JUSTICE 2 COMMITTEE

Wednesday 30 October 2002
(*Morning*)

Session 1

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JUSTICE 2 COMMITTEE
38th 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:

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

Committee Room 1

Scottish Parliament

Justice 2 Committee

Wednesday 30 October 2002

(*Morning*)

[THE CONVENER *opened the meeting at 09:48*]

Item in Private

The Convener (Pauline McNeill): I welcome members to the 38th meeting of the Justice 2 Committee. As usual, I remind everyone to turn off mobile phones and anything else that is likely to disrupt the meeting.

The first item on the agenda is to ask members whether they agree to take item 6—the consideration of potential advisers on petition PE336, which deals with asbestos sufferers—in private. Is that agreed?

Members *indicated agreement*.

Petitions

Judiciary (Freemasons) (PE306)

The Convener: We have three interesting petitions before us this morning. The first is petition PE306, from Thomas Minogue, which members have already seen. When we previously considered the petition, which is about freemasonry and the judiciary, we agreed to consider it again. We have received further information from Mr Minogue about the judiciary and membership of the Speculative Society. Members will note that we have written to the Minister for Justice, whose response is that he sees no need for a change in the current requirements. I invite members to make comments and suggestions on how to deal with the petition.

Scott Barrie (Dunfermline West) (Lab): I know that we have already written to the minister and received a response from him. However, the committee was not totally satisfied with the response. Without entering into constant correspondence back and forward, I would favour the committee writing to the minister again urging the consideration of declarations of interest by the judiciary, perhaps as part of the new judicial appointments procedure. That would be one way of getting round the problem, as the procedure would be open and might satisfy some of the issues that have been raised, both in the past and today.

George Lyon (Argyll and Bute) (LD): I support Scott Barrie's proposal. The petition deals with the serious issue of declarations of interest. Members of Parliament are now required to declare their interests, so I think that we should pursue the matter with the minister and say quite clearly that the practices that have been adopted by the Scottish Parliament should be spread to the judiciary as well.

Bill Aitken (Glasgow) (Con): On the basis that I would not join any club that would have me as a member, I declare that I am certainly not masonic. It was Groucho Marx, not Karl Marx, who said that.

The situation is somewhat exaggerated. Anyone who takes judicial office has to take the judicial oath, which inter alia requires that individual to do right to all manner of people without fear, favour or prejudice. I would have thought that the judicial oath was a sufficient safeguard. As I say, I have no particularly strong views on the matter, but I wonder where such declarations would cease. Many people are clubbable and join organisations and societies. At what point would one have to cease declaring membership of clubs? For example, I am a member of the Partick Thistle supporters club. How far do we take declarations? That is the sort of difficulty that would arise.

We certainly wish to be as open as possible. We all applaud the way in which the judicial appointments system has become much more transparent, open and subject to scrutiny. However, I have some doubts about whether it is worth pursuing the matters raised in Mr Minogue's petition to what might sometimes seem to be infinite proportions.

Stewart Stevenson (Banff and Buchan) (SNP): It is useful to bear in mind what MSPs are enjoined to do: to declare an interest when it touches on the matter under consideration or might be thought to do so. That latter point is the most important. It is up to all of us who hold public office, of whatever kind, to be absolutely scrupulous and open. Judges should generally follow the same dictum. However, I am reminded of the phrase, "Quis custodiet ipsos custodes," or, "Who will guard the guards?" If I misquote the Latin, I apologise. In other words, there is a point at which we must trust people whom we have put into office to act according to their own code. We should not pursue the matter ruthlessly, but we should certainly take the steps that Scott Barrie proposed, as they would add to transparency and confidence in the system.

The Convener: I agree with Scott Barrie, George Lyon and Stewart Stevenson. It is not suggested that the judges' oath is not enough, but there is a public perception about members of societies that have a secretive reputation, whether that society is the freemasons or another organisation. If we ask the minister to reconsider the matter, we should be clear that we are talking about any group or society in which there could be deemed to be a perception of secrecy where there could be a declaration. If the committee agrees that we should to write to Jim Wallace, we should refer to all organisations that may fall into that category. Does any member dissent from that?

Bill Aitken: There might be a difficulty in defining excessive secrecy, but I will not fall out with any member over the matter.

The Convener: We have not been given a satisfactory explanation of why we are not taking the route that I think England has already taken. There has not been a strong enough answer as to why, in the interests of transparency in the judiciary—which Stewart Stevenson mentioned—there should not at least be a declaration from judges. It remains to be seen whether Bill Aitken is correct in saying that the new system is transparent enough. We have not had an opportunity to consider that matter in detail, but the committee may wish to take it up in the future.

How should we proceed with the petition? Is the majority view that we should write to Jim Wallace to say that we are not satisfied that the matter should be closed and that we believe that there should be a review of the declarations that the judiciary makes in relation to the freemasons and any other organisation that may fall into the category under discussion? Bill Aitken's comments about difficulties of definition may be mentioned. We could say that we do not wish simply to end the matter there and that we wish further scrutiny of what is required. Do members agree with that course of action?

Members *indicated agreement*.

Parental Alienation Syndrome (Sibling Contact) (PE438)

The Convener: Petition PE438, from George McAuley, on behalf of the UK Men's Movement, calls for procedures to enable children to establish a right of contact with siblings. Again, there is correspondence for members to study, including correspondence from the Public Petitions Committee.

Members will note from the Executive's correspondence in particular that the Children (Scotland) Act 1995 makes provision for siblings or any other person with an interest to gain access to a child through the courts. The question that members must consider is whether that provision is easy enough to operate in order to achieve the desired result of sisters and brothers being able to make contact with each other if they live in different families.

Scott Barrie: I do not doubt the difficulties that siblings and half-siblings have in trying to maintain contact if they live in different households and if legal orders, such as residence orders, are in force. However, I understood that the Children (Scotland) Act 1995 sought to make such situations easier to resolve. Any person can make an application under section 11 of the act, not just a parent. A sibling can apply. In Scotland, siblings have instructed legal proceedings. I am not suggesting that that is the route that we ought to go down, as such matters are better resolved without seeking access through the courts. However, in complex and difficult situations, a young person does not have to be 12 to be able to instruct a solicitor. They can be younger than that. I know of an eight-year-old who instructed a solicitor independently of their parent.

Section 11 allows legal redress. I think that that is sufficient. What we always want in such situations is that people do not have to go to court. The presumption must be that siblings should have contact. That would be the best way of proceeding. I am not clear about what we could do in legal terms to make the situation any easier than it is, given that the Children (Scotland) Act 1995 is a recent piece of legislation and a vast improvement on what existed before.

10:00

Bill Aitken: It is difficult to see what can be done. There will be unanimous sympathy for the aim of the petition to make contacts easier, but I am not sure that we can do anything. The legislation is comparatively recent and seems to be working. I do not think that we can advance the matter much further. However, if something were to come to light, we would want to respond.

The Convener: I am reluctant to leave our consideration of the petition at this point because I am unclear about the practical effect of the provisions in the 1995 act. I have not had the opportunity to talk to people who have had experience of how the act operates. Like many MSPs, committee members will have received correspondence from Grandparents Apart, which makes similar points about the difficulties of using the provisions of the act. The legal advice that I have had is that the same provisions apply in both cases—for grandparents and siblings. I do not know whether the presumption for access is strong enough. It applies for parents in terms of custody and access, but I am not clear about whether it applies in relation to siblings and other family members.

Does the committee think that it might be useful to seek a view from practitioners about how the 1995 act operates in practice? It might not be possible to get such information but, before we leave the matter, we should be sure that the provisions of the act are adequate to cover the subject of the petition.

Scott Barrie: The Children (Scotland) Act 1995 states that anyone who can demonstrate that they are a significant person can make an application under section 11. That clearly applies to siblings, grandparents and other significant adults in a young person's life.

An organisation such as the Scottish Child Law Centre might be a useful port of call in order to seek further information. Given that we are talking about children seeking contact with grandparents, siblings or significant others, we should find out what experiences such organisations have had in using the legislation. They may be able to indicate whether there is a difficulty or some way in which we could go forward.

The Convener: That is a helpful suggestion. We could then find out whether the provisions are adequate and take the matter from there. Does the committee agree that we should take that course of action?

Members *indicated agreement*.

Civic Government (Scotland) Act 1982 (Obscene Material) (PE476)

The Convener: Finally, petition PE476, from Catherine Harper, on behalf of Scottish Women Against Pornography, calls for the enforcement and a full review of legislation on the display of obscene material. Do members wish to comment or make any suggestions on the petition?

Stewart Stevenson: I have some sympathy with the point that is being made, but I have a difficulty in knowing how to define "obscene" or "indecent". That has been a long-running legal issue; it has been the subject of argument for at least 40 years. One of the options suggested by the clerks is to ask the minister to commission further research on the link between pornography and violence against women. We should perhaps pursue that option in an attempt to move the matter forward on a factual basis.

Bill Aitken: I would be interested to see some follow-up on the matter in relation to the law. Obscenity was defined for me years ago in my council days when we had to view uncertificated films. If material was likely to pervert or corrupt, it was regarded as obscene. However, I never found a satisfactory definition of what was likely to pervert or corrupt, because different people can be affected by different things. The issue is difficult.

Scott Barrie: I agree that definitions are difficult in this area. I have a lot of sympathy with the thrust of the petition and Stewart Stevenson's suggestion on getting further evidence of a causal link might be a good starting point. I remember from my youth one of the greatest groups ever in Britain, the Sex Pistols. When they released their album, "Never Mind The Bollocks", there was a huge outcry and someone tried to have the album banned under legislation on indecent advertising. However, when the case came to court, it was found that the album could not be banned under that legislation, because one person's definition is different from someone else's. Because the law does not give a definition, we get ourselves into a difficult situation.

The same difficulty arises in relation to the petition. More information about the causal link between the explicit display of pornography and violence against women and children would be useful for our consideration of the petition. That could help us to come to some sort of conclusion.

The Convener: I am happy to go along with that. The only other issue for me is that I do not really understand the background to what is driving the petition, such as an identified increase in obscene material. The report that is referred to is "Preventing Violence Against Women: Action Across the Scottish Executive". Perhaps the petition has just been lying around for a while, but

I would like a bit more clarity from the petitioner on why she feels that a full review is needed now. She is calling for a full review of legislation, especially the Civic Government (Scotland) Act 1982. Do other members know of anything of note that has happened to drive the petition?

Bill Aitken: There is nothing that I am aware of.

Stewart Stevenson: I make a personal observation that the length of the top shelves in shops appears to have increased. In some cases, we are now talking about the top two shelves. It is a salami change, if you like; it has happened a little bit at a time over a relatively long period. I suspect that the petitioner has got to the point of saying, "This is enough." I have some sympathy with that view. I am not aware of a specific incident that might have inspired the petition; the gradual increase in the display of pornography seems likely to have led to it.

The Convener: Would the committee be happy to add to our list of things to do that we write to the petitioner asking whether anything in particular concerns her and has prompted her to petition the Parliament?

Members *indicated agreement*.

The Convener: We shall also take up Stewart Stevenson's suggestion and ask the Executive to consider whether there is any proven link between pornography and violence against women, which is the issue that lies at the heart of the petition.

Subordinate Legislation

Combined Police Area Amalgamation Schemes 1995 Amendment (No 2) (Scotland) Order 2002 (SSI 2002/458)

The Convener: The next item is consideration of subordinate legislation.

Stewart Stevenson: On a point of order, convener. I note that the motion that designates the Justice 2 Committee as the lead committee on the instrument is published in today's bulletin. Can the clerks assure us that that designation has been passed?

Gillian Baxendine (Clerk): It has not been passed yet. However, the committee can consider anything that is within its remit, so I suggest that the committee consider the instrument on a provisional basis and decide whether it would have any comments if the instrument were sent to it. If necessary, we can return to the matter again, but I hope that that will not be necessary.

Stewart Stevenson: My point was simply a procedural one. I wanted to be clear about the basis on which we are considering the instrument. I have no issues with it.

The Convener: You are spot on. I was about to tell the committee that the instrument has not yet been formally referred to the committee. The instrument does not seem controversial, but if there are any matters that members want us to note, we can do so. If not, do members agree simply to note the instrument?

Members *indicated agreement*.

Crown Office and Procurator Fiscal Service Inquiry

The Convener: Following our last discussion on our inquiry into the Crown Office and Procurator Fiscal Service, we agreed a remit for Duncan Hamilton's report. Do members agree that Duncan Hamilton will be our reporter?

Members *indicated agreement*.

The Convener: As Duncan is not here yet, I should point out that members may wish to relay their views to him.

Land Reform (Scotland) Bill: Stage 2

The Convener: The Deputy Minister for Environment and Rural Development will join us shortly. I take this opportunity to thank Bill Aitken for stepping into my place yesterday. I have told him that he can relax today. Thank you, Bill, for taking over the reins.

This is the 10th stage 2 meeting on the Land Reform (Scotland) Bill. Members should have copies of the marshalled list of amendments, the bill itself and all the usual bits and pieces. We are now on section 37; we are making good progress.

Mr Alasdair Morrison (Western Isles) (Lab): It is worth noting that yesterday's meeting finished seven minutes before the scheduled time.

Stewart Stevenson: We will go for eight minutes today.

Section 37—Effect of registration

The Convener: Once again, I welcome the Deputy Minister for Environment and Rural Development to the committee.

Amendment 212, in the name of George Lyon, is grouped with amendments 5, 6, 467, 7, 468, 218, 343, 8, 9, 10 and 469.

George Lyon: I lodged amendments 212, 5, 6, 7, 8, 9 and 10 in response to evidence that the committee took at stage 1. At the first evidence session, we heard from Andy Wightman that, under the current Executive proposals, less than 1 per cent of all the land sold last year in Scotland would be affected by the pre-emptive community right to buy. Our stage 1 report highlighted that as one of the committee's key concerns.

It was clear that, through the legislation, we were offering the opportunity to communities to purchase a crucial piece of land that would be useful for the sustainable development of those communities. However, if the figures are accurate, we might also be telling them that they might have to wait 100 years before they have the opportunity to exercise the right to buy. As is also well known, many of the parcels of land and estates are held in trusts or by companies, usually for tax reasons, and concern has been expressed that those vehicles would be exempt from the triggering of the community right to buy.

My amendments are an attempt to provide extra triggers to ensure that communities that register an interest in a parcel of land get an opportunity, at some stage, to decide whether they want to buy it. That is the main reason for my lodging the amendments. If Andy Wightman's evidence is

correct, the community right to buy will have little or no effect on communities throughout Scotland; therefore, as it is drafted, the bill is fatally flawed.

I move amendment 212.

10:15

Stewart Stevenson: I shall support George Lyon's amendments. Amendments 467, 468 and 469, which I lodged, must be considered together, as they all seek to address the issue of the landowner granting a third party the option of buying the land at some future point. Such options are granted for many reasons, the main one being that a third party may seek to buy a piece of land for a purpose that will require planning consent. The granting of an option that will be exercised only if that planning consent is secured is a way in which developers and others can secure their position without making the commitment that buying the land entails. They can buy an option for a relatively small amount of money, go through the planning process, obtain the permissions and then buy the land.

Amendment 467 would exclude the right for a community to buy a piece of land when it is sold following the granting of an option and moves the point at which the community has the right to buy to the point at which the option is granted. If the community does not exercise its right to buy the land when the option is granted, it cannot come back to it later. I am prepared to hear from the minister if there is a better way of achieving that. The amendment is not necessarily the final word on the issue. However, it is important that we do not create a situation in which options cannot be granted because of uncertainty over whether the person to whom an option is granted can buy the land at a subsequent date. All that I am seeking is to make the point at which the options are granted the point at which the community can exercise its right to buy. That is the intention. If the minister can point to defects in the drafting of the amendment, we can deal with them.

Bill Aitken: Section 37(5)(b) prevents the owner of a piece of land, or the creditor under a standard security over the land, from entering into

"negotiations with another with a view to the transfer of the land".

As it is drafted, the bill provides no sanction against an owner of land in respect of any breach of section 37(5)(b). However, any possible sanction may involve a breach of article 10 of the European convention on human rights, which states inter alia:

"Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers."

Even in the new Scotland, we still have the right of freedom of expression—for the moment, at any rate. It would be unfortunate in the extreme if that were to be prejudiced in any way. Amendment 218 seeks to prevent that from happening.

On the question of freedom, I believe that George Lyon's amendment 212 is an appalling attempt to interfere with the rights of individuals to dispose of their property in the way that they wish. Accordingly, the committee will not be surprised to learn that I see no merit in the amendment and that I will oppose it.

The Deputy Minister for Environment and Rural Development (Allan Wilson): This group of amendments is considerable, so I will deal with it in some detail to address the points that members have made and that have arisen from representations that I have received, to which the committee's stage 1 report referred. The committee expressed concerns that a lot of land—

The Convener: I apologise for interrupting you, minister, but I find the sound awful low this morning. I wonder whether it could be put up a notch.

Allan Wilson: I hope that the sound is better now.

The Convener: Yes, that is better.

Allan Wilson: My voice will resonate around the room.

Paragraph 100 of the committee's stage 1 report expressed concerns that a lot of land would be effectively excluded from the right to buy, because it is owned by family trusts and limited companies. The committee recommended that the Executive consider measures to bring more rural land within the scope of the bill. We went away, as we said that we would, and reconsidered all those areas. We decided to make changes to accommodate the committee's desires.

Ross Finnie wrote to the committee on 4 October confirming that we had reconsidered various aspects of the bill with a view to identifying additional areas where the right to buy might be triggered. We have also looked closely at the amendments in this group to see whether they would form a reasonable basis for such change.

In developing the bill and our amendments, we have enlisted the services of a senior official from the Inland Revenue to help us to determine how the policy can be best served in each case and how definitions might be tackled in the bill.

In general terms, exempt transfers that are contained in the bill in effect mirror exemptions in taxation statutes. Our development of the bill included an expert seminar involving the Royal Institution of Chartered Surveyors in Scotland, the

National Farmers Union of Scotland, the Scottish Landowners Federation, the Inland Revenue and other experts from the conveyancing sector. It was agreed that inter-family transfers should be exempt from the bill. The agreed list of such transfers included inheritance; transfers that are covered in existing intestacy laws; family trusts; inter-group transfers; pro indiviso transfers, for example as part of a divorce settlement; insolvency; and gifts and leases.

I believe that the bill as drafted will mean that the right to buy is triggered by nearly all transactions for value. However, the one category of such transactions that are exempt at present relates to transfers between family members. For that reason, I am happy to support George Lyon's amendment 5 in order to remove the exemption. Consequently, the Executive's amendment 343 is provided in support of Mr Lyon's amendment 5, as there will be no need to provide in the bill a definition of family if amendment 5 is agreed to. I urge the committee to support amendment 5, in the name of George Lyon, and amendment 343, in the name of Ross Finnie.

Amendment 8 is similar to Executive amendment 343, but it goes further. As well as removing the definition of family from the bill, it removes the references to trusts and companies in section 37(4). That goes too far, as do amendments 6 and 7, which are also in the name of George Lyon.

If we were to accept amendment 6, we would remove section 37(4)(e) from the bill, which relates to the exemption of transfers of land between companies in the same group. That should not be used as a trigger, as such transfers occur for valid business reasons that are confined solely within that group, such as company restructuring. It is clear that such a transfer between companies in the same group—that is, with the same parent company—does not constitute a change of ownership, as the two companies exchanging land remain within the ownership of the same parent company. That follows the capital gains tax rules that are operated by the Inland Revenue of no gains, no loss for group company transfers and therefore adopts section 171 of the Taxation of Chargeable Gains Act 1992, which is already well understood by companies that are registered in the United Kingdom. To proceed otherwise would mean that the legislation encroached on company law, which is a reserved matter.

The area is complex and includes additional difficulties that relate to company share transfers and attempting to define what is meant by "effective control". It is too simplistic to assume that control is determined by simple majority ownership and there are obvious difficulties in tracing share transfers for all companies and with monitoring trading by the second on the stock market, as such information is not held centrally at Companies House. There are no proposals or resources to track or investigate share transfers and neither the community body nor the Scottish Executive would be able to police changes in order to ascertain when and whether the right to buy had arisen. In current circumstances, that would make the legislation unenforceable. However, if evidence is provided to ministers in respect of land that is owned by a company and is being transferred outwith the company group, the legislation will apply.

Although amendment 6 is obviously well intentioned in seeking to make more land available for community purchase, a transfer of land that is akin to a sale—which is our guiding principle—is not demonstrated in the circumstances to which it pertains, as the land will remain within the ownership of the parent company. The amendment is therefore outwith the general scope of the community right to buy, notwithstanding what I said about company law.

Amendment 212 has three legs. First, it would have the effect of prohibiting all transfers of land to persons or bodies outwith the European Union. From a policy perspective, such a provision is well outwith the scope of the bill.

Secondly, proposed subsection (3A)(b) would prohibit

"transfers of pro indiviso shares in land".

As I have mentioned, that was one of the scenarios that was included when we considered how we could extend transfers relating to land that is owned jointly—for example, by families, trusts or partnerships. Such transfers have been raised as a topic of concern by landowning interests, with particular reference to the sad circumstances of divorce where, as part of the settlement, jointly owned land is transferred to one of the parties in the whole. It would seem reasonable for such transfers to be exempt. However, if all pro indiviso shares are excluded, it would be possible for land ownership to be arranged so that all the land is transferred in that way and to make it exempt as a consequence. We have therefore concluded that, overall, those transfers should not specifically act as a trigger. Instead, we have made provision for exemption for divorce settlements by including an order of a court as an exemption in section 37(4)(c). That goes some way towards meeting the intention of proposed subsection (3A)(b).

The third leg of amendment 212 is proposed subsection (3A)(c), which would allow any transfer of shares in a company that owns land to trigger the right to buy, where there is a registered interest. We have considered the issue in detail. In allowing all transfers of land between companies

to be a trigger, where there is a registered interest, subsection (3A)(c) would have a similar effect to amendment 6. I dealt with the difficulties that are associated with share transfers when I discussed amendment 6.

If amendment 212 were agreed to, subsection (3B) would allow subsection (3A) to override section 37(4).

10:30

Amendment 7 seeks to remove transfers of land on the assumption, resignation or death of partners in a firm or trustees of a trust, which is dealt with in section 37(4)(h). Such transfers do not usually result in the land being transferred from the ownership of that firm or trust. The land usually remains under the ownership of the same firm or trust, even though one or more of its partners or trustees has been superseded. The land is not transferred until it leaves the ownership of the firm, the trust or, where appropriate, the group. Particularly in the event of the death of a partner or trustee, such actions cannot be described as a voluntary intention to dispose of the land, as there is no willing seller, which part 2 of the bill requires. To act in any other way on the demise or resignation of a partner in a firm or a trustee of a trust would be to fall outwith the ethos of the community right to buy.

However, the bill will apply to any voluntary disposal of land that takes place following any of the circumstances that I have described, should the firm or trust no longer wish to retain the land, or should the firm or trust be dissolved.

I understand that amendment 218 is a Law Society of Scotland amendment. That body contends, I believe, that the bill provides no sanction against an owner of land in respect of any breach of section 37(5)(b) and that any possible sanction may involve a breach of article 10 of the European convention on human rights, which states:

"Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers."

The expression "enters into negotiations" goes further than

"to receive and impart information and ideas"

in that it applies to the more formal initial steps of negotiating detailed elements that relate to a possible transfer. However, there is a grey area. That is why the sanction for any breach under section 37(5)(b) should be the anti-avoidance provision in section 40(2), which allows the Lands Tribunal for Scotland, under section 46(1)(a)(ii), to determine whether such a breach has taken place. An application by the community body to the Lands Tribunal under section 46(1) would instigate that process. I hope that the committee will agree that the bill already includes a suitable sanction and I invite Bill Aitken not to move amendment 218.

Amendments 8, 9 and 10 are consequential to amendments 6 and 7, which I have already indicated my resistance to, so I urge the committee to resist them in the interests of the bill. Those amendments go too far and they would create more difficulties than they would resolve.

Amendments 467, 468 and 469, in the name of Stewart Stevenson, were later additions to the group. At the outset, I am happy to say that the intent behind the amendments is already covered in the bill.

Under an option agreement, a landowner and a developer enter into a contract whereby the developer pays an option price to secure a right to buy the land at a date within a defined period that is agreed between the two parties. If the developer then exercises the right-to-buy option on a chosen date that is within that agreed period, the purchase price is paid on transfer of the land. The option will endure for a finite period, which can be a number of years. If the option period expires without the developer exercising the right to buy, the option price is forfeited.

Section 37(4)(g)(iv) provides for the exemption of any transfer of land that is subject to an option agreement at the time that the community body applies to register an interest in that land. The policy is that, if there is an existing option to purchase, the community right to buy should not come into play, as the land will not have been exposed for sale on the open market. Therefore, section 37(4)(g)(iv) already covers Stewart Stevenson's point about a continuing option. However, if, following a community body's interest being registered, the landowner were to seek to enter into any new option, that would act as a trigger for the right to buy.

Amendment 467 would allow the community body with a registered interest in the land to exercise its right to buy when an existing option agreement is exercised. Since the option agreement would have been concluded prior to the community body's registration of interest, that agreement potentially to transfer the land will already have been concluded under the terms of the option agreement that was entered into prior to the community body's registration. We believe that any intervention at that stage would interfere with the land market to an unacceptable extent. For that reason, we resist amendment 467.

We will also resist amendments 468 and 469. Amendment 468 would provide for the setting up of an option agreement to be listed in section

37(5) as a trigger for right to buy where an interest has been registered. Although it could be argued that the amendment would help to clarify the policy intention, which is that any new option following a registered interest should trigger the right to buy, we consider that, given the provision in section 37(4)(g)(iv), it is already obvious that the granting of an option after an interest has been registered would act as a trigger.

Amendment 469 is unnecessary for the reasons that I have stated for amendment 468, which is that the issue is already covered by the provisions of section 37(5). On that basis, I urge the committee to resist amendments 467, 468 and 469.

I am grateful to you, convener, for allowing me the time for such a lengthy explanation of the Executive's position on transfers, but I believe that it is time well spent as part of the process of considering what is a complex and important aspect of the bill. Obviously, my explanation supplements the letter that we sent to the committee at the beginning of the month.

I will press amendment 343. In light of the explanation that I have given, I ask George Lyon and Stewart Stevenson not to press their amendments, excluding amendment 5, which, as Ross Finnie has already indicated, we are happy to support.

The Convener: As the minister said, it is important that we spend some time examining where we will end up in relation to section 37, which the committee's stage 1 report highlighted as being fundamental to the whole question of right to buy.

George Lyon: I thank the minister for his letter and his further explanation. In his letter, he indicated that 70 per cent of all transfers of rural land that were registered last year would have triggered the right to buy. That picture is completely different from the one that we received in evidence at stage 1 and it puts a completely different perspective on the powers of the bill and its likely effect.

I have two questions that I would like the minister to answer. The first concerns the catch-all, the triggers for the right to buy and how much land will be affected by the measures in the bill. The minister indicated that on an examination of the situation last year the figure would be 70 per cent. Was that figure arrived at on the assumption that the Executive would accept amendment 5?

Secondly, how will the catch-all work? Can the minister explain how the situation in which estates try to avoid triggering the community right to buy by forming trusts or moving into companies can be prevented under section 40? Can he give us guarantees on that point, because it is crucial that there is a catch-all to prevent active avoidance of the provisions of the bill?

The Convener: If no other members wish to speak, I have a few questions. Section 37 is fundamental to the bill. Not only is it important for the development of rural communities, but I believe—and I say so openly—that it provides a way to transfer ownership of land to a greater number of people in Scotland. As the committee said in its stage 1 report, we believe that a way should be found to do that, so I am particularly pleased that the Executive has responded, in part at least, to our recommendation with amendment 343.

In its stage 1 report, the committee was also keen to examine the question of transfers of share ownership. I heard what you said on that point, minister, but I want to be clear in my mind about why the Executive will not support the proposal to make such transfers a trigger for the right to buy. Are you saying that the fundamental reason why that would be practically impossible relates to the resources that would be required to track changes? Is it within our competence to have such a trigger? If a clear majority of shares are transferred to a different owner, why would that not trigger the right to buy? I am not entirely clear why the Executive is not supporting the proposal.

While the minister is thinking about answers to those important questions, do any other members wish to make points?

Bill Aitken: Members are correct in saying that the measures are a pivotal part of the bill. I agree with that assumption. However, I am deeply concerned by amendment 5. Clearly, it represents an outrageous attempt to seek effectively to take people's land away from them and to prevent them from disposing of land to members of their family. I doubt whether such legislation has been put on the statute book of any civilised country for many years. It smacks of the sort of legislation that would have been introduced in Albania, Cuba or the Soviet Union as was. It will put the people of Scotland's confidence in the legislative process under severe strain, because the proposal is nonsensical. I suspect that, at the end of the day, it will prove to be unworkable. I also suspect that it will be subject to legal challenge in Scotland and Europe. Even at this late stage, I urge George Lyon and the Executive to think again.

Mr Morrison: I am sure that Mr Aitken, being a reasonable man, will accept that the current system of land ownership is perverse.

The Convener: Mr Aitken is entitled to his view. We have heard the speech before and I am sure that we will hear it again. That is fair enough, but the majority view of the committee is clear. We feel that Scotland is a nation in which there are too

few owners, and if there is an opportunity for us to expand ownership, the committee has always said that it intends to support that.

There are several questions. Will the minister do what he can to answer as many of them as possible?

10:45

Allan Wilson: I will do my best. Important issues were raised, and George Lyon rightly draws attention to the figure of 70 per cent of all transfers being covered. That figure is significant and excludes the provision that I hope we will agree on family transfers, which obviously applies to transfers for value. That would be in addition to the 70 per cent that we calculated, although I am not sure by how much it would increase the figure. It would still exempt gifts of land and inheritance of land, to which George Lyon referred.

On the point about using transfers to trusts or companies as a means of avoidance, the community interest would have the right to take a transfer to the Lands Tribunal for Scotland, and unless the owners could demonstrate a sound commercial reason for it, the tribunal could then trigger the community right to buy. However, there is an important market consideration. Generally speaking, one might imagine that most transfers would be to avoid tax, and if people are engaged in such enterprise, they are not in the market for selling the land in question. Therefore, it is not land that would otherwise have come on the market.

A critical point is that there is no blight on the process of the community expressing an interest in the ownership of the land at that time. Indeed, I would say that the market value is added to, because there is a third-party interest. Given that capital receipt is usually the primary motivating factor in a seller's willingness or otherwise to sell, there is no market incentive for them to transfer. That is an important consideration. I would not expect a mass attempt by the land-owning classes to transfer ownership to trusts or shares, because it is not in their financial interest.

The question of tracking share transfers is not about resources. I could devote considerable resources to the process and still not do it. In response to the committee's stage 1 report, we examined the matter in considerable detail. We took the view that such transfers should not trigger the right to buy as they are normally made within the same group or among companies for valid business reasons such as company or financial restructuring. That should be taken in the context of what I have just said about there not being a market incentive for using such transfers as a means of avoiding selling to the community. As anyone engaged in selling property will know, sellers want as many potential buyers as possible to force up the market value of the land.

The entrance of the community into the auction has the market effect of pushing up the value of the landholding. That is the principal reason and it is a valid business reason. When control changes through changes in share ownership the issue clearly strays into company law, which is of course reserved to Westminster. I also referred to the difficulties in tracking such changes.

The Convener: I will just stop you there. I want to be clear about why the Executive has ruled out that option. In the situation that you have described, the control of companies and changes in ownership through changes in shareholdings are a matter for company law, and we do not have the competence to deal with that. Is that the primary reason?

Allan Wilson: As I have just said, there is the question of our inability to enforce the provision were we to introduce it. It would involve us in the reserved area of company law, which is outwith the competence of the legislation.

Stewart Stevenson: It has taken me a little while to absorb what the minister has said about amendments 467, 468 and 469. By and large, I am content with what the minister has said.

However, I want to push him a little bit on section 36, on the procedure for late applications. I am slightly unclear about that and the minister might be able to clarify things for me. The granting of options is not something of which a community will normally be aware. A community might be aware of it but it is not normally advertised. Given that a community cannot register after an option has been granted—as I understand it—do not amendments 467, 468 and 469 go some way to addressing the issue in allowing late registration?

I have a number of issues to ask the minister about. I could bowl all of them at him at once or does he prefer to deal with that question first?

Allan Wilson: I asked similar questions earlier today. As I understand it, when the option is being considered there would be an obligation on the owner to tell us about the prospective transfer under the proposed legislation.

Stewart Stevenson: Is that the case even though there is no registration? As I understand it, the procedure for late registration is generally used when land is advertised. However, options go through the same process only very exceptionally. I am concerned that options could be granted that then block off the community's opportunity to buy because of the way in which the bill is currently structured.

Allan Wilson: I hear what you are saying.

Stewart Stevenson: I genuinely seek clarification. I am sure that we are pointing in the same direction.

Allan Wilson: We are. I am not sure where in your amendments 467, 468 and 469 that is provided for.

Stewart Stevenson: I am genuinely trying to find out what I might or might not have to do at stage 3. I am perfectly willing not to move the amendments on the basis of what you have said.

Allan Wilson: I think that that might be the solution, because I have no problem with what you seek to secure. However, I would argue that the bill already contains adequate provision. Like you, I am anxious to ensure that communities do not lose the opportunity to intervene in the process if options are entered into and exercised. I do not believe that to be in the interests of the seller, never mind of anyone else, so I am happy to enter into correspondence or discussion with you to ensure that all the potential loopholes are plugged.

Stewart Stevenson: In the interest of progressing today's debate and because you have assured me of the effect, I am happy not to move my amendments. However, I will look more closely at the effect of late registration in relation to options. The subject is complicated—but that may just be because of my limitations today.

I have another couple of points. When speaking to amendment 7, the minister referred to the willing seller principle. It occurred to me that there is at least one instance in which there is no willing seller: when someone dies intestate and their assets must be sold. That relates to the minister's example. I wonder whether he wants to reconsider his opposition to amendment 7 in the light of my observation.

I have something with a wee bit more substance on amendment 212. The minister made great play of the possibility that we are stepping into ultra vires areas in relation to the Companies Act 1985. However, is not it the case that under the provisions of the 1985 act a company is required to indicate in its annual report any outstanding disputes or actions against the company? I do not have the 1985 act in front of me, so I cannot be certain about this, but it is likely that the provisions of the 1985 act would require a company to report to its shareholders that a registration had taken place on land in which it had an interest. Without treading on ultra vires matters, the existing law might cover the area that the minister suggests proposed subsection (3A)(c) in amendment 212 should not be treading on.

The Convener: Just before the minister answers, I want to ask Stewart Stevenson a question that perhaps the minister could also address. I am not sure what Stewart Stevenson means by his question about intestate estates that may be sold. The Succession (Scotland) Act 1964 would apply in such a case. Does the point refer to situations in which there is no one to inherit the property? What circumstances was he talking about?

Stewart Stevenson: I was simply making the point that the minister said that the principle is based on having a willing seller. He then made a remark about the handling of estates, to the effect that it is those who inherit who decide to sell. I was just suggesting that there are examples of there being no willing seller. My point was more a debating one than a legal one.

Allan Wilson: I presume that the point that the convener will make is that if a person dies intestate that does not mean that their assets will be sold. The assets would pass to the nearest relative. However, Stewart Stevenson raised a point about options in relation to late applications and I think that we would want to have a look at that.

On Stewart Stevenson's latter point about company law, the hypothetical situation to which he referred could still affect legitimate company restructuring. Therefore, as I understand it, that would impinge upon other aspects of company law that remain reserved. It may the case that what Stewart Stevenson described would be imposed as a consequence of company law, but it would have other implications and effects—for example, on legitimate restructuring.

The Convener: What you said is helpful because some of this area is complex and may need further consideration. As Stewart Stevenson said, the concept of the willing seller is perhaps just a general rule. If there were no one to succeed, land would revert to the Crown. If the Crown decides to dispose of the land, the willing seller principle does not fit. There may be a couple of exceptions to the general rule. Stewart Stevenson was right to raise the point.

No other member wishes to speak and the minister has covered all the ground that he wishes to cover, so I ask George Lyon to wind up.

11:00

George Lyon: I thank the minister for clarifying the Executive's position on my amendments. The amendments were probing amendments, which I lodged to draw the Executive on the amount of rural land that would become eligible under the current legislation. The minister's letter outlining the fact that 70 per cent of all transactions last year would have qualified gives me and the committee comfort, as we raised the issue.

Amendment 5 is directed at the small minority of people who may try to use transfers from an

individual to long-lost cousins, for example, to frustrate the genuine interests of communities, so I intend to move the amendment.

One would expect nothing less from Bill Aitken, in his role as the landlord's lapdog, than his intemperate outburst. He performs his duties well, and I hope that he gets adequate reward.

Bill Aitken: That sounds defamatory.

George Lyon: The issue is important, and it is pivotal to the working of the bill. The triggers are crucial. If we are to offer the majority of communities throughout rural Scotland an opportunity to take ownership of small parcels of land that are crucial to their future development and sustainability, we must ensure that those opportunities come to fruition and that it is not a promise that will not be delivered over the next 100 years. I welcome the minister's clarification and seek to withdraw amendment 212.

Amendment 212, by agreement, withdrawn.

Amendment 5 moved—[George Lyon].

The Convener: The question is, that amendment 5 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Barrie, Scott (Dunfermline West) (Lab)
Lyon, George (Argyll and Bute) (LD)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST

Aitken, Bill (Glasgow) (Con)

ABSTENTIONS

Hamilton, Mr Duncan (Highlands and Islands) (SNP)

The Convener: The result of the division is: For 4, Against 1, Abstentions 0.

Amendment 5 agreed to.

Amendments 6, 467, 7, 468 and 218 not moved.

The Convener: The question is, that section 37, as amended, be agreed to. Are we agreed?

Bill Aitken: No.

The Convener: I am afraid that, according to bill procedure, we cannot vote on sections. Members cannot disagree at this point. Nonetheless, Bill Aitken's dissent is noted.

Mr Duncan Hamilton (Highlands and Islands) (SNP): Why did you ask the question, then?

The Convener: It is just a tidying-up procedure under the Scotland Act 1998 or something like that.

Section 37, as amended, agreed to.

Section 38—Provisions supplementary to and explanatory of section 37

Amendment 343 moved—[Allan Wilson]—and agreed to.

Amendment 8 not moved.

Section 38, as amended, agreed to.

Section 39 agreed to.

Section 40—Anti-avoidance provisions

Amendments 9 and 10 not moved.

Section 40 agreed to.

Section 41—Duration and renewal of registration

The Convener: Amendment 344 is grouped with amendments 213, 345 and 346. I ask the minister to speak to and move amendment 344 and to speak to the other amendments in the group.

Allan Wilson: The amendments in the group relate to the procedure for re-registration of an interest in land. Our amendments 344 and 345 clarify the duration of the five-year period of registration of an interest in land. They amend the bill so that any subsequent period of registration starts at the end of the previous five-year period. I think that the committee will agree that that is a clearer way of arranging for the re-registration of community interests. Provided that the registration is renewed, it will mean that the date of future re-registrations will be the same as that of the original registration.

Amendment 345 clarifies the circumstances in which a community body can apply to register an interest in land in which it had previously registered an interest. The amendment sets out that a community body can apply to register an interest in land in which it previously had an interest that has ceased to have effect or where such an interest has been deleted by ministers. The clarifications are useful; they will help communities to understand the bill.

Roseanna Cunningham's amendment 213, which I suspect Stewart Stevenson might speak to, is somewhat different in its intention. The amendment would significantly change the re-registration process that is set out in section 41, by putting a duty on ministers to write to the community body six months before the end of the five-year registration period, inviting the community body to renew its registration. We think that it is better to put the legal responsibility for renewal firmly on the community body. Yesterday, we discussed at length the question of serious intent, which is a way of ensuring that a community body is intent on buying the land when it comes to be sold.

I say to Stewart Stevenson that I have no problem with setting up an administrative system, whereby the Executive sends a reminder to the community body around six months before the expiry of registration, advising it that its registration is about to expire and asking it to re-apply. However, I am unhappy with the transfer of responsibility to ministers, which would raise questions similar to those we discussed yesterday about the penalty if ministers failed to do that. We would have to advise that the system was regulatory as opposed to mandatory and make consequential amendments.

I suggest that we approach the provision in an administrative manner, by setting up a system that would involve a reminder being sent to the community bodies six months in advance of expiry, giving them the option to take up the registration again. I recommend that amendment 213 should not be moved and that the committee should support the Executive's amendments, which I believe make significant improvements.

I move amendment 344.

The Convener: I assume that Stewart Stevenson will speak to Roseanna Cunningham's amendment 213.

Stewart Stevenson: I note that the minister has no concerns about the substance of amendment 213. I welcome his offer to establish an administrative procedure. I am sure that that meets the need and I am happy to fall in with his wishes. Under no circumstances would I wish to embarrass ministers, especially ministers in the new Administration that will take over after May.

The Convener: Goodness me; we are all awake this morning.

Allan Wilson: If I am still in this position in the new Administration after May, I will be able to do that.

Bill Aitken: I am relieved to hear it.

The Convener: Although I have no particular problems with the content of amendment 344, the committee made it clear in its stage 1 report that it wanted to be sure that there were no unnecessary gaps between the five-year registration period and the next period of registration. I think that the matter has been adequately dealt with. If no other member wishes to speak, I ask the minister whether he wishes to wind up.

Allan Wilson: No. I am happy with the debate.

Amendment 344 agreed to.

Amendment 213 not moved.

Amendment 345 moved—[Allan Wilson]—and agreed to.

Section 41, as amended, agreed to.

Section 42—Deletion of community interest in land

The Convener: Amendment 219 is grouped with amendments 226, 313 and 315.

Bill Aitken: Amendment 219 seeks to add the definition of

"creditor in a standard security over the land"

to the list of persons whose views are to be sought by ministers on the proposed deletion of a community interest. The reasoning behind that is perfectly straightforward. As any proposed deletion of such an interest might have an effect on the value of land and therefore on the value of the standard security, it is only reasonable that ministers seek the views of a creditor in such circumstances.

Amendment 226, which amends section 48, ensures that

"the owner of the land"

subject to the proposed purchase and the

"creditor in a standard security"

over that land will be notified by the community body of the result of the ballot, namely of the number of people who were eligible to vote, the number who voted, and the number who voted in favour of the proposition mentioned in section 47(2)(b).

Although the provision exists for ministers to be notified of the detail of the ballot described in section 48(6), there is no mention of the owner of the land subject to the proposed purchase or of the creditor in a standard security over the land. Again, it would seem equitable and reasonable to include the owner and creditor as well as ministers among those who should be notified of the outcome of the ballot, as it will have direct consequences on their respective pecuniary interests.

Amendment 313, which amends section 72, will ensure that

"the owner of the land"

subject to the proposed purchase and the

"creditor in a standard security"

over the land will be notified by the crofting community body of the details of the ballot set out in section 72(7). Again, although there is provision for ministers to be notified of the details of that ballot, there is no mention of the owner of the land subject to the proposed purchase or of the creditor in a standard security. It seems only equitable to adjust matters in that direction.

Amendment 315, which amends section 82, again relates to the interests of heritable creditors and those who might be prejudiced by any failure to be provided with appropriate information. As I have said, the amendments are perfectly straightforward and have been lodged in a genuine effort to be helpful. The intention behind them is not particularly controversial and I look forward to hearing the minister's comments.

I move amendment 219.

The Convener: If no other member wishes to comment, I invite the minister to respond.

Allan Wilson: We discussed the matter in some detail yesterday. Indeed, in order to address a few of the issues, we lodged about 20 amendments that I think were welcomed by Bill Aitken and the rest of the committee.

Amendment 219 adds a further reference to

"any creditor in a standard security with a right to sell the land"

to those who are to be consulted when ministers propose to delete an interest from the register. As we made extensive changes to the bill yesterday in relation to such creditors, we do not think that that further change is necessary.

Turning to amendments 226 and 313, neither I nor the committee will have any objection to the idea that the landowner and any heritable creditor should be informed of the result of a ballot at the same time as ministers. If one thinks it through, it is obviously in the interests of the community body to tell the owner when a ballot supports an application. When the owner knows that an application is certain, he is more likely to seek a negotiated sale. I see that as common practice in the event of a ballot coming out in favour of a community interest being pursued. That will usually suit both parties better than the formal process that is created by the legislation. For that reason, and because the amendments make no provision for dealing with failure to notify an unfavourable result, I suggest that there is nothing to be gained by accepting the amendments. I believe that it will be shown to be in the interests of both parties to enter into a negotiated sale when a ballot result within the community confirms that a community interest ought to be pursued.

Furthermore, in the case of part 3, the ballot must take place before a right-to-buy application can be made. At that point it is quite possible that the crofting community body will be unaware of the existence of a creditor with a right to sell the land.

Amendment 315 would add little to the bill other than an additional small complication. There are adequate arrangements in section 82(3) for advising owners of land of a crofting community body's decision not to proceed with an acquisition and, as members know, Executive amendments 438 and 439 refine the arrangements further by setting a time limit within which ministers must acknowledge the decision by the crofting community body and inform the landowner of that decision. We are introducing those additional amendments to clarify matters. Amendment 315 is superfluous and, unfortunately, it discriminates unfairly by excluding persons entitled to sporting interests that are the subject of a right-to-buy application.

I invite Bill Aitken to withdraw amendment 219 and not to move amendments 226, 313 and 315.

11:15

Bill Aitken: I have listened carefully to the minister's comments. I agree that in many instances it would be in the interests of both parties to have this degree of communication. Unfortunately, in view of the controversial nature of some aspects of the bill, it is likely that those communications will be rendered much more difficult and relationships may be somewhat fraught. That being the case, there is a danger of a lack of communication, so I intend, initially, to press amendment 219.

The Convener: The question is, that amendment 219 be agreed to. Are we agreed?

Members: No.

The 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)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Stevenson, Stewart (Banff and Buchan) (SNP)

The Convener: The result of the division is: For 1, Against 6, Abstentions 0.

Amendment 219 disagreed to.

Section 42 agreed to.

After section 42

Amendment 346 moved—[Allan Wilson]—and agreed to.

Section 43 agreed to.

Section 44—Duties on owner, or creditor, proposing to transfer land

Amendment 469 not moved.

Section 44 agreed to.

Section 45—Procedure following receipt of notice under section 44

The Convener: Amendment 214 is grouped with amendment 215.

Stewart Stevenson: Amendments 214 and 215 relate to previous amendments that we discussed and did not agree. The previous amendments would have provided for registration to be made by a wider range of bodies than companies. The amendments relate to the need, if the previous ones had been passed, to allow the transfer of the right to buy from a body that was not a company to a body that was a company and which would make the purchase.

I will not push the matter too strongly, but there is potential value in allowing the right to buy to be assigned from one body to a successor body. For example, bodies in adjacent areas with registered interests might subsequently realise that they have a common interest. The amendments would allow a process by which those bodies could merge and assign the right to buy to a successor body. I do not think that that process is as important as the context in which the amendments were originally drafted and lodged, but it is likely to be a useful additional facility.

I move amendment 214.

The Convener: These are useful probing amendments. A community body's interest could be registered for 15 years. It would be useful to debate the point with the minister.

Allan Wilson: I am happy to consider the issue. The second community body would have to be properly constituted to register an interest in the same land. I am not sure in what circumstances another community body could be close enough to register an interest in the same land. I am not intrinsically opposed to the proposals—assuming that the bodies were properly constituted—and we will consider the matter, but I cannot think of circumstances in which the proposals would be necessary.

Stewart Stevenson: Amendment 215 refers specifically to ministers' approval, which provides for the point that the minister makes. Is the minister indicating a wish to formulate at a later stage an amendment that addresses the issue more appropriately?

Allan Wilson: I do not think that I said that. The amendments seek to restore an area of ministerial discretion that was removed from the draft bill in response to criticisms from, amongst others, the committee. That is fairly perverse, from the nationalists' perspective. I cannot think of circumstances in which such an assignation would be liable to occur. Like Stewart Stevenson and the convener, I would be interested in preserving the community interest in such circumstances. If assignation was a methodology for preserving the interest, we would consider it. However, I cannot think of circumstances in which two community bodies would be close enough to each other to have a registered interest in the same piece of land.

The Convener: Could there be a scenario whereby a community body might change its nature but still fulfil the requirements under the legislation? For example, if a community body changed its name, would the right to buy have to be reassigned?

Allan Wilson: No. The body could restructure its memorandum and articles of association under the Companies Act 1985. Clearly, that would be with our involvement because we would have to check that the restructuring accorded with the basic definition in the bill.

Stewart Stevenson: The minister makes interesting points, but I can think of a number of scenarios. In the light of changing circumstances over what might be a long period of 50 or 100 years, the community body, which is a limited company, might change its memorandum of association in such a way as to require it to no longer be a body that could register an interest in land. I do not know why it might want to do that, but circumstances in 50 years' time might involve something of which we are not aware. At that point, a successor body could be incorporated to take over the registered interest. I give that as an example, together with the possibility—it might not be a probability—that adjacent bodies might have common interests.

There is a credible range of possibilities over quite a long term. On that basis, I will persist with amendments 214 and 215. We might find, on considering them further, that there are other issues that we need to deal with and we will have the opportunity to do so at stage 3, through amendments lodged either by the minister or by members.

The Convener: I will go against the procedure for a minute and ask Stewart Stevenson a question. What is your intention? Are you trying to ensure that there is a catch-all provision to enable a community body to give the right to buy to another body, if that body met the requirements of the legislation?

Stewart Stevenson: Yes.

The Convener: Who do you think should have the discretion to do that? Should Scottish ministers have that power? Should that be prescribed in the bill?

Stewart Stevenson: Amendment 215 delivers the discretion—which we do not envisage being

exercised often—to Scottish ministers. However, the initiative must come from the community body that has the registration. That should achieve a reasonable balance.

The Convener: Would the minister like to say anything? This is an important issue. I am sympathetic to what Stewart Stevenson is trying to achieve and I do not want to lose everything in the amendment. You have said that you would be willing to consider the substantive point.

Allan Wilson: I am still not too sure what Stewart Stevenson is trying to achieve that could not be achieved by having the two bodies registering an interest in the same land. That would preclude the requirement to make any assignments. I am happy to explore the matter further with the committee. If members could identify a circumstance in which the community interest might be lost without the power of assignation being reserved for ministerial discretion, that would be useful.

The amendment is motivated by conjectures about what might happen 50 years down the line and whether a community body will change its memorandum and articles of association to enable it to do certain things. However, as we said yesterday, provision has been made to prevent community bodies disposing of the assets among themselves because of the fact that public money has been used in the purchase. Those considerations are important and have been included in the legislation to prevent community bodies tampering with their memorandum and articles of association down the line, and it is difficult to provide for assignation on the basis of some hypothetical requirement to change the memorandum and articles of association some years hence.

Stewart Stevenson: I am seeking only to address a situation in which the right to buy has been registered, not the subsequent ownership. I do not think that the minister was suggesting that I was addressing the issue of the subsequent ownership. On that basis, I think that the amendment is a useful addition that will maintain continuity of registration and reduce the risk that there could be gaps in registration that could be to the disadvantage of communities. I will therefore press amendment 214.

Amendment 214 agreed to.

Amendment 215 moved—[Stewart Stevenson].

The Convener: The question is, that amendment 215 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Aitken, Bill (Glasgow) (Con)
Hamilton, Mr Duncan (Highlands and Islands) (SNP)
Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST

Barrie, Scott (Dunfermline West) (Lab)
Lyon, George (Argyll and Bute) (LD)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)

The Convener: The result of the division is: For 3, Against 4, Abstentions 0.

Amendment 215 disagreed to.

Amendment 220 moved—[Bill Aitken].

The Convener: The question is, that amendment 220 be agreed to. Are we agreed?

Members: No.

The 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)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Stevenson, Stewart (Banff and Buchan) (SNP)

The Convener: The result of the division is: For 1, Against 6, Abstentions 0.

Amendment 220 disagreed to.

Section 45, as amended, agreed to.

Section 46 agreed to.

Section 47—Exercise of right to buy: approval of community and consent of Ministers

The Convener: Amendment 181, in the name of George Lyon, is grouped on its own.

11:30

George Lyon: Amendment 181 attempts to simplify section 47(2) by stating that the decision to exercise the community right to buy will be made by a simple majority of those voting in a ballot that is conducted by the community body on the question whether the community body should buy the land. That seems a much simpler approach than that which has been taken by the Executive. Clearly, there would be worries if the vote were not representative—if, for example, few people turned out to vote. However, under section 47(3), the minister has to give final approval of the decision. If there were concern that the simple majority did not represent the wishes of the community, the minister would have the power to step in and stop the process.

I move amendment 181.

Stewart Stevenson: I am happy to support amendment 181. As it is drafted, the bill brings malodorous reminiscences of 1979, when I lost 2.5 stone working for a campaign that was ultimately defeated, not by a majority of the people voting against the proposition, but by too many people not voting at all. I would not wish to inflict on any community the pain that we experienced between 1979 and 1997, which followed that ill-cast and ill-fated piece of legislation.

The Convener: You benefited, nonetheless, by losing 2.5 stone.

Bill Aitken: Leaving aside the therapeutic benefits to Stewart Stevenson of his 1979 activities, there is a difficulty with George Lyon's amendment. Regardless of whether one supports the general terms of this part of the bill, we would all agree that what it asks a community to do is no small thing. If such schemes are to work, they should have the support of as many people in the community as possible. There may be an argument—although I am not proposing it today—that a higher proportion of the community should be required to vote positively if a scheme is to take off.

I understand what George Lyon is trying to do; nevertheless, the amendment could be damaging. A situation could arise in which a community decided on a certain course of action although the majority of the people in that community were not in favour of it. The majority of those voting may have declared their intentions, but there are real dangers if the situation is that the majority of those who are likely to be involved in the community buyout do not feel sufficiently committed to support it in a vote. That is why I cannot support amendment 181. The events of 1979 resulted in 18 years of superb government.

The Convener: Cut.

Bill Aitken: I shall leave it at that.

The Convener: Please do.

Mr Morrison: It is worth observing that the most recent test of such a process was in Harris, in my constituency. About four or five weeks ago, the community went through a buyout. Out of an electorate of 537 people, turnout was 401—a 75 per cent turnout. In recent and previous instances, the experience is that the community votes in greater numbers than it does in Scottish Parliament elections, general elections or local authority elections.

The Convener: I am sympathetic to amendment 181 for the reasons that Stewart Stevenson gave: section 47(2) is reminiscent of a previous occasion. The fact is that, under that section, those who do not participate in the ballot would be counted as having voted against the buyout. That is a wee bit uncomfortable. The case would have to be put as to why we should not have any worries about it. Perhaps we have to consider Alasdair Morrison's experience, but we must ensure that we have the right provisions before we conclude the matter.

Mr Hamilton: I take a slightly different view. First, the overhanging fears of 1979 and Thatcherism—and even of Stewart Stevenson's losing 2.5 stone—are not a reason to make a change to the bill of the scale that amendment 181 proposes. It is a question of scale. I can understand the concerns at a national level, but in small communities, the scale becomes important.

Bill Aitken is right: amendment 181 is a fundamental change. I take Alasdair Morrison's point on the likelihood that the vast majority of the population would take the opportunity to vote. In the circumstances that he mentioned, the buyout would have gone through under section 47(2).

I would be concerned if we arrived at a situation in which 20 per cent of the community voted and 50 per cent of those was enough to push through a measure of such magnitude. George Lyon argued that that is provided for under section 47(3), but I do not see where that subsection provides ministers with an opportunity to say that they were happy or unhappy with a vote on the basis of the turnout.

I oppose amendment 181 in the absence of such ministerial discretion, which would presumably be arbitrary. It would presumably be based on a case-by-case assessment: 20 per cent of a larger number is perhaps more significant than 20 per cent of a community of 100 people. As section 47(3) does not include ministerial discretion on the turnout, it is not unreasonable that half the members of a community of the scale of which we are talking should have to vote on a change of such magnitude.

The Convener: Perhaps it would be useful to have the track record of community buyout results so far and whether they bear out Alasdair Morrison's experience.

Mr Morrison: I will put what Duncan Hamilton said into the context of north Harris. As the person who began the process when the estate went on the market—calling public meetings and then allowing the community to run with it—I assure the committee that, if turnout had been 20 per cent and 51 per cent of that 20 per cent had voted yes, I would have been very uncomfortable supporting a community buyout, given the scale and the number of people concerned. So few would have been involved.

Mr Hamilton: That is precisely my point.

Mr Morrison: Exactly. I wanted to amplify it using the illustration of Harris. Given the numbers concerned, a simple majority of a 20 per cent turnout in Harris would be divisive and would not be the basis on which to proceed with a community buyout.

Allan Wilson: Seeing that we are all reminiscing, my recollection is that the years of pain between 1979 and 1997 to which Stewart Stevenson referred were ushered in by his colleagues voting with Mr Aitken's colleagues to bring down the Labour Government of the day. Had that not happened, we would not have had those years of pain. However, I agree with Duncan Hamilton that that should not colour our consideration of the matter in any way.

Section 47(2) specifies the level of support that a community must show in the ballot. At least half the eligible community members must vote in the ballot—or if less than half vote, they must be a sufficient number to justify the community purchase—and a simple majority of voters must vote in favour.

Interestingly, I agree with what both Alasdair Morrison and Duncan Hamilton said. The principal purpose is to allow the community body to show that it has substantial support from the local community. The principal requirement of the right-to-buy process is that the local community supports the right to buy. If that cannot be shown by having 50 per cent of the local community vote at a simple ballot, the body is undermined. The fundamental principle of extending the right to buy land is that the land purchase should be in the community interest.

Unlike the referendum arrangements in 1979, under our arrangement, the normal minimum proportion of the community that must support a right-to-buy bid will be just over 25 per cent. However, if turnout were higher, the proportion would be higher. Treating people who choose not to vote as opposing the proposition would be unreasonable.

Agreeing to amendment 181 would mean that if 15 people from a turnout of 25 in a community of 500 voted in favour, the community could proceed with the right to buy. It is in no one's interest to argue that that shows the local community's overwhelming wish to purchase the land. Such a result would not show community support and could allow a private right to buy to be presented as a prospective community right to buy. We partly discussed that yesterday.

It is also necessary to maintain the ministerial discretion in section 47(2)(a)(ii), which applies when the turnout is less than 50 per cent. That could be used in exceptional circumstances when a clear majority was in favour, despite a comparatively low turnout. For example, if 49 per cent turned out and nearly all were in favour, ministerial discretion could be used to say that that represented community support. That covers the convener's point about not counting people who did not turn out as opponents of the proposal.

In the example that I gave, the overall level of community support would be far in excess of the 25 per cent minimum that would apply when more than 50 per cent voted. That is a safeguard against very low turnout and is a useful spur to inspire communities to attain the widest possible support for their proposals, as Alasdair Morrison showed. Those who establish a community company must go out and ensure that as much of the community as possible is behind their proposition. That principle is fairly fundamental, so I resist amendment 181 and ask George Lyon to withdraw it.

The Convener: We have all had at least one opportunity to get our political hangovers out of the road and we can move on.

George Lyon: I listened to the minister. Like Alasdair Morrison, I was recently involved in a buyout. It would be extraordinary if the vast majority did not turn out to vote on a community buyout, because buyouts arouse strong feelings one way or the other. The amendment was lodged in that spirit. A simple majority of voters should be all that is required. However, I take the minister's point that section 47(2)(a)(ii) gives ministers discretion about the requirement in section 47(2)(a)(i), so I am minded to withdraw amendment 181.

The Convener: George Lyon seeks to withdraw amendment 181. Does the committee agree to the amendment's withdrawal?

Members: No.

The Convener: The question is, that amendment 181 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST

Aitken, Bill (Glasgow) (Con)
Barrie, Scott (Dunfermline West) (Lab)
Hamilton, Mr Duncan (Highlands and Islands) (SNP)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)

ABSTENTIONS

Lyon, George (Argyll and Bute) (LD)

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

Amendment 181 disagreed to.

Amendment 407 moved—[Allan Wilson]—and agreed to.

The Convener: Amendment 221, in the name of Bill Aitken, is in a group on its own.

11:45

Bill Aitken: Amendment 221 is a straightforward amendment that seeks to require ministers to consider whether a community has the resources to complete a purchase before ministerial consent is granted to the community to purchase land. It is common nowadays in commercial property transactions involving significant amounts of money for the proposed seller to seek guarantees before the conclusion of missives. That is almost invariably the case in large transactions.

Therefore, it is reasonable that there should be an early indication in negotiations, prior to consent being granted for a purchase, that appropriate funds are in place to allow the purchase to be satisfactorily concluded. I concede that in many cases a purchase will be funded by public money in some way. Nevertheless, it is important that the seller receives a financial assurance prior to negotiations taking place. Negotiations can be expensive and financial guarantees should be available.

I move amendment 221.

Scott Barrie: If I understand amendment 221, I think that I have a concern about it. Amendment 221 could artificially inflate the price of land. If people had to disclose that they had sufficient money or disclose the source of the money, that could lead to a bidding contest. If that is the intention of amendment 221, we should reject it.

Mr Hamilton: I have a brief point. Amendment 221 would amend section 47(3)(d). However, section 47(3)(c) states that the minister would have to be convinced

"that what the community body proposes to do with the land is compatible with the sustainable use and development of the land".

I am curious about whether that would, by implication, cover what amendment 221 seeks because there would have to be an expectation that the funding was available to satisfy the provisions of section 47(3)(c).

The Convener: You may be right. We will hear in a moment if you are.

Stewart Stevenson: Amendment 221 is extremely onerous because it states that the minister would have to be satisfied

"that the community body has or will be able to obtain … money".

Therefore, if a community body had not obtained money, it would have to have struck a deal to obtain money. That would be an onerous condition at the consent stage, given that banks or the land fund would not be sure what the proposition was until the minister had given his consent. Therefore, effectively if not necessarily intentionally, amendment 221 would be a wrecking amendment.

George Lyon: As Duncan Hamilton said, section 47(3)(c) implies that there must be a business plan that demonstrates that funding is in place and that a community can buy land and develop the community through the purchase. Therefore, I do not think that there is any necessity for amendment 221. I would be interested to hear the minister's views on Duncan Hamilton's point.

Allan Wilson: We discussed this subject in part yesterday. The committee agreed that it was right for the community body's plans to be made public at the right-to-buy stage, but that the community body should not have to go public on the details of its finances. That is right and proper.

Amendment 221 fails to recognise that the bill as currently drafted gives the community body six months in which to raise the necessary funding, from the date on which it sends confirmation to ministers that it wishes to exercise its right to buy. The funding would not necessarily be in place when the community body sends its confirmation. The time scale would be slightly different if an appeal was lodged, but the principle would be the same.

If amendment 221 were accepted, it could create funding difficulties for community bodies—although that is not, I am sure, Bill Aitken's intention. If the community body applies to the Scottish land fund, it will almost certainly not be in a position to offer any information on funding until after ministerial consent is obtained.

There are safeguards built into the bill to address the scenario of the community body failing to attract the necessary funding. If after six months the community body fails to pay the price agreed by the valuer, the community body's right to buy the land will be extinguished. Similar safeguards are built in if the transaction involves the Lands Tribunal.

For those reasons, we ask the committee not to support amendment 221.

The Convener: If the right to buy is extinguished because the community body has failed to raise the appropriate funds, what position does that place the landowner in? Will the landowner have to go through the same process again?

Allan Wilson: No. He will be free to sell the land to a third party.

The Convener: Will any consideration be given to the fact that the landowner has had to wait for six months to hear the outcome? Will compensation be owed to the landowner if that were to happen?

Allan Wilson: He would be compensated.

Mr Hamilton: Would the compensation cover expenses incurred in the putative sale that was cancelled? For example, what about legal expenses?

Allan Wilson: Does Mr Hamilton perhaps want to declare an interest?

Mr Hamilton: Not yet.

Allan Wilson: I am reliably informed that, under section 59(1)(a), the landowner could be compensated for expenses.

Bill Aitken: Having looked carefully at section 47(3), I cannot accept the contention that the subsection implies that the finance package should already be in place.

Having looked hurriedly at section 59, I concede that that section provides the right to compensation. However, money may be spent under that section that need not be spent if everyone could be satisfied from the inception of the negotiations that the funding package was in place. That is what I seek.

Amendment 221 does not seek to inflate the price, as Scott Barrie suggested, nor is it a wrecking amendment. The amendment simply seeks to apply the same criteria as would apply to a commercial transaction in the real world. Any vendor selling a substantial chunk of property would wish to ensure that the person or group that put in an offer was likely to be able to come up with the funds if matters progressed. We should not apply different commercial standards to negotiations for a community right to buy from those which would apply in normal commercial enterprise.

I will press amendment 221.

The Convener: The question is, that amendment 221 be agreed to. Are we agreed?

Members: No.

The 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)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Stevenson, Stewart (Banff and Buchan) (SNP)

The Convener: The result of the division is: For 1, Against 6, Abstentions 0.

Amendment 221 disagreed to.

Amendment 408 moved—[Allan Wilson].

The Convener: The question is, that amendment 408 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

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

AGAINST

Hamilton, Mr Duncan (Highlands and Islands) (SNP)

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

Amendment 408 agreed to.

Amendment 222 moved—[Bill Aitken].

The Convener: The question is, that amendment 222 be agreed to. Are we agreed?

Members: No.

The 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)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Stevenson, Stewart (Banff and Buchan) (SNP)

The Convener: The result of the division is: For 1, Against 6, Abstentions 0.

Amendment 222 disagreed to.

The Convener: Amendment 347, in the name of Ross Finnie, is grouped with amendments 348 and 349. Amendment 349 is pre-empted by amendment 223, which was debated with amendment 217.

Allan Wilson: Amendment 347 is a technical amendment to make a small, but it is hoped useful, change to section 47. When we considered the text of the bill, it became apparent that, if two or more community bodies had registered an interest, there was no time scale within which ministers had to decide which one was to proceed. As we have just discussed, ministers make their decision only when community support has been demonstrated by way of a ballot. The amendments in the group are technical amendments to rectify that situation and to improve the handling of what

are the unlikely circumstances of two community bodies wishing to buy the same piece of land.

In situations in which two or more community bodies are so involved, two or more ballots are required. It is unlikely that the ballots will be held or the results notified at the same time. However, in that situation, unlikely as it may seem, ministers would be obliged to make their decision within 21 days of receiving the latest notification of the ballot result. I hope that the committee agrees that the amendments in the group make useful, if minor, changes to the bill. I also hope that the committee will support the amendments in the group. I move amendment 347.

Amendment 347 agreed to.

Amendment 348 moved—[Allan Wilson]—and agreed to.

Amendment 223 moved—[Bill Aitken].

The Convener: The question is, that amendment 223 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Aitken, Bill (Glasgow) (Con)

AGAINST

Barrie, Scott (Dunfermline West) (Lab)
Hamilton, Mr Duncan (Highlands and Islands) (SNP)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Stevenson, Stewart (Banff and Buchan) (SNP)

The Convener: The result of the division is: For 1, Against 4, Abstentions 0.

Amendment 223 disagreed to.

Amendment 349 moved—[Allan Wilson]—and agreed to.

Section 47, as amended, agreed to.

Section 48—Ballot procedure

The Convener: Amendment 350, in the name of Ross Finnie, is grouped with amendments 224, 225, 351, 374, 375, 311, 312, 376, 424, 425 and 426. Amendment 350 pre-empts amendments 224 and 225. Amendment 375 pre-empts amendments 311 and 312.

12:00

Allan Wilson: Amendments 350 and 375 remove an area of ministerial discretion from sections 48 and 72 in parts 2 and 3 of the bill. Their linked amendments, amendments 351 and 376, have similar effects in parts 2 and 3. The effect of the amendments is to impart greater certainty and rigour to the ballot process. Although I accept that there are concerns about the extent of ministerial discretion, I believe that the approach that is adopted in amendments 224, 225, 311 and 312 is not the best way in which to proceed. The Executive's amendments 350, 351, 375 and 376 have the desired effect of recasting the bill's terms and removing ministers from the decision-making process on a ballot.

Rules for the conduct of a ballot will be prescribed so as to ensure that the ballot is fair and reasonable. Any dispute will have to be settled judicially. An application that is founded on a ballot that has not been conducted as prescribed would fail. If that happened, a community could conduct a new ballot and make a new application thereafter. The Executive's amendments should ensure that community bodies take great care in the conduct of their ballots. If the committee accepts the Executive's amendments, which respond to members' concern about ministerial involvement, Bill Aitken's amendments are no longer necessary.

Amendment 374 is a technical amendment that has no effect on the way in which the bill will operate. Amendment 424 gives a crofting community body a more reasonable time scale in which to return ballot results. The extreme haste that was previously prescribed is not necessary in part 3. Amendment 425 is procedural and provides that an application cannot be made before ballot results are available to ministers, thus ensuring that ministers have the results before they start to consider an application.

Amendment 426 defines a croft tenant for the purposes of the ballot. Without the amendment, the definition of a croft tenant for the purposes of a ballot would be liable to become an issue to be settled in a court by reference to the provisions of the Crofters (Scotland) Act 1993. That would likely complicate the first application in which rights to vote were disputed and the end result of such a process would be unlikely to differ much from the definition that is provided in amendment 426. The amendment is intended to expedite that process.

I ask the committee to support amendments 350, 351, 374, 375, 376, 424, 425 and 426. I hope that Bill Aitken will agree not to move his amendments 224, 225, 311 and 312, as the issues that they address are addressed in the Executive's amendments.

I move amendment 350.

Bill Aitken: It is important that, when something goes wrong with the conduct of a ballot, the issue should be determined judicially rather than by ministerial discretion. The minister has recognised that. Accordingly, I shall not move amendments 224, 225, 311 and 312.

Amendment 350 agreed to.

Amendment 351 moved—[Allan Wilson]—and agreed to.

Amendment 226 not moved.

Section 48, as amended, agreed to.

Sections 49 and 50 agreed to.

Section 51—Right to buy same land exercisable by only one community body

The Convener: Amendment 352, in the name of Ross Finnie, is grouped with amendments 253, 353, 354, 314, 427 and 428.

Allan Wilson: We are in the same set of circumstances as we were previously. This group of amendments proposes procedural changes to sections 51 and 73, which deal with the unlikely circumstance of two community bodies or crofting community bodies wishing to buy the same piece of land.

Amendments 352, 353 and 354 are technical amendments to improve the handling of the outcome of two or more ballots. I hope that the committee will agree that those are useful, if minor, changes and that it will support them. Amendment 428 makes a similar change to section 73.

We have already discussed in relation to amendments 347, 348 and 349 changes to time limits for ministers' decisions in section 47. Amendment 253 would insert a further time limit in section 52, but we do not think that that is necessary now.

We agree that it is necessary to modify section 73 to clarify the procedural arrangements in the event of competing applications being made. Amendment 314 is clearly intended to be a technical amendment to rectify a procedural omission. However, we have proposed amendment 427, which is intended to deal with the same problem. I believe that amendment 427 would do that in a manner that would ensure that all relevant information is available to be considered before the decision is taken.

On that basis, I ask Bill Aitken to consider not moving amendments 253 and 314, as they are superseded by amendment 348, on which the committee has already voted, and by amendment 427. I invite the committee to support all the Executive amendments to which I have spoken.

I move amendment 352.

Bill Aitken: Discussing amendments 253 and 314 would reiterate the arguments that we heard yesterday, which were resolved, so I will not press the amendments.

Amendment 352 agreed to.

Amendment 253 not moved.

Amendments 353 and 354 moved—[Allan Wilson]—and agreed to.

Section 51, as amended, agreed to.

Section 52—Procedure for buying

The Convener: Amendment 355, in the name of Ross Finnie, is grouped with amendments 356 and 357.

Allan Wilson: The three Executive amendments in this group deal with the procedure for buying land once ministers have given a community their agreement to proceed. Through amendment 355, we have revised the procedure for determining the offer price so that it first allows the seller and the community to reach an agreed price. If they cannot or do not wish to agree a price, a valuer is appointed and either party can appeal against the valuation. That is a better way of proceeding than was our previous proposal, which did not include the first stage of agreement between the parties. As I said earlier, I hope that most agreements will be reached in a similar way.

Amendment 356 is a clarification of the procedure for determining the date of entry where an appeal has not been resolved after four months. It does not change the arrangements that are in place in the bill whereby the entry date is set at no later than two months after the appeal is determined or abandoned.

Amendment 357 amends the conditions that can be applied to the offer. It removes the reference in the bill to "good and marketable title", as that might give the community an advantage over the ordinary buyer.

I hope that the committee will be happy to accept the amendments, which make useful changes to the procedure for buying land.

I move amendment 355.

Amendment 355 agreed to.

Amendments 356 and 357 moved—[Allan Wilson]—and agreed to.

Section 52, as amended, agreed to.

Section 53—Powers of Lands Tribunal in event of failure or delay

The Convener: Amendment 358, in the name of Ross Finnie, is in a group of its own.

Allan Wilson: Amendment 358 removes the procedurally complex section 53(5) and replaces it with a new section that provides what the Lands Tribunal may do if a landowner refuses or fails to effect a transfer of land under an order already made by the Lands Tribunal. It sets out how the

transfer of the land to the community body is to be completed. We hope that the provision will rarely be needed, but it should reassure communities that are seeking to buy land that an ultimate sanction is available to the Lands Tribunal. I hope that the committee will support the amendment, which seeks to clarify and improve the working of the bill.

I move amendment 358.

Amendment 358 agreed to.

Section 53, as amended, agreed to.

Section 54—Procedure where right to buy activated by virtue of notice under section 46(3)

The Convener: Amendment 359, in the name of Ross Finnie, is grouped with amendments 360, 384, 440, 385, 441, 442, 443, 444, 445 and 446.

Allan Wilson: This group contains a range of technical amendments. Amendment 360 is intended to simplify the bill by taking out two specific provisions covering the treatment of heritable securities where the land is transferred to the community body under section 54. That section deals with the right to buy where it is activated after a breach of part 2 has been detected—in other words, where a landowner has sold registered land without it being offered to the community. Once subsections (7) and (8) are removed, we will rely on the usual conveyancing practice in relation to the discharge of heritable securities over land.

Amendments 359 and 384 are purely technical and remove some text that is now redundant due to the impending abolition of the feudal system, which I know we are all in favour of. Amendments 385, 440, 441 and 445 are purely corrective amendments. They have no effect on the way in which the legislation will operate.

Amendment 442 rectifies an omission in the bill and protects the interests of heritable creditors. We spoke about that issue yesterday. The amendment deals with the situation where a heritable security applies to the land that is subject to the right to buy and to other land. It ensures that the standard security will continue to apply to that other land.

Amendments 443, 444 and 446 together provide that any sums due to a heritable creditor of the owner of the land should be deducted from the sum due to be paid to the owner and paid by the crofting community body direct to the heritable creditor. The bill provided for the whole price to be paid to the owner and required the owner to pay the heritable creditor. The arrangement proposed by the amendments is in line with normal conveyancing practice, I am told, and other than that they have no implications for the main purpose of the legislation.

I hope that the committee will approve this group of amendments, as they seek to improve and simplify the working of the bill.

I move amendment 359.

Amendment 359 agreed to.

Amendment 360 moved—[Allan Wilson]—and agreed to.

Section 54, as amended, agreed to.

Section 55—Assessment of value of land

The Convener: Amendment 227, in the name of Bill Aitken, is grouped with amendments 361, 362, 447, 316, 448, 449 and 450.

12:15

Bill Aitken: Amendment 227 relates to the appointment of valuers and seeks to ensure that they are "suitably qualified and independent". As members have pointed out, some of the issues attached to the legislation are likely to be controversial and, to achieve fairness in the process, any valuer appointed by ministers must act neither for the community body nor for ministers. That person must also be "suitably qualified". Although I accept that such a requirement is probably implicit in the bill, amendment 227 makes it totally clear that the valuer must be impartial and "suitably qualified". It is highly desirable for such a requirement to be underlined instead of simply being left to interpretation.

Amendment 316 would ensure that the valuer can extend the period in which he or she must notify ministers, the owner of the land or the person entitled to the interests and the crofting community body of the assessed value of the land or interests. Obviously, complications can arise in any commercial transaction. For example, delays can occur that might not necessarily be the fault of any body or individuals. However, as the valuer is best placed to assess the period of time that will be required to assess the land's value, it should be left solely to him or her to apply to ministers for an extension of the period required to carry out his or her duties under section 85(11).

I move amendment 227.

Allan Wilson: The bill's approach is consistent with the general basis of valuation and ensures that the owner of the land receives a fair price for the property. That also applies to parts 2 and 3, including the provisions in part 3 under which the land is acquired under compulsory purchase powers.

Amendments 227 and 316 seek to include in the bill the stipulation that the valuer should be "suitably qualified and independent", but they do not define what is meant by "suitably qualified". Although I believe that the amendments are well intentioned on Bill Aitken's part, qualifications and experience can be regarded as two separate requirements.

Executive amendments 361 and 448 have been lodged in response to those amendments to ensure that the valuer is a person whom ministers consider to be "suitably qualified" and "independent" and who has valuation experience that is relevant to the bill's requirements. That will allow ministers to determine the qualifications that are required for a valuer to be deemed "suitable".

Such an approach is preferable to specifying particular qualifications, which might change over time. We are aware of the Law Society of Scotland's proposed amendments from earlier meetings and our amendments in this group should address those concerns. I hope that the committee will agree that amendments 361 and 448 achieve Bill Aitken's aims but offer greater clarity. As a result, I hope that Bill Aitken will withdraw amendment 227.

Amendments 362 and 450 clarify the valuer's role as being that of an expert rather than an arbiter, who will apply his or her personal professional experience in reaching a valuation figure. That contrasts with a valuer who acts as an arbiter by merely arbitrating between either party's valuations.

Amendment 449 deals with imprecision over the timing of certain events in the text of the bill and is designed to ensure that two of the tasks that must follow consent to a right to buy take place in proper sequential order. It also ensures that the valuation will not proceed until the terms and conditions of a leaseback of sporting interests are known and can therefore be taken into account in the valuation. Amendment 447 is consequential on amendment 449.

I hope that the committee will support amendments 361 and 362, which relate to part 2, and amendments 447 to 450, which relate to part 3.

Mr Hamilton: Bill Aitken's amendments 227 and 316 would achieve what we need to achieve more simply than the minister's amendments would. I do not understand the argument. A person

"who appears to Ministers to be suitably qualified"

and independent is not the same as a person who, by objective tests, is suitably qualified and independent, because the Government, through ministers, is a party to the transaction. I do not see a difficulty in keeping the matter simple and accepting the wording "suitably qualified and independent", which would have its normal meaning in the event of a challenge. I support amendments 227 and 316 on the basis of simplicity. Bill Aitken's proposal passes the Ronseal test: it does what it says on the tin. The person should be suitably qualified and independent, not someone who appears to ministers to be so.

The Convener: Amendments 227 and 361 might mean the same, but amendment 361 adds the requirement of

"experience of valuing land of a kind which is similar to the land being bought".

That is an important addition, particularly given Bill Aitken's point in previous debates about the importance of getting the correct value for land. It is more important to have someone with experience than to have someone who simply possesses qualifications. A person with a history of dealing with land is more likely to make an accurate valuation. That central issue was pointed out by some of the organisations that made representations to the committee.

Mr Hamilton: I presume that the idea of experience is encapsulated in the wording "suitably qualified". Amendment 227 does not simply refer to someone who has the qualifications; it refers to someone who is "suitably qualified".

The Convener: I do not accept that point.

Mr Hamilton: That is opinions for you.

The Convener: I suppose that a different conclusion could be reached, but I am of the view that having the phrase

"experience of valuing land of a kind which is similar to the land being bought"

is crucial to getting correct valuations.

Allan Wilson: As I said, we accept that Bill Aitken's amendments are well intentioned. In my opinion, qualifications and experience can be regarded as separate requirements. I believe that our amendments provide the requisite clarity. Qualifications can change over time.

Bill Aitken: I accept that there is not much difference in what we are attempting to achieve, but I am slightly concerned about the wording of amendment 361, which states that the individual must be

"a person who appears to Ministers to be suitably qualified".

I am not wholly entering into an exercise in semantics by pointing out that the phrase "suitably qualified and independent" in amendment 227 focuses much more on what we want from the

individual who will carry out valuations. I am not prepared to take the matter to the wall, but I think that my wording is better than the minister's and I will press my amendment.

The Convener: Are we stuck on the phrase "who appears to Ministers"? Is any importance attached to that phrase?

Allan Wilson: As I understand the matter, ministers make the appointment, so it would have to appear to us that the person had the requisite qualifications and experience.

Mr Hamilton: If I were to challenge the qualifications of the valuer, the defence that it appeared to ministers that they were up to the job would be one thing and the fact that the person had been tested objectively would be another. The fact that it appears to ministers that a person is up to the job does not necessarily mean that they are up to the job.

Allan Wilson: Whether the individual was up to the job would be a matter of objective tests, which would presumably be based on objective analysis of whether they had the requisite qualifications and experience.

The Convener: The minister has heard the committee's comments. I am entirely happy with the meaning of amendment 361, which I think is a better amendment. Perhaps it could say "who is assessed by ministers" rather than "who appears to ministers", but that could be addressed at stage 3 if necessary. George Lyon has a point of clarification.

George Lyon: It was just to say that Bill Aitken and Duncan Hamilton have a point and that I have some sympathy with their views. Amendment 227 does in a much more succinct way what the minister's amendment wants to do. As I said, I am perfectly willing to support the minister, but Bill Aitken has a good point. His amendment is much more succinct.

The Convener: Bill, is there anything further that you want to say?

Bill Aitken: No. We can take the matter to a vote.

The Convener: The question is, that amendment 227 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

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

AGAINST

Barrie, Scott (Dunfermline West) (Lab)
Lyon, George (Argyll and Bute) (LD)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)

ABSTENTIONS

Stevenson, Stewart (Banff and Buchan) (SNP)

The Convener: The result of the division is: For 2, Against 4, Abstentions 1.

Amendment 227 disagreed to.

Amendment 361 moved—[Allan Wilson]—and agreed to.

Amendment 228 moved—[Bill Aitken].

The Convener: The question is, that amendment 228 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

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

AGAINST

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

The Convener: The result of the division is: For 2, Against 5, Abstentions 0.

Amendment 228 disagreed to.

Amendment 362 moved—[Allan Wilson]—and agreed to.

The Convener: Amendment 409 is next. It is in a large group, so I want to get members' views on whether we should proceed or stop now.

Bill Aitken: I suggest that it is likely to prove necessary to discuss the amendments at some length. It might be advisable to stop now.

Mr Morrison: Although we have made substantial progress yesterday and today, I agree with Bill Aitken. The next group of amendments will need a protracted discussion.

The Convener: Does the committee agree that we should stop now?

Members *indicated agreement*.

The Convener: I thank the minister once again and we look forward to seeing him next week.

There is a possibility, depending on how much progress we make, that we might be able to finish our consideration of the bill on Tuesday. I would like to push on on Tuesday, but it might not be possible to finish then.

12:29

Meeting continued in private until 12:45.

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