdraw amendment 179.

Amendment 179, by agreement, withdrawn.

The Deputy Convener: I call amendment 205, in the name of George Lyon. Do you wish to move the amendment?

George Lyon: I listened to what the minister said, but I cannot say that I am completely convinced. In the case of Colonsay Community Development Company, it is a genuine community body. To ask it to go through the process of having—

The Deputy Convener: Will you move or not move amendment 205?

George Lyon: At this stage I reserve my right to bring the amendment back at stage 3.

Amendment 205 not moved.

Amendment 401 moved—[Allan Wilson].

Mr Hamilton: I do not agree to the amendment, on the same basis as I disagreed with amendment 400.

The Deputy Convener: There will be a division.

FOR

Barrie, Scott (Dunfermline West) (Lab)
Lyon, George (Argyll and Bute) (LD)
Morrison, Mr Alasdair (Western Isles) (Lab)
Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST

Aitken, Bill (Glasgow) (Con)
Hamilton, Mr Duncan (Highlands and Islands) (SNP)

The Deputy Convener: The result of the division is: For 4, Against 2, Abstentions 0.

Amendment 401 agreed to.

The Deputy Convener: Amendment 402, in the name of the minister, is grouped with amendments 206, 207, 403, 208, 404 and 209. This is complicated—I am required to point out that if amendment 402 is agreed to, I cannot call amendment 206. Similarly, if amendment 403 is agreed to, amendment 208 will be pre-empted. I ask the minister to move amendment 402 and to speak to all other amendments in the group.

Allan Wilson: I hope that there will be consensus on amendment 402 because it has been lodged to accommodate views that have been represented to us.

As drafted, section 31(4) of the bill defines a community by reference to

"polling district or districts in which the land in which the community body proposes to register an interest is situated".

That has attracted some criticism to the effect that polling districts are too large to be used to identify a local community, particularly in the Highlands and Islands. Paragraph 96 of the committee's stage 1 report says that "full postcode units" should be used

"with Ministerial discretion to deal with exceptional circumstances".

In its memorandum to the committee of 28 January, the Executive said that it would be prepared to consider the options. We have considered those carefully and we accept consequently the committee's recommendation that postcode units should be the defining criteria. By virtue of that fact, I offer amendments 402, 403 and 404 to facilitate that objective.

George Lyon's amendments 206 and 208 would in effect achieve that change and I accept the principle behind the amendments. However, I believe that a better solution is to revise section 31(4) to provide, using postcode units, a clear and suitable definition of a community. Executive amendments 402 to 404 will provide that definition.

In amendment 402, I offer a replacement for amendment 206. Amendment 402 substitutes the words "postcode units" for "polling districts". Amendment 403 will consequently provide that members of the community should be resident in the postcode unit, or in one of those units if the community has more than one postcode, and that they should also be registered to vote at that residential address in the postcode unit in the defined community. Amendment 403 therefore replaces amendment 208.

Amendment 404 will provide a definition of the area to which a "postcode unit" relates, and replaces amendment 209. A minor point is that I understand that amendment 209 is factually

incorrect. The area of a postcode unit is defined geographically by the General Register Office for Scotland, and made publicly available on request by the registrar general for Scotland. As far as I am aware, the Keeper of the Registers of Scotland has no locus in relation to postcodes or postcode units. That is another reason why the committee should accept amendment 404, rather than amendment 209.

That leaves amendment 207, which I believe is unnecessary. Section 35(1)(b)(ii) already provides for a community body to register an interest in land for which it can demonstrate a relationship between the community and the postcode unit or units to which the land relates. To a certain extent, that is just what we have been discussing. Secondly, the Executive's amendment 402 supersedes amendment 207 by removing the text that it is intended to extend.

The provisions with which we will end up under amendments 402 to 404 will be predictable, clear and all inclusive. They will not provide an opportunity for community bodies to create their own boundaries and to isolate on purpose those who object to the proposal to register an interest in or purchase land—that is, to create a community in their own interest. Following any application to register an interest in land, ministers will look closely at how the local community has been defined to ensure that all those who are directly affected by the community body's proposals have had the opportunity to express a view about the application. In all cases, the community body will be required to demonstrate that it is sufficiently representative of and supported by the local community. The bill already provides for that.

We are all, I hope, heading in the same direction. I ask the committee to accept amendments 402 to 404 as a preferable method to that proposed by amendments 206 to 209. Amendment 209 includes a factual inaccuracy.

I move amendment 402.

The Deputy Convener: Before George Lyon speaks to his amendments, I ask you for the sake of clarity to define what you mean by a postcode unit. If we take the initial two letters and number, as opposed to the secondary identifiers, postcodes in certain parts of Scotland, such as the more remote areas, can cover a massive chunk of land.

Allan Wilson: The Royal Mail describes a postcode as being made up of two elements, the outward postcode and the inward postcode, which give different levels of precision in defining an address. The outward postcode—the first half—enables mail to be sent to the correct area for delivery, for example, G8.

The Deputy Convener: There is no G8, but I take your point.

Allan Wilson: G12, then. I was trying to find the approximate vicinity of an area that you might recognise.

The second half—the inward postcode—is used to sort the mail at the local delivery office. Whatever the three characters—the number and successive letters—that is how it is defined.

The Deputy Convener: How do you intend to define a postcode unit under the bill? Will you use the whole postcode?

Allan Wilson: It is defined by the whole area that I have just described.

The Deputy Convener: How will you get round the problem of the fact that, in certain parts of Scotland, that could cover an extremely wide area that would not by any stretch of the imagination be defined as a community?

Allan Wilson: We will get round that by reference to the application and to whether what is proposed in a postcode unit or units constitutes a recognisable community.

The Deputy Convener: Are you saying that you would break it down further?

Allan Wilson: Yes, if necessary. You ask a hypothetical question about what might happen in the eventuality that such an application is made.

George Lyon: I welcome the minister's comments on amendments 402 to 404. It is welcome to see a minister listening to a committee report and responding to the points that it makes.

For the sake of clarity, I would like an assurance that amendment 403 addresses the concerns that amendment 207 attempts to address and deals with communities that might be in a separate postcode unit from the piece of land that they might benefit from.

15:45

Allan Wilson: I can give that assurance. The wider area that is involved could be varied by a street or half a street, even. If it were desired, it would be possible to use extremely small units.

George Lyon: In that case, I do not intend to move my amendment.

The Deputy Convener: If no one wishes to speak on this convoluted issue, I ask the minister to wind up.

Allan Wilson: I have nothing to add, other than to point out the fact that we only got convoluted at your request.

The Deputy Convener: I am pleased to hear that.

Amendment 402 agreed to.

Amendment 207 not moved.

Amendments 403 and 404 moved—[Allan Wilson]—and agreed to.

Amendment 209 not moved.

Section 31, as amended, agreed to.

Section 32—Provisions supplementary to section 31

The Deputy Convener: Amendment 210, in the name of Roseanna Cunningham, is grouped with amendment 211. In the absence of Roseanna Cunningham, I assume that Stewart Stevenson will move amendment 210.

Stewart Stevenson: You never know, Duncan Hamilton might move some of these amendments at some point.

In essence, amendments 210, 211 and 180—which is in the next grouping but which I will deal with now in the interest of saving time—are all intended to focus section 32 purely on the body that is registering a community interest by removing references to bodies that make the purchase. That is in line with the desire to separate the body that registers from the body that exercises the right to buy. In other words, the body that registers need not be a company, but the body that exercises the right to buy needs to be.

I move amendment 210.

Allan Wilson: I am not sure that either I or Stewart Stevenson understands what he has just said. I can think of no reason for accepting amendments 210 and 211.

I am surprised that the SNP is lodging amendments that would help individuals to gain financial benefit from the community right to buy. If the community body chooses to use the legislation, it must then be prepared to abide by that legislation in its entirety. It would be detrimental to the community right to buy to accept any amendments—such as amendments 210 and 211—that would create opportunities for individuals to profit from a community right to buy.

It is important to bear in mind the essence of what we are seeking to do. Public funds have already been made available to assist communities to purchase land for the development of that community. That is as it should be, as the sustainable development of a community is a worthwhile use of those public funds. That is what land ownership is all about and it is in the public interest that that should be done.

We must then take sensible steps to protect those public funds, no matter what they are used for. Allowing a community body to amend its memorandum and articles of association after the land has been purchased and without seeking consent from ministers might allow company assets, profits, or surpluses that have been generated to be distributed to individual members. That is not something that we could contemplate.

I had anticipated that the issue of charitable status was going to be brought up at this point. I do not see any other reason for the proposition being put. I therefore ask the committee to resist amendments 210 and 211.

Mr McGrigor: It is essential that community bodies should operate on the same basis as that on which their right to buy was approved. Amendments 210 and 211 would make section 32 illogical because it would leave it open to community bodies to purchase land with one set of articles of association, and then change the articles once the land had been purchased. I oppose that.

Stewart Stevenson: It will not surprise the minister to know that the SNP certainly does not intend what he ascribed to it, although I accept that that might be the effect. Amendment 210 simply seeks to delete the words “or bought” and stresses the community interest aspect. It is possible that I have misunderstood the intent of the amendment and, on that basis, I am happy to seek the committee’s permission to withdraw the amendment. If it transpires that Roseanna Cunningham had something in mind that I did not understand, I might be asked to come back at stage 3.

The Deputy Convener: That is extremely honest.

Amendment 210, by agreement, withdrawn.

Stewart Stevenson: I will not move amendments 211 and 180, in the name of Roseanna Cunningham, if I am allowed to not move what is not mine.

The Deputy Convener: Some might say that that was the collapse of a stout party.

Amendments 211 and 180 not moved.

Section 32 agreed to.

Section 33—Register of Community Interests in Land

The Deputy Convener: Amendment 322 is grouped with amendments 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 342, 371, 418 and 419.

Allan Wilson: You have read out a prodigious list of amendments. To assist members in their consideration, they should have received a draft of how the section will look after it has been amended. We have provided such a draft because of the dramatic nature of the changes.

Apart from certain exceptions, which I will deal with later, all the amendments in the group relate to the procedure for involving heritable creditors in the notification and consultation process that takes place prior to registration of the community body's interest. That will apply in situations in which heritable creditors have taken steps to exercise their right to sell the land that is the subject of the community body's application. The point is that, because heritable creditors who have taken such steps will act as the sellers in any future transaction, they should be involved in the procedure.

Although the bill makes provision for involving creditors, we felt that it was not ideal to put the onus to bring the creditor into the process on a seller, particularly if the seller was in default under the terms of his security. One could assume that such a person would be reluctant to play a part. The Executive amendments deal with that shortcoming in the procedure by putting the onus of intimating the existence of any heritable creditors to ministers on the community body. That is where the onus should lie. Creditors will then be notified by ministers and thereby brought into the process. That is a relatively simple requirement in these days of online communication. I hope that members agree that it represents a welcome refinement to the bill.

As there are more than 20 amendments to section 34, we have made available to the committee a revised version of the section, which should make matters easier to follow.

We have sought to close a gap in the procedure that relates to the registration of interests. That could have been exploited by an owner who was keen to sell his land before ministers had had an opportunity to prohibit the owner from taking action to dispose of his land while the community body's application was under consideration. I am not saying that the gap would have been exploited, but that would have been a possibility.

Amendment 324 removes the requirement for the community body to send a copy of its application for registration of an interest in the land that it seeks to purchase to the landowner, to notify the landowner of the community body's interest. In place of that requirement, amendment 329 provides that the owner and any heritable creditor will receive notification of the community body's application directly from ministers, at the same time as the temporary prohibition is put in place. The owner and any heritable creditor will receive simultaneous notification. That will mean that the owner will have no opportunity to effect a quick disposal to circumvent the community interest. Amendment 324 is a worthwhile amendment, which, in accordance with our policy objectives, strengthens the position of the community body.

Amendment 419 inserts a procedural requirement that will facilitate the expeditious processing of the application. Without amendment 419, delay and disputes could arise in relation to the handling of an application.

I move amendment 322.

Stewart Stevenson: We now know what ministers, the Labour party and bankers speak about over the dinner table at red rose dinners. The changes are useful, but the complexity is such that I do not pretend to have satisfied myself at the moment that all the ground is covered—and I suspect that I may not be alone in that on the committee. I am posting the fact that we will support the changes, but we will examine them carefully afterwards and, if necessary, we may respond at stage 3.

16:00

The Deputy Convener: I flag up a similar caveat by commenting that there is a degree of cynicism on the part of the Executive with regard to those who would do business, which I find disturbing. I also find it surprising that some of the issues to which the minister referred were not picked up at an earlier date.

Allan Wilson: I assure you that there are no secrets in this context, masonic or otherwise. There is nothing that might be discussed over red rose dinners or any other dinners or in social settings that is not immediately replicated in the text of the amendments. I emphasise that an important loophole in the timing of the notification of the interest of the prospective community buy-out to the owner and any heritable creditor will be plugged, to prevent the owner, if he or she were so disposed, circumventing the provision by a quick sale.

The Deputy Convener: Without necessarily agreeing, I thank the minister for his submission.

Amendment 322 agreed to.

The Deputy Convener: Amendment 216, in my name, is grouped with amendment 222.

Amendment 216 would remove the ability of the community body to withhold from public inspection any information and documentation relating to the use to which it is proposed to put the land. As I am sure the minister will agree, we are entering a period where open government is seen as an essential part of the democratic process. Section 33(3) permits the community body to withhold from public inspection any information or documentation pertaining to the use to which the land in which the interest is registered is to be put. I submit that that is not based on openness and fairness. Such information or documentation is a matter of public interest and should therefore be open to public inspection.

Furthermore, without public disclosure as to the proposed purpose to which the land is to be put, the landowner will be unable to seek judicial review of any decision made by ministers about the community body's registration of interest in land. That seems contrary to natural justice and appears to put landowners in an invidious position. Bearing in mind the Executive's much-vaunted demand for open government, I would have thought that that was unacceptable in the present day.

I do not propose to speak to amendment 222, as that amendment is perfectly self-evident.

I move amendment 216.

Stewart Stevenson: For once I find myself on the same side of the argument as the deputy convener. It would be particularly invidious if the community company had proposals in mind that were not made known to the voters when they voted on the proposal for purchase. For that reason alone—subject to the minister's response—I am minded to support amendment 216.

George Lyon: Like Stewart Stevenson, I find myself in the unusual position of supporting Bill Aitken. Unlike his previous amendments, which tended to be of the wrecking variety, amendment 216 is constructive, as it addresses a fundamental flaw in section 33. I will therefore support amendment 216.

Allan Wilson: Continuing the consensus, I, too, find myself in agreement with everything that Bill Aitken said about amendment 216. The problem is with amendment 222. I want to draw a distinction between the two amendments.

I welcome amendment 216 for the reasons that have been mentioned by the deputy convener and by Stewart Stevenson and George Lyon. The amendment seeks to remove a community body's right to demand confidentiality for its plans for the use of registered land. I agree that such a move would encourage the openness and transparency that we favour and would sit well with the principles of the bill.

At the registration stage, the community body is not required to provide ministers with information on the use to which it proposes to put the land, although one would expect that such information would be incorporated with the application if the community body hoped to be successful with that application. However, if such information is included, I agree that it should be publicly available. I have no qualms about supporting amendment 216.

However, amendment 222 would go much further, as it would remove not only the right of the community body to require ministers to treat as confidential information on the use to which the community body proposed to put the land, but simultaneously the community body's right to require ministers to treat as confidential information relating to the funding of the purchase. That is where we part company.

Funding for the purpose of purchasing land can come from a number of sources—for example, the Scottish land fund. However, at the stage in question, the community body is unlikely to have received confirmation that it will receive funding. It is also possible that negotiations with other funding bodies could be jeopardised if the relationship were made public at that juncture.

I agree that we should remove the confidentiality provisions that relate to information on land use and that that principle should apply equally at the right-to-buy stage. The Executive will therefore lodge an amendment at stage 3 to that effect, so that we remove the confidentiality provisions about information in relation to land use. As Stewart Stevenson pointed out, it is important that as much information as possible is publicly available at the right-to-buy stage prior to the ballot, but it is also important that we do not link the information on land use to the information on funding. An Executive amendment at stage 3 will remove the confidentiality provision in relation to land use but retain it for the funding arrangements.

I therefore support amendment 216 but ask Bill Aitken not to move amendment 222, on the understanding that I will lodge an amendment at stage 3 that will remove the confidentiality provision concerning the land use application but not concerning the funding.

The Deputy Convener: I thank the minister for that. It appears that if something is said often enough, a degree of common sense will eventually pervade the atmosphere of the debate. I will be pleased to accede to the minister's wish by not moving amendment 222 at the appropriate stage. However, I will press amendment 216 on the basis of the undertaking that the minister has given.

Amendment 216 agreed to.

The Deputy Convener: Amendment 323 is in a group of its own.

Allan Wilson: Executive amendment 323 provides for greater flexibility over which other persons may be appointed by ministers to carry out the functions of the Keeper of the Registers of Scotland in relation to the register of community interests in land. Section 33 of the bill states that the Keeper of the Registers shall set up and keep the register, but there could be reasons in the future for transferring part or all of that work to another person or body.

Amendment 323 is required because, when we reconsidered the text of the bill, we saw that section 33 does not provide the flexibility that would be required in those circumstances. The revised wording would therefore allow ministers to appoint different persons to carry out different functions in relation to the register.

I move amendment 323.

The Deputy Convener: The amendment seems to be largely technical.

Stewart Stevenson: Does the minister have someone other than the Keeper of the Registers in mind? It seems slightly odd to be bringing up the issue at this stage.

Allan Wilson: No. I do not know of any such plans. The amendment merely seeks to make sufficient provision should there be a requirement in the future. There is no hidden agenda. I would not do that to you.

Amendment 323 agreed to.

Section 33, as amended, agreed to.

Section 34—Registration of interest in land

Amendments 324 to 340 moved—[Allan Wilson]—and agreed to.

The Deputy Convener: Amendment 217, in my name, is grouped with amendments 220, 223, 228, 232 and 317.

Amendment 217 would delete section 34(20), which states:

"Any failure to comply with the time limit specified in subsection (18) above does not affect the validity of anything done under this section."

The inclusion of time limits lends certainty to proceedings and I believe that any stated timetables should be adhered to. Obviously, a situation could develop whereby there could be an open-ended time limit, which would not be satisfactory by any stretch of the imagination. The minister should consider the effect of section 34(20) and see what could arise in certain instances. Clearly, there could be some unsatisfactory situations.

Amendment 220 would delete section 45(6), which states:

"Any failure to comply with the time limit specified in subsection (2) above does not affect the validity of anything done under this section."

Once again, I underline my belief that the inclusion of a time limit adds a desirable degree of certainty to a situation.

Amendment 223 is related because it is consequential on amendment 220. It again highlights the desirability of matters being disposed of as readily and efficiently as possible. As the bill stands, an open-ended situation could develop where there could be all sorts of difficulties and where there could be a lot of controversy in the courts. That is surely not what we are seeking to achieve.

Amendments 228 and 317 are consequential and related.

I move amendment 217.

16:15

Allan Wilson: I do not disagree with the intent, but when Bill Aitken hears what I have to say he will agree that the penalty that he proposes would be completely unfair and not fitting to the proposition. Ministers and the Lands Tribunal will seek to adhere to the time limits—the process is not an open-ended one. All the amendments in the group—except amendment 232, which relates to the Lands Tribunal—relate to time limits that apply to ministers. At the outset, it is our intention that the time limits that are set out in the bill should be adhered to. Any failure of ministers or, for that matter, the Lands Tribunal to meet those time limits should not, on a point of principle, affect the right-to-buy process. I am sure that that is not what Bill Aitken intends.

It would be most unfair on community bodies when they applied to register land or when they activated their right to buy if, through no fault of their own—for example, through the fault of the minister or of the Lands Tribunal—they lost that right because we had failed to adhere to a timetable, as good as ministers are at adhering to timetables. Removing the subsections that allow the process to continue in that circumstance would—even though ministers or the Lands Tribunal missed the deadline by only a day—create another problem through the penalties that would be applied for failure to meet those time limits.

As I said, we accept that the bill requires time limits to support the progress that we wish to see in the right-to-buy process. It is also right that there should be penalties if the community fails to meet its time limits—that is fair enough. For example, under section 45(4), if the community body does not respond to ministers within 30 days, the penalty that will be applied to the community body is that its right to buy will be extinguished.

That is as it should be. The application of that penalty is fair, because it targets the community body as the offender and the community body is the recipient of the penalty. As a justice of the peace, Bill Aitken must surely see where I am coming from. In contrast, under his amendments 217, 220, 223, 228, 232 and 317, the community body would be penalised when the fault might not

be its. Surely that is not fair. I argue that it is not just and it is not what we would want to happen.

I ask the committee to reject amendments 217, 220, 223, 228, 232 and 317, and accept that ministers will do their best to comply with the time limits that are set out in the bill.

Stewart Stevenson: I listened carefully and have great sympathy with what the minister said—it was a valuable contribution to the debate. Would he be prepared to support me were I to lodge at stage 3 an amendment that required ministers to report formally to Parliament on the first parliamentary day after the expiry of the 63 days that the time limit had been exceeded? That stops short of the Estelle Morris approach to ministerial responsibility, but it might bring appropriate discipline to the ministerial process.

The Deputy Convener: I am sure that ministers make every possible effort to adhere to targets. Sometimes, however, as facts have proven, the targets are not adhered to. As such, I feel that amendment 217 is necessary, and I shall press it.

Mr Hamilton: Before we proceed to the division, will the minister clarify his position on the proposal?

The Deputy Convener: I thought that he had attempted to do so.

Mr Hamilton: I am curious. I am actually quite interested in this. Given that the minister said that it is unfair and unjust for communities to be the victims of ministerial incompetence, presumably it is fair and just that ministers take the rap for that, so what does the minister have in mind?

The Deputy Convener: I think that you should answer that, minister.

Allan Wilson: There could be many reasons for delay beyond bland ministerial incompetence. I take responsibility for any delays on my part. The serious point is that we would not wish the community organisation to be penalised by any failure on the part of any other party. In the event of such a failure, the process should continue, which is why I reject Mr Aitken's amendments.

The Deputy Convener: Thank you for that exposition, minister. We still require to determine whether amendment 217 is agreed to. The question is, that amendment 217 be agreed to. Are we agreed?

Members: No.

The Deputy Convener: There will be a division.

FOR

Aitken, Bill (Glasgow) (Con)

AGAINST

Barrie, Scott (Dunfermline West) (Lab)
Hamilton, Mr Duncan (Highlands and Islands) (SNP)
Lyon, George (Argyll and Bute) (LD)
Morrison, Mr Alasdair (Western Isles) (Lab)
Stevenson, Stewart (Banff and Buchan) (SNP)

The Deputy Convener: The result of the division is: For 1, Against 5, Abstentions 0.

Amendment 217 disagreed to.

Section 34, as amended, agreed to.

Section 35—Criteria for registration

Amendment 405 moved—[Allan Wilson].

The Deputy Convener: The question is, that amendment 405 be agreed to. Are we agreed?

Members: No.

The Deputy Convener: There will be a division.

FOR

Barrie, Scott (Dunfermline West) (Lab)
Lyon, George (Argyll and Bute) (LD)
Morrison, Mr Alasdair (Western Isles) (Lab)
Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST

Aitken, Bill (Glasgow) (Con)
Hamilton, Mr Duncan (Highlands and Islands) (SNP)

The Deputy Convener: The result of the division is: For 4, Against 2, Abstentions 0.

Amendment 405 agreed to.

Amendment 341 moved—[Allan Wilson]—and agreed to.

Amendment 406 moved—[Allan Wilson].

The Deputy Convener: The question is, that amendment 406 be agreed to. Are we agreed?

Members: No.

The Deputy Convener: There will be a division.

FOR

Barrie, Scott (Dunfermline West) (Lab)
Lyon, George (Argyll and Bute) (LD)
Morrison, Mr Alasdair (Western Isles) (Lab)
Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST

Aitken, Bill (Glasgow) (Con)
Hamilton, Mr Duncan (Highlands and Islands) (SNP)

The Deputy Convener: The result of the division is: For 4, Against 2, Abstentions 0.

Amendment 406 agreed to.

Section 35, as amended, agreed to.

Section 36—Procedure for late applications

Amendment 342 moved—[Allan Wilson]—and agreed to.

Section 36, as amended, agreed to.

The Deputy Convener: Thank you. We have now kept to today's schedule and are finishing some seven minutes ahead of our projected time. I thank you all for your co-operation.

I remind members that tomorrow we will be resuming consideration of the Land Reform (Scotland) Bill. It will be the 10th day of our deliberations. We will not be in our customary venue, however. We will be in committee room 1. I thank the minister and his team for attending.

George Lyon: I have a question about timetabling for Tuesday and Wednesday of next week. Have we any idea what is being considered? I have constituency business in Tiree, which means that I will not be back.

The Deputy Convener: At this stage, I will close the meeting and we will deal with your question informally.

Meeting closed at 16:23.

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