JUSTICE 2 COMMITTEE

Tuesday 5 November 2002
(*Afternoon*)

Session 1

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CONTENTS

Tuesday 5 November 2002

JUSTICE 2 COMMITTEE
39th Meeting 2002, Session 1

CONVENER

*Pauline McNeill (Glasgow Kelvin) (Lab)

DEPUTY CONVENER

*Bill Aitken (Glasgow) (Con)

COMMITTEE MEMBERS

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

COMMITTEE SUBSTITUTES

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

*attended

THE FOLLOWING ALSO ATTENDED:

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

CLERK TO THE COMMITTEE

Gillian Baxendine

SENIOR ASSISTANT CLERK

Irene Fleming

ASSISTANT CLERK

Richard Hough

LOCATION

The Hub

Scottish Parliament

Justice 2 Committee

Tuesday 5 November 2002

(*Afternoon*)

[THE CONVENER *opened the meeting at 14:34*]

The Convener (Pauline McNeill): I open the meeting and welcome everyone to the 39th meeting of the Justice 2 Committee. I do not have any apologies, but we are waiting on Duncan Hamilton and Alasdair Morrison who, I understand, are both on their way. If members could do their usual and switch off mobile phones, that would be helpful.

Criminal Justice (Scotland) Bill

The Convener: The first item is a motion for the committee to consider the Criminal Justice (Scotland) Bill in a different order from usual, starting with parts 5 and 6 and then parts 1 to 4 and 7 to 12. Each schedule will be considered immediately after the section that introduces it. The rationale for considering the bill in that extraordinary order is to ensure that the committee feels briefed enough about the sections of the bill that might be more time consuming and controversial.

I felt that the committee would want a briefing on part 1 of the bill, particularly since the Mental Health (Scotland) Bill has been introduced and there is some crossover with our work on the MacLean committee report. I thought that the committee would appreciate a briefing from officials about how they are integrating one with the other. There are also some parts of the bill that the Executive is still considering, so we should ensure that all the bits fit together. The order in which we consider the bill does not particularly matter, as long as we understand the basis on which we are doing it.

I propose to have a briefing for members in advance of part 1 on 19 November. So that the committee knows, I should say that the note on Reliance Monitoring Services, which might be useful for our examination of restriction orders, is so far only a note. It has not been formally agreed by Reliance Monitoring Services. As members know, we usually check that organisations agree with the content of notes. We still have to do that formally, but members have the note in their papers and might find it useful.

Bill Aitken (Glasgow) (Con): Will you remind me what parts 5 and 6 of the bill deal with again?

The Convener: Part 5 concerns the drugs courts and part 6 is about non-custodial punishments, which deals with interim anti-social behaviour orders and the requirement for remote monitoring. Part 7, as you know, deals with children, and part 1 concerns lifelong restriction. The rest deal with a whole range of issues that are probably boxed off into individual compartments.

I move,

That the Justice 2 Committee consider the Criminal Justice (Scotland) Bill in the following order: Parts 5 and 6, Parts 1 to 4, Parts 7 to 12, each schedule being considered immediately after the section that introduces it.

Motion agreed to.

Land Reform (Scotland) Bill: Stage 2

The Convener: Item 2 is the 11th stage 2 meeting on land reform. As usual, members should have the bill and the 11th marshalled list in front of them. It is our intention to try to complete the bill today if possible, but we have a meeting scheduled for tomorrow morning should we require it. I know that members have various commitments and I want to make sure that they feel that they have a proper opportunity to speak to their amendments, so I will be mindful of that as we go through our business. I know that Bill Aitken has to leave about half-past 5, but we may be joined by one of his colleagues. Is that right?

Bill Aitken: I think that that is unlikely. Looking at what I have to deal with today, I do not think that it will take up too much time. I should be able to short-circuit it to some extent.

The Convener: George Lyon has successfully managed to make it on time. It helps a lot that you are here.

I welcome the Deputy Minister for Environment and Rural Development and his team to this 11th meeting.

Section 55—Assessment of value of land

The Convener: Amendment 409, in the name of the minister, is grouped with amendments 229, 410, 411, 182, 412, 413, 451, 318, 452, 453, 255, 454, 490, 455 and 456.

The Deputy Minister for Environment and Rural Development (Allan Wilson): This group of amendments is fairly substantial. When I spoke to the previous group of amendments last Wednesday, I indicated that the approach adopted in the bill was designed to be consistent with the general process of valuation. Our main aim is to ensure that the owner receives a fair price for the property. The same principle applies here. Executive amendments 409 to 413 and 451 to 456 are intended to specify more precisely, and with greater clarity, how the valuation is to be determined.

The amendments will not significantly change the way in which valuations are undertaken in practice, but they will make the process clearer and more transparent. As a consequence, the changes will greatly reduce the scope for confusion and dispute—which we would all favour—simply because they will clarify and simplify the process. That is why I consider the changes to be worth making.

Executive amendments 409 and 410 will make provision for determining the value of the land for the purposes of part 2. The amendments will provide that the value should be the sum of the value that the land would reach on the open market plus, where the community body is buying only part of the land to be sold, the amount of any depreciation in the remaining land in the lot that is being sold. Both the market value and any depreciation in the value of the remaining land to be sold will need to be added to provide the total valuation figure for the registered land. The purpose of that is to ensure that the seller does not lose out financially from the community body's ability to purchase, or cherry pick, the land that it has registered when that land is included in a larger lot.

Section 85 could be clearer about which elements form part of the valuation. Part 3 provides for purchases that are akin to a compulsory purchase by a public sector body. In such instances, the sum payable on transfer should reflect the open market value of the land plus it should provide compensation for any depreciation of other land, where such depreciation is a consequence of the acquisition of the croft land, and for disturbance. The revised wording that amendments 451 to 455 propose will make that clearer.

Executive amendments 410 and 452 contain similar requirements for the assessment of said depreciation—and, in the case of part 3, disturbance—to those that are currently found in sections 55(7)(b), 85(6)(a)(ii) and 85(6)(a)(iii). However, Executive amendments 409, 410, 451 and 452 together place all such requirements in a different context. The changes are necessary to ensure that all the elements of the valuation are added together to produce the total valuation figure.

Executive amendments 412 and 454, which will remove existing provisions, are consequential on amendments 409, 410, 451 and 452. Equally, Executive amendments 411, 453 and 455 are consequential on amendments 409, 410, 451 and 452, all of which adjust the definition of open market value.

Bill Aitken's amendments 229 and 318 would remove references in, respectively, sections 55(6) and 85(5) to both seller and buyer being "knowledgeable and prudent". If the reason for the amendments is that the test for achieving market value for land should be the value that it would have had on the open market between a willing seller and a willing buyer, we would agree to that—we want to see that test applied. However, I point out that the words that amendments 229 and 318 seek to remove are in the Royal Institution of Chartered Surveyors red book. Notwithstanding that, if the committee wishes to support amendments 229 and 318, I see no difficulty in

that. The end result is perfectly compatible with what we propose.

14:45

In some instances, the effect of amendments 182 and 255 could be that the seller would not receive the price that they could expect to realise if they were to sell the land on the open market. That would run contrary to the aims and objectives of the bill, in so far as we have no interest in punishing people for owning land. That is not the purpose of the bill.

An important consideration is the European convention on human rights requirement that compensation for land purchases of this nature should be adequate. Any amendment to the bill that is liable to reduce compensation to the owner to a level that is below open-market level could be used to support a case that asserts that the compensation provisions in the bill are inadequate and that the right to buy is not therefore ECHR compliant. All supporters of the bill would wish to avoid that, as it would be the bill and not the provision that would fail.

Amendments 182 and 255 would create a situation that would be unfair to those who are selling land under part 2 or who are being compelled to sell their land and who are deprived of their property under part 3. That would invite an ECHR challenge. For those important reasons, I urge Stewart Stevenson—if he is to pick up Roseanna Cunningham's amendment 182—and George Lyon not to move the amendments. I am happy to go into further detail if members require me to do so.

Amendments 413 and 456 remove references to unlawful uses of the land at sections 55(7)(c)(ii) and 85(6)(b)(i), which prohibit the valuer from taking account of a use of land that would be unlawful. The provision was considered to be unnecessary, as it was causing confusion. I ask the committee to accept amendments 413 and 456, as they will serve to apply further consistency to the valuation process.

We are not convinced that Bill Aitken's amendment 490 would deliver any benefit to the provisions that are already included in the bill. The requirement for a valuer to comply with what is called standard practice in the unusual circumstances with which we are dealing—a forced sale—may not work to anyone's benefit.

The bill does not specify how a professional valuer should do his or her job. There is no reason to suppose, simply because it is not specified, that a properly qualified valuer would, for example, value salmon fishings on any basis other than that on which they are normally valued for the purpose of sale. I see no reason why they should do otherwise.

As the committee is aware, valuations are subject to appeal to the Scottish Land Court. The court has expertise in valuation matters and, if an appeal is lodged, the valuer could be expected to explain the basis of the valuation that he or she reached.

I am also concerned about the use of the term standard practice, to which I have already referred, if, as in amendment 490, it is not defined. As it cannot be certain how a court would interpret the phrase if it is not defined in the bill, the amendment is flawed.

As a result, I am prepared to accept amendments 229 and 318. I also ask the committee to accept amendments 409, 410, 411, 412, 413, 451, 452, 453, 454, 455 and 456 and to resist amendment 490. Moreover, I ask George Lyon not to move amendment 255 and Stewart Stevenson not to move amendment 182.

I move amendment 409.

Bill Aitken: I am relieved to hear that the minister believes in the Thatcherite principle that one cannot buck the markets. As a result, I do not think that I need say too much about amendment 229.

The basic difference between the minister and me on this group of amendments lies in amendment 490. I disagree with the minister's premise that the amendment would not add to the bill. The market value of land is used when valuing land that is to be acquired by a crofting community body. That is quite correctly defined in the bill. However, the method used to value croft land is different from the method used to value salmon fishings. As I recall, the valuation for croft land is based on 15 times the annual rental, whereas the valuation for salmon fishings is based on the number of salmon caught, which I would have thought was a fairly inexact science.

Uncertainty follows. Because salmon fishings are classified as "eligible croft land", the method of valuation for croft land might be used instead of that for salmon fishings. We estimate that that would result in a value that is half the figure that could be gained from the traditional method of valuation.

I accept that a written answer given by Ross Finnie went some way towards resolving the matter. He stated that section 85 would not tie the valuer "to any particular methodology". However, agreeing to amendment 490 would ensure that the proper method is used to value each type of land. It is important that we point out the difference. It is essential not only that different approaches be adopted but that the bill makes that quite clear.

Stewart Stevenson (Banff and Buchan) (SNP): I have no particular difficulty with the Executive amendments. I now understand Bill

Aitken's reasons for lodging amendment 490, but I am sure that it will come as a great surprise to many to hear that the salmon caught in a fishery are not accurately counted and reported and that, as a result, there is no proper basis for valuing fishings. From my experience and knowledge, I rebut that assertion. It is all too easy to count the rather small number of salmon that are caught in many of our fisheries.

On amendment 182, I take on board the minister's points about the ECHR. However, the important purpose of the amendment relates to what might be called the Bill Gates question. Bill Gates is worth £400 billion. If for a particular reason—perhaps because of an imagined relationship with a distant ancestor—he wished to bid a price for a piece of land that was totally removed from the value that he could obtain in a subsequent resell, it would distort the market. That would amount to a peculiar interest, but in many ways, particularly where foreign buyers might be concerned, such an interest might be a method of distorting and thwarting the community's objectives in buying land.

I would be interested to hear from the minister whether the ECHR would apply if the buyer were outside the European Union, because that might clarify what we can do. If the amendment opened up the possibility of an ECHR challenge, I would not be anxious to pursue it, having made the point. If the minister were able to say that the Bill Gates question could be covered by an amendment at stage 3 that addressed the same issue but was cast in a different way, I would be minded to accept that. At this stage, I reserve judgment on whether to pursue amendment 182.

George Lyon (Argyll and Bute) (LD): My amendment 255 is virtually identical to Roseanna Cunningham's amendment 182. I reiterate that I support fully the principle that landowners should receive fair compensation and a fair valuation. Nevertheless, as Stewart Stevenson has highlighted, there is concern that section 55(7)(a) could be used to thwart a community in its attempt to purchase the land or as a mechanism for ratcheting up the price. That is the key concern. Both Stewart Stevenson and I believe in the principle of fair compensation; the worry is that it may provide a road for those who want to be obstructive either to thwart the community purchase or to ratchet up the price dramatically. Whether that is Bill Gates or someone else is a different question, but the opportunity exists.

I know that in the Gigha buyout, one of the great worries was that someone would appear who was determined to pay over the odds purely because they were hostile to the idea of communities being able to buy and own their island. I hope that the minister will address that point and give us reassurance. If that aspect needs covering, I echo Stewart Stevenson's call for an amendment at stage 3.

The Convener: I accept what the minister says about the bill being ECHR compliant, and I am mindful that the test would be applied not to the transaction but to the content of the bill. However, like other members who have expressed a fear about section 55(7)(a), I am concerned about determining the difference between a buyer who would be willing to buy the land, which is the term used in subsection (7)(a), and someone who genuinely offers a higher price for it.

It might be useful to address the meaning of subsection (7)(a). It talks about

"the known existence of a person who (not being the community body which is exercising its right to buy the land) would be willing to buy the land at a price higher than other persons because of a characteristic of the land".

How will that operate in practice and prevent a buyer who has no intention of buying, and who only expresses a willingness, from affecting the sale?

As other members have said, there is no difference of opinion between the committee and the minister about what we want the bill to do. Neither of us wants any section to be able to be used as a way of thwarting the intentions of the community right to buy. There is no difference in what we want; we are just cautious about that section.

Scott Barrie (Dunfermline West) (Lab): I want to ask for a simple point of clarification, because I could not quite understand Bill Aitken's rhetoric when he spoke to amendment 229. Will the minister explain why section 55(6) contains the words "knowledgeable and prudent"? What effect, if any, would result from removing those words? Does the minister support amendment 229 because those words are superfluous to the subsection? The minister's clarification would help us to decide how to vote on the amendment.

15:00

Allan Wilson: As I said, the phrase in section 55(6) is a direct take from the terminology that is used by the Royal Institution of Chartered Surveyors. Removing the phrase would make no difference to the process that the section will introduce for assessing the market value of land.

We need to ensure that nobody can claim to have been prevented from securing anything other than the market value of the land as a consequence of the culmination of that process. Otherwise, people might have cause to complain that their human rights had been infringed and to question the process. Removing the phrase would

make no difference to the process, but retaining it could lead to the suggestion that account had been taken of considerations other than market considerations. Therefore, it is our view that it would be better to remove the phrase.

On amendment 490, I disagree with Bill Aitken, who seemed to be working on the basis that the amendment's effect would be to constrain how the valuer conducts his or her valuation. That constraint would not necessarily work in favour of the seller, as Bill Aitken suggested. If Bill Aitken thinks about the issue, I am sure that he will agree not to move amendment 490. If he presses the amendment, the committee should oppose it.

On amendments 255 and 182, Stewart Stevenson raised the point on which we have all subsequently focused, which is the need to ensure the principle that the price paid is the market value. I agree with the convener that those of us who have the bill's principles at heart are at one on the issue. The important consideration is that no loophole should be left that would enable a seller to claim that he or she received anything other than the market value of the land.

Our aim is not to introduce a means whereby Bill Gates, or whoever, might engage with communities in a bidding process that communities could not win, but to ensure that the valuer is required to take account of any representations that he or she might receive from the seller of the property on whether, for whatever reason, there exists a special interest in the land that would increase its market value.

As we know, that is often the case in land disposals in the Highlands, where there might be a family connection or interest in the land, or where there might be interest in the salmon fishing rights that would accompany the property. For an island property, people might favour the seclusion that such properties convey. Organisations such as RSPB Scotland and other environmental agencies could have a particular interest. We would all agree that all those special interests might add to the value of the property under consideration.

The seller of that property would then make that case to the valuer, the community would make the contrary case and the valuer would reach a conclusion on the merits of the proposal. If one or other party to the process were aggrieved at the outcome of the evaluation, they might then appeal. All those provisions make the legislation ECHR compliant and build in the safeguards that everyone wants to prevent the possibility of putting obstacles in front of communities.

Ultimately, the valuer is responsible for reaching a conclusion on the market value of the property. However, precluding the valuer from taking account of those special considerations would infringe ECHR provisions. For example, a valuer might argue that the market value was not being reached because such special considerations had not been taken into account in the valuation.

In that context, the origin of the prospective special interest—no matter whether it is within or without the European Union—is irrelevant, certainly in terms of the ECHR. We are talking about compensation for an enforced sale and the valuation of such a sale. If we do not provide for the valuer to take account of special interests, whatever they might be, we will leave the legislation open to challenge under the ECHR.

Mr Duncan Hamilton (Highlands and Islands) (SNP): The minister claims that it would be contrary to the ECHR to preclude a valuer from taking certain factors into account. I am, therefore, slightly at a loss to understand the logic of amendment 455. The minister will correct me if I am wrong, but amendments 451 and 452 include factors such as

"depreciation caused by division of the land".

However, the effect of amendment 455 would be that no specific account would be taken of those factors in any assessment. How is that consistent with what the minister has just said?

Allan Wilson: Do you mean—

Mr Hamilton: You said that all those factors would have to be taken into account to ensure that the legislation was ECHR compliant. However, amendment 455 specifies that the factors mentioned in amendment 452 cannot be taken into account. How is that consistent with your previous comments?

Allan Wilson: Can I just take a look at that?

Mr Hamilton: Yes.

While the minister is doing that, I want to make a more general point about the ECHR that will be quite important throughout the committee's deliberations. I am slightly troubled about what happens when we reach an area that the minister subsequently says will constitute a breach of the ECHR. That is merely an opinion. In this instance, Stewart Stevenson and George Lyon's amendments are subject to an opinion about one interpretation. Is there any way that the committee can take advice to test that opinion? Frankly, it is not a robust enough stance for the committee simply to accept that something is de facto in breach of the ECHR. Anyone will tell you that if one person thinks that something is in breach of the ECHR, another person will dispute that. I do not doubt the Executive's good intentions, but the situation is really not good enough for the committee.

The Convener: I want to clarify Duncan Hamilton's point. It is up to the committee whether

it wants to accept the minister's view. On the specific question whether we can take legal advice, there is no formal mechanism for doing so. Perhaps committees need to examine that general issue.

We had an opportunity to question the ECHR implications of this section in our stage 1 report. If the committee feels strongly about the issue, there is a loose mechanism for pursuing the matter. For today's purposes, it is well in order for each committee member to make up their own mind about the arguments and on whether the advice that has been put in front of them is correct.

Mr Hamilton: I am not sure that the committee is in a position to do that. Given the absence of any specialised advice, I am not sure how we are meant to reach any conclusions about whether something is in breach of the ECHR. That is no reflection on the abilities of individual committee members. Will the convener raise the issue with the convener's liaison group and try to secure a recommendation that committees will be able to access such advice?

The Convener: I am happy to do that, as it is always important to explore better ways of doing things. The issue has been on the table for over a year. If members felt strongly that they wanted to challenge the advice, they have had a long time to consider the issue.

George Lyon: Before I make my other points, I want to say that Duncan Hamilton's last statement is not accurate. We have just heard the minister's explanation of why he wishes us not to agree to amendments 182 and 255. The minister's explanation was the first indication that I have heard that there could be ECHR implications if the provision is not included. The committee has not had time to consider the matter in any great detail. I am not trying to be difficult—I am simply trying to clarify matters. Duncan Hamilton raised a genuine point.

I will return to the minister's explanation. Like him and others sitting around the table, I feel that there is genuine concern about the implications of the provision. We seem to be adding another test. We seem to be saying that there has to be a fair assessment of the market value of the land, but that the valuer, in coming to that view, has to take into account the separate issue of an individual coming forward and arguing that he has a particular interest in the land. The individual could argue that, because of his interest in the land, he might be willing to pay way over the top for it in comparison with anyone else.

What tests would the valuer have to take into consideration in his determination of whether the bid was genuine? That question seems to be crucial. You are not asking the valuer to make up his mind about the market value of the land; you are asking him to determine whether the bid is genuine. The person who was indicating an interest and willingness to bid would not have to deliver on that.

Surely there has to be some sort of test and the valuer has to have criteria for determining whether the bid is genuine and, if it is, whether it should be taken into account in coming to a decision about the market value of the land. It is clear that someone who wanted to spoil the community interest could, quite legitimately, come forward and say that they were willing to pay well over the odds, that they had family connections, and so forth. Given that they would never have to follow through and write a cheque, I am not clear how it is possible to tell whether the bid is genuine. I would like an explanation of how the valuer has to take the new test into consideration when arriving at the market value of the land.

The Convener: I sense that there are some concerns about the debate on valuation. Do members want to raise any additional points?

Allan Wilson: Perhaps I could address Duncan Hamilton's point about inconsistency. It is not the case that the intention is to prevent double counting of the same terminology. Earlier amendments provided for those factors to be taken into account. The provisions are put in and then taken out. There is no inconsistency in our position in relation to the provision, or to any other part of the bill.

There is a danger that we could go off at a tangent. All that we are saying is that the valuer would be required to take account in his or her professional judgment of whatever special interest, if any, might be argued by the seller. It would be for the buyer to argue that the special interest did not exist or should be mitigated for whatever reason. That is no different from the process in any compulsory purchase of land, in which a valuation is placed upon the land that takes account of its market value.

In my view, to define the market value as anything other than one that incorporates special interest would be to invite an ECHR challenge. That is because the valuer would be being told that they should not take account of the seller's contention that the value of the land would be inflated in the open market by a direct reference to factor A, B or C. That is the point, not that the provision would place any additional obstacle or test on the community in seeking to establish their right to buy. It could invite challenge by precluding the valuer's ability to take those considerations into account.

15:15

The Convener: I hear what you are saying. The provisions would ensure that the valuer would have to take account of special interest. Can you tell us where the safeguards are? A person who is making an assessment of the valuation has to consider a real interest in the land as opposed to an interest that may be set up by the seller. I suppose that you will tell me that there will be a professional duty on the valuer. I accept that that is the case, but I wonder whether the safeguards could be strengthened. I do not see where the test is that could exclude a seller from setting someone up to say that they would be willing to pay X amount of money for the land. In that case, the valuer would be duty bound to take the bid into account.

George Lyon: On that point, I appreciate that the minister is saying that we are to rely on the professional judgment of the valuer. The argument is that by not making the provision explicit in the bill, we could leave open the possibility of a challenge under the ECHR.

Surely if we are to rely on the professional nature of the valuer to take everything into account, the provision does not have to be explicit in the bill? Is not it implicit in the fact that we are saying that the land should be valued by a professional valuer with the experience to do the job? Does not that cover all the circumstances that might influence the value of a piece of land? I would appreciate clarification of why the provision has to be made explicit in the bill.

Mr Hamilton: We are still debating amendments 452 and 455. I may be being monumentally thick—if I am, the minister will not be slow to tell me—but is the minister saying that, because he is putting in the provision and then taking it out, there is no inconsistency? Will he explain why he is putting it in? Amendment 451 would add the words "the aggregate of" to the three categories. Section 85(6)(b) states that

"no account shall be taken of"

certain factors in arriving at the market value of the land. Unless I have misunderstood, the minister said that no additional account would be taken of that factor.

Allan Wilson: In this instance, we are talking about market value plus. The earlier amendment provides for those factors to be taken into account. There is no inconsistency in our approach. We are talking about market value plus.

Mr Hamilton: For the sake of clarity, do you mean that no additional account, as opposed to no account, should be taken of that factor? If so, would you consider inserting that wording into the bill? I cannot be the only person who would be misled by that.

Allan Wilson: I accept that.

Mr Hamilton: You do? All is well.

The Convener: Good. I am glad that you have sorted that out.

Allan Wilson: I take the point that was made by George Lyon, but I can only repeat that the process happens every time that a public body purchases land. It is entirely consistent with the compulsory purchase order process. The process has been laid out in the bill because we are not in an ordinary situation. We are in the process of introducing enforced sales and the equivalent of compulsory purchase, so we require to set out the factors that the valuer is required to, or may, take into account—to take up the convener's point—in his or her professional judgment.

On whether safeguards are attached in respect of a valuation's not being professionally conducted, as I said, provision exists for appeal against any valuation that the purchaser or seller believes may have been reached inappropriately or unprofessionally. The important point to remember is that not to specify such a provision would lay the bill open to challenge under the ECHR—indeed, I argue that it would invite such a challenge.

The Convener: Can you clarify whether it would be in order for the community body to use the appeal process to which you referred on the basis that it did not think that the valuer had properly tested the existence of a person who was willing to pay a higher price? Would that be a legitimate ground for appeal?

Allan Wilson: Yes.

Amendment 409 agreed to.

Amendment 229 moved—[Bill Aitken]—and agreed to.

Amendments 410 and 411 moved—[Allan Wilson]—and agreed to.

The Convener: Amendment 182, in the name of Roseanna Cunningham, was debated with amendment 409. I invite Stewart Stevenson to move amendment 182.

Stewart Stevenson: On the basis that I might revisit the matter at stage 3, I will not move the amendment.

Amendment 182 not moved.

Amendments 412 and 413 moved—[Allan Wilson]—and agreed to.

Section 55, as amended, agreed to.

Section 56—Procedure for valuation

The Convener: Amendment 230 is grouped with amendments 363, 231, 319, 458 and 320.

Bill Aitken: The four amendments in which I have a personal interest are linked. Amendment 230 links with amendment 319 and amendment 231 links with amendment 320. The amendments deal with two specific principles.

Amendment 230 would delete the requirement for the valuer to invite the owner of the land and the community body to make written representations as part of the valuation process. Substitutes are required simply to take such evidence as appropriate. When conducting his or her duties as a valuer, the person must take account of a number of factors, such as local market conditions and details of the property in question. Factors for consideration may or may not include written submissions from the purchaser and the owner. The valuer should be free to decide whether such submissions are necessary when coming to a considered view on the open market value of the land. The amendment would simply give the valuer the flexibility to conduct the valuation in accordance with current practices.

Amendment 231 relates to amendment 320. It would simply have the effect of ensuring that the valuer can extend the period in which he or she must notify ministers, the owner of the land and the community body that the assessed value of the land and any moveable property has been valued where the right to buy the land is being exercised.

Basically, valuers are best placed to gauge the period of time that is required to assess the value of the land, and it should therefore be left to them to apply to ministers to extend the time required to carry out their duties under section 56(2).

I move amendment 230.

Allan Wilson: We are back on valuation, and I would argue again that the approach that is adopted in the bill should be as consistent as possible with the process of valuation generally, so that the owner receives a fair price for the property and nobody can argue otherwise.

As we have just debated, the position is that the valuer should in all cases be required to take representations from both parties at the outset. That requirement will ensure that the valuation process is as open as possible and will minimise the possibility for subsequent appeals. The effect of amendments 230 and 319 would be to give the valuer greater flexibility, but we want to ensure that, from the earliest stages, the valuation process is so transparent as to preclude the likelihood of subsequent appeals. We do not think that the existing provisions place an intolerable burden on the valuer. The approach will encourage the parties to think through the valuation implications for themselves and thereby reduce the risk of unrealistic expectations on the part of either the seller or the purchaser.

Although I agree with the principle of amendments 231 and 320, it is important that ministers retain some control to ensure that the valuation process does not drag on interminably. I urge the committee to support our alternative Executive amendments, 363 and 458, which would allow that extra degree of control. They also deliver on the Law Society of Scotland's intention that the valuer would apply to ministers to extend the period of time that is required to carry out the valuation. That extension can be given only if the valuer applies for it, rather than leaving it to the valuer to determine the time scale for the process to be completed.

The Convener: Does Bill Aitken wish to wind up?

Bill Aitken: The issues are perfectly straightforward and I have nothing to add.

The Convener: The question is, that amendment 230 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 230 disagreed to.

Amendment 363 moved—[Allan Wilson]—and agreed to.

Amendment 231 moved—[Bill Aitken].

The Convener: The question is, that amendment 231 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 231 disagreed to.

Section 56, as amended, agreed to.

After section 56

The Convener: Amendment 397 is grouped with amendments 398 and 399.

Mr Alasdair Morrison (Western Isles) (Lab): On amendment 397, which deals with compulsory purchase, an issue that has consistently held back development of communities throughout the Highlands and Islands has been access to land for what could be described broadly as social or community development purposes that could also have an economic impact. That issue has been discussed in our deliberations on the bill and is regularly raised in the Rural Development Committee.

Communities often want to use comparatively small pieces of ground for playing fields, community centres, village halls, social housing, shinty and football pitches and so on. The nature of land ownership patterns in the Highlands and Islands has often resulted in the requests of communities, which many people would consider reasonable, being refused. That is unacceptable, given the enormous efforts that are being made to develop communities in different ways. The bill will be of enormous help, particularly in the context of what the Executive and the UK Government are trying to do.

15:30

The Town and Country Planning (Scotland) Act 1997 gives local authorities powers to acquire compulsorily any land in their area that is suitable for, or required to secure, development or improvement, or required for the purposes of the proper planning of the area. However, those powers relate to the planning function of the local authority. The minister will be well aware that the Local Government in Scotland Bill, which the Executive is piloting through Parliament, makes provision for a power of well-being. Amendment 397 is designed to complement that power, and the other proposed powers in the Land Reform (Scotland) Bill, by making it clear that, where a council could show that a proposed purchase was for the well-being of that community, it could have the power to purchase the land compulsorily. I am aware that the Executive has expressed a view that sufficient powers are already available to local authorities to secure sites for community development, but I want to put the matter beyond doubt.

I suspect that the minister might take the view that my amendment does not appear in perfect legal form and I am sure that he will not hold back from highlighting any technical flaws that it might have. However, I lodged it in order to ensure that we debate the issues and to give the minister an opportunity to explain the Executive's position. I might be willing to withdraw it following the debate in order to tighten up its terms and I am happy to work with the Executive to find the best way of securing my objective.

I move amendment 397.

Stewart Stevenson: I congratulate Alasdair Morrison on amendment 397, which would make a useful and radical change to the bill. The matter concerns people not only in the Highlands and Islands but throughout Scotland. Duncan Hamilton might have some technical quibbles about the drafting of the amendment, but the principle is good. I will address some of those quibbles for the sake of providing further information.

Under subsection (6)(b) of the proposed new section, it is not clear that the community body to which land would be transferred without charge would be the same body that had registered interest in the land under section 34. However, that technical issue does not detract from the principle that Alasdair Morrison advocates. If he chooses to press his amendment, I would be minded to support it, even if the minister highlights minor difficulties, because we will have the opportunity to correct any defects at stage 3. Agreeing to the amendment would send out the message that we are determined to extend the powers of the bill in the way that Alasdair Morrison proposes. I congratulate him—he should listen carefully because I do not congratulate him often—on lodging amendments 397, 398 and 399, which are comprehensive.

Mr Jamie McGrigor (Highlands and Islands) (Con): The bill is about facilitating the purchase of land by local communities in order to enhance those communities. However, the exercise of the right to buy should protect the right of owners to security of ownership. It should also involve the demonstration by a community of its commitment to own land; a community should also demonstrate that it can support the costs that arise from the initial purchase and from the long-term sustainable investment and management.

Amendment 397 is drafted in such a way that it is unclear whether the power of compulsory purchase could be exercised only once an interest in land had been registered and a ballot had taken place, or whether it could be exercised with regard to land in which an interest had been registered only. Moreover, there would be no requirement that any ballot needed to secure the necessary consent of the community.

The amendment takes no adequate account of the effect on the value of the remaining land of a compulsory purchase or of any impact that the compulsory purchase might have on other essential local services if they have been deprived of funding that has been redirected to benefit the few, not the many. I think that amendment 397 is draconian and unnecessary.

Bill Aitken: Although I accept that Alasdair Morrison probably has a greater in-depth knowledge of these issues than I have, I am sure that he would concede that, over the years, many requests have been made to land managers for the sale of pockets of land for community facilities and that such requests have been granted in a perfectly amicable manner.

My main concern is with the way in which amendment 397 would conflict with other local authority powers. Alasdair Morrison cited examples, including the use of land for a school or recreational facility, but such facilities would, in the normal course of events, be supplied by local authorities. Under the requisite town and country planning legislation, local authorities have powers of compulsory purchase, and therefore it is difficult to understand why the amendment is necessary. I know that he seeks to underline the fact that powers of compulsory purchase already exist in legislation, but I suggest that the powers that he proposes in amendment 397 are superfluous.

Mr Hamilton: I know what Alasdair Morrison is getting at, but, for a number of reasons, I do not think that I can support amendment 397. We have worked hard to strike a balance between competing interests and have discussed exemptions—in particular the exemption that relates to inheritance. I am prepared to go that far, but no further, which is why I abstained when we voted on that matter. We are in danger of making the bill unbalanced, although some would say that that is a deliberate policy. I do not think that it makes for good legislation to be as absolute as Alasdair Morrison wishes us to be.

On the position of local authorities, we have worked hard on the definition of communities with an interest. I am not sure that it is entirely analogous to say that local authorities should be viewed as having that same interest, as they would cover a wider, more diverse range of people in comparison with those covered by a community interest.

Under amendment 397, an interest could be passed on to a community body. I have a number of concerns about the amendment's reference to a "community body". Would the same definition of community body that is used in the rest of the bill apply to the new section proposed by the amendment? Does that new section actually say what Alasdair Morrison intends it to say? I understand where he is coming from, but I think that amendment 397 goes too far.

Allan Wilson: I agree in part with Duncan Hamilton. I am grateful to Alasdair Morrison for clarifying the intention behind his amendments. As Bill Aitken said, compulsory purchase powers are already available to local authorities and cover many of the circumstances in which the proposed new powers might be used as Alasdair Morrison envisages.

In developing the bill, we have retained a clear policy line on the general approach to the community right-to-buy process under part 2. As we discussed last week, if a transaction is akin to a sale, it should be covered by legislation. However, a sale requires a willing seller and I am not clear that amendment 397 covers that. It would give local authorities the power to buy the land for subsequent transfer to the community body, although subsection (6)(b) of the proposed new section appears to permit the local authority to retain ownership in some form.

The general policy issue aside, we must say—as Alasdair Morrison anticipated—that amendment 397 is fundamentally flawed, because proposed subsection (2)(a) refers to

"section 21 of the Local Government in Scotland Act 2002",

to which he referred. As all members present know, no such act exists. The Local Government in Scotland Bill is about to enter stage 2 in the Local Government Committee, which is the designated lead committee. To refer to the Local Government in Scotland Act 2002 in the Land Reform (Scotland) Bill is legislatively incompetent. That is self-evident, if we think about it.

When developing any legislation, the Executive ensures that it amends or works alongside existing legislation or, as in this case, ensures that it is not at odds with proposed legislation. On Alasdair Morrison's point about the general power of well-being that we envisage will be introduced in the Local Government in Scotland Bill, we want to ensure that the Land Reform (Scotland) Bill and the Local Government in Scotland Bill are compatible. Therefore, I want to ensure that my ministerial colleagues who are responsible for the Local Government in Scotland Bill are given the opportunity to consider and discuss fully any possible effects of amendment 397 on that bill. Perhaps Alasdair Morrison's proposition would be better made in that forum.

We remain significantly concerned about the principles behind amendment 397, which could significantly change one of the guiding principles of the Land Reform (Scotland) Bill: to provide for a community body to buy land, rather than for a power to be given to local authorities to purchase land and pass it on to community bodies if they so

desire. The bill's general principles have already been agreed to by the Parliament at stage 1. To change those principles would be inappropriate, so the question is whether amendment 397 would be compatible with them.

Stewart Stevenson said that he was not clear about the application of proposed subsection (6)(b). I share that concern and would also be interested to learn what the intention behind it is. It does not appear to allow the local authority to gift the land to the community body—or does it relate only to the costs of transferring the title to the land? As Alasdair Morrison knows, there would be substantial differences in costs for the community body and local authority in those circumstances. Gifting land goes beyond the existing powers of local authority expenditure. I suspect that gifting land would have the converse effect of that envisaged, in so far as a consequential loss to the council tax payer at the end of such a process would make local authorities even more reluctant than they are now to use compulsory purchase powers.

Amendments 398 and 399 are obviously consequential to amendment 397. I suggest that, if Alasdair Morrison agrees and the committee concurs, he withdraw amendment 397 and not move amendments 398 and 399. That would allow us to consider whether it is appropriate to include such provisions in the bill—there is a question as to whether they are compatible with the general direction and powers that we envisaged in the consultations to date and at stage 1—or whether it might be more appropriate to include them in another bill, such as the Local Government in Scotland Bill. I would then write to the convener to confirm our position in advance of stage 3, which would give members an opportunity to consider whether that would be the appropriate way to proceed. I confirm that the Executive will consider whether it would wish the principle behind the amendments to be enshrined in legislation and, if so, whether the Land Reform (Scotland) Bill or the Local Government in Scotland Bill would be the appropriate vehicle. I am not in a position to determine that, because I have not discussed it with ministerial colleagues who are responsible for local government.

15:45

Mr Morrison: I will wind up, having listened to a comprehensive dissection of amendment 397; at least the dissections by Duncan Hamilton and Bill Aitken were gracious. I share the minister's sentiments about anything that would undermine the principles on which the bill is based; I would not promote anything that would undermine those principles. The minister stated that the amendment is "legislatively incompetent" and "fundamentally flawed". All that remains to be said is "over and out".

The Convener: That was a graceful winding-up speech. Do you seek to press or withdraw amendment 397?

Mr Morrison: I will withdraw the amendment.

Amendment 397, by agreement, withdrawn.

Section 57 agreed to.

After section 57

Amendment 398 not moved.

Section 58—Appeals to Lands Tribunal: valuation

The Convener: Amendment 364 is grouped with amendments 365, 366, 367, 491, 387 and 388.

Allan Wilson: This is another group that mainly consists of what I hope the committee will agree are straightforward Executive amendments, which I hope the committee will support. They are in part driven by the committee's consideration of the bill.

Amendments 364 and 365 adjust the wording in section 58(1) to clarify what a valuation appeal applies to and amendment 366 expands section 58(3) to make it clear that it applies to land and to moveable property. I hope that the committee will agree that those are tidying-up amendments to make the bill clearer.

Amendment 367 extends from two to four weeks the time allowed for the Lands Tribunal for Scotland to issue a statement of the reasons for its decision on an appeal. I know that the committee has considered the matter previously.

Amendment 387 is technical and removes an unnecessary provision to bring the appeal provision in part 3 of the bill more closely into line with what is in part 2.

Amendment 388 extends the time allowed for the Scottish Land Court to issue a statement of the reasons for its decision on an appeal. As a consequence, the amendment provides consistency between parts 2 and 3 of the bill. We have already discussed how time limits should apply to ministers and to the Lands Tribunal. Although we have accepted the view that the Lands Tribunal and the Land Court will often not be able to produce a report within two weeks, we think it important that they do so reasonably quickly—although one could argue about the length of time—particularly in the case of the Lands Tribunal, where the overall time scale for the community right to buy is only six months. We think that extending the time allowed from two to four weeks should be sufficient for the committee's purposes.

I ask members to support those amendments, which I think are in line with the committee's thinking.

On amendment 491, in the name of Bill Aitken, the fact that the appeal provisions in parts 2 and 3 of the bill are slightly different did not occur by accident. Appeals under section 88 in part 3 are on a point of law only, whereas appeals under section 57 in part 2 can be on fact and law.

The reason for that difference is that in part 3 of the bill any contentious questions of fact will have been decided by the Land Court. It would be inappropriate to have the sheriff court review those findings. In part 2 there is no independent determination of facts—we have already discussed that issue in relation to the valuation process. It is therefore unobjectionable to have an appeal on questions of fact as well as of law.

The appeal provisions in both part 2 and part 3 of the bill are without prejudice to any party taking judicial review proceedings. I ask the committee to reject amendment 491 and to accept our amendments as compliant with the appeals time limits that the committee wanted to introduce.

I move amendment 364.

Bill Aitken: Notwithstanding the minister's comments on amendment 491, the amendment is clearly worthy of consideration. Under the bill as it stands, ministers may determine any application under part 3 of the bill without those concerned having the right to a public inquiry. Those who have been involved in local government will be aware that, where there is compulsory purchase and where a planning application is refused, the relevant legislation allows for a public inquiry to be held to determine whether the decisions that were made were correct and whether the balance of public opinion opposes or favours the application.

As the minister said, the bill provides for an appeals procedure. Disgruntled landowners would be able to take their case to the sheriff. However, the case would be decided on questions of law, rather than questions of fact. Scottish Executive ministers could have operated under a misapprehension as to the state of affairs in a particular case—the facts on which they based their decision could be erroneous. As far as I can tell, the bill does not provide for any procedure that would enable that mistake to be corrected.

It is socially undesirable for there to be no appeals process and for Executive ministers to be able simply to go along with a compulsory purchase of the sort that we are discussing. I am certain that no other country—with the exception, perhaps, of Cuba—has similar legislation. No doubt Scott Barrie can enlighten us on that issue.

For the sake of equity, it should be possible for a public inquiry to be held into cases of the sort that we are discussing. That would allow them to be examined on a wider basis—on the basis of fact, as well as of any questions of law that may arise.

As the minister indicated, the Executive amendments to section 58 are tidying-up amendments. They are unobjectionable.

Mr McGrigor: Amendment 367 is a sensible amendment that would allow the tribunal more time to produce a written statement setting out its reasoning. However, it is a pity that a similar opportunity is denied to the owners of land, who at various stages in this process are given only 21 days to respond and who do not have the same resources and staff as public bodies have.

The Convener: Mr Barrie, do you want to reply to Mr Aitken's unprovoked attack on you?

Scott Barrie: Last week, Bill Aitken referred to North Korea and Albania, rather than Cuba. Clearly, he is using shorthand this week.

Mr Hamilton: Can the minister clarify whether Bill Aitken is correct when he says that there is no right to appeal against decisions of the Land Court? I should probably know the answer to that question, but I do not.

Allan Wilson: Specifically, there would be an appeal to the Court of Session on the stated case, although that would be an expensive business, I suspect.

Mr Hamilton: In other words, you would not expect that that would happen as a matter of course.

Allan Wilson: I would not.

The Convener: Is that point cleared up?

Mr Hamilton: As far as I understand it, the minister said that a decision of the Land Court could be appealed in the Court of Session. Is that correct, minister?

Allan Wilson: In the stated case, yes. That is provided for in the Scottish Land Court Act 1993.

Mr Hamilton: Is that appeal on the basis of the facts or on the basis of the law?

Allan Wilson: The law.

Mr Hamilton: On the basis of the facts, is there any point of appeal? Presumably, the only reason why we are considering the issue is that Mr Aitken is right and there is no appeal on the facts.

Allan Wilson: It would be a question of appeal on the point of law as to whether the Land Court—

Mr Hamilton: Is that a no?

Allan Wilson: The issue would be a point of law at that stage.

Mr Hamilton: I understand that, but I want to know whether there is any means of appeal on the facts.

Allan Wilson: There is no appeal beyond the Scottish Land Court.

Mr Hamilton: Why do you think that that is a good idea?

Allan Wilson: That provision is already made in the Scottish Land Court Act 1993.

Mr Hamilton: However, in legislation that could be contentious, would not it be fair and open-minded to allow appeal beyond the Land Court?

The Convener: Minister, let us finish with this point. I want to ensure that Mr Hamilton is satisfied with your answer. Is it not the case normally that any appeal to a court of law is made on the basis of law? Any appeal on the basis of fact would be the exception to the rule—that is generally the position in Scots law.

Allan Wilson: In addition to that general point, I am sure that members of the committee will want some finality to the process.

Bill Aitken: I accept that the revised legal position, as advanced by the minister, is correct, but the issue comes down to a question of equity. Any appeal to the Court of Session from the Land Court would be such a convoluted, expensive and stretched-out process that it would be impossible to go down that route.

Allan Wilson: As the convener pointed out, the provisions are no different from those that apply in any other Land Court case.

Mr Hamilton: Does the minister accept that, to some extent, the point of the bill is to alter all that radically? Never before have we had the likelihood of such an increased flow of legal challenge and appeal, with the consequent need for transparency and fairness. Even if what is suggested has not been the case so far, does he not consider that it would be fair to allow such alterations now?

Allan Wilson: In drawing up the bill, consulting on it and proposing amendments, we have considered that. We believe that there is ample provision for transparency and fairness.

Mr Hamilton: The minister's argument is that we should not have what is proposed because we have never had it and it does not apply in other areas. It is hardly a good argument that, with new legislation, things should remain as they are.

The Convener: Minister, I will allow you to come back to those points in your summary, if you wish.

Stewart Stevenson: I have a clarifying question. In the operation of the Scottish Land Court to date, have there been any instances where people have perceived themselves to be hard done by because of the lack of an appeal on facts?

Does the minister's silence mean "No", written in large letters, or does it mean "No", written 17 times?

Mr Morrison: I do not know whether this adds to or detracts from the discussion, but my experience is that Land Court proceedings are seen as an arbitration service and decisions are usually accepted by all parties. I do not have extensive knowledge of all the conclusions but—certainly from my limited experience over the past 10 years—I believe that Land Court decisions are seen as being the end of the road.

16:00

Allan Wilson: The Land Court is a higher court than a sheriff court. There will undoubtedly have been references to the Court of Session. However, even if a party feels aggrieved, I doubt whether they would prevail by going through that or any other part of the judicial system.

The Convener: I fear that we are poring over the whole legal system and trying to condense it to fit into this section of the bill. It might be useful for the committee to have an Executive note on the matter, so that, at stage 3, everyone knows exactly where the bill fits into the current legal system and what the additional levels of appeal are. I sense that we are not agreed about that.

As you said, minister, the committee was looking for a longer time limit for Lands Tribunal decisions, so the extension to four weeks is welcome.

Bill Aitken drew an analogy between what is proposed and the public inquiry system. However, I am not sure whether there is a direct analogy, although I apologise if I am going right back to the beginning of the argument. Is it not the case that, in a public inquiry, one party does not have the right of appeal anyway? What Bill Aitken is saying is therefore not necessarily analogous. In a public inquiry into a planning matter, only one party has the right of appeal.

Allan Wilson: I agree that the situations are not analogous. It would probably be best to include a reference to such situations in the note that I will send to the committee about how we envisage the proposed legislation might operate in the context of the wider judicial system of decision and review.

Mr Hamilton: I have a point about this famous note.

Allan Wilson: It cannot be famous; I have only just introduced it.

Mr Hamilton: You are quite right. In your case, it would be infamous.

The suggestion of an appeals process might be reasonable because the whole point of the bill is to create a new set-up. When you give the committee your opinion, can you not just state what has happened thus far? If you are anticipating a greater volume of challenges under the bill, why would it be unfair to have a proper appeals process?

Allan Wilson: The point is that, in relation to part 2, Land Court provisions are pre-existing. We want to ensure that the note clarifies our intent with regard to the Lands Tribunal, to the pre-existing provisions on Land Court references and decisions and to prospective appeals.

The Convener: Okay. Minister, is there anything else you would like to say in winding up or has the issue been covered?

Allan Wilson: I hesitate to open up the discussion further, except to say that we will provide the note requested on the points that have been raised.

Amendment 364 agreed to.

Amendments 365, 366 and 367 moved—[Allan Wilson]—and agreed to.

Amendment 232 not moved.

Section 58, as amended, agreed to.

Section 59—Compensation

The Convener: Amendment 474, in the name of Stewart Stevenson, is in a group on its own.

Stewart Stevenson: Members will recall that, two meetings ago, we discussed time limits. The minister persuaded the committee on that occasion that we should not proceed with some of the amendments that related to the 63-day time limit. I suggested that I might return at a later stage with an amendment to address ministerial discipline. That is what I am doing now.

Amendment 474 would simply add to the list of reasons for compensation a failure to comply with the 63-day time limit. If and when any penalties or compensation might have to be paid for a failure by ministers to meet the time limits, my amendment would open up the prospect of MSPs asking relevant parliamentary questions about how many penalties had been paid. In that way, we would have a metric on the efficiency and effectiveness of the minister and of the agencies and courts, over which he does not necessarily have direct control.

I move amendment 474.

Bill Aitken: I am attracted by what Stewart Stevenson's amendment requests. I am a great believer not only in checks and balances on the powers of Executive ministers, but in methods of assessing ministers' competence. I am sure that no reasonable minister could be afraid of that. Nevertheless, I am just a bit concerned about the workability of amendment 474. Although I think that it has considerable merits in some respects, I really do not think that we could approve it today.

Allan Wilson: I am grateful to Stewart Stevenson for explaining why he thinks amendment 474 is necessary. However, I do not agree with him. As we discussed at a previous meeting, under section 59, which deals with compensation,

"Any person (other than a community body) who has incurred loss or expense … is entitled to compensation from Ministers."

I suspect that most of the circumstances in which the section will apply will relate to the sale of the land. The intention is to compensate the landowner and potential buyers where they incur losses as a result of the process. Section 59(1)(a) is more broadly drawn and allows compensation to be paid where losses result from

"complying with the procedural requirements"

of part 2 of the bill.

Amendment 474 would allow landowners and others to claim compensation when ministers take more than 63 days to determine whether an application for registration of an interest in land is to be entered on the register—that is, whether that application is valid. During that 63-day period, a temporary prohibition is placed on the landowner preventing the sale of the land, so any further delay would obviously prevent the landowner from selling.

However, in the circumstance to which Stewart Stevenson referred, section 59(1)(a) allows for compensation for loss in the event of such delays. I do not see the need for an additional requirement. I ask Stewart Stevenson to withdraw amendment 474 on that basis.

Stewart Stevenson: I am happy to withdraw amendment 474. It was simply a sighting shot and the minister should be aware that we shall return to the subject at stage 3. I seek the committee's consent to withdraw amendment 474.

Amendment 474, by agreement, withdrawn.

Section 59 agreed to.

Section 60 agreed to.

Section 61—Right to acquire sporting interests

The Convener: Amendment 183, in the name of Alasdair Morrison, is grouped with amendments 184 and 368.

Mr Morrison: I am conscious of the fact that we have slipped slightly behind our timetable and I

would not want to delay the ministerial analysis for much longer. I open up the debate immediately and await the minister's comments.

I move amendment 183.

Allan Wilson: I was going to say that I was grateful to Alasdair Morrison for explaining the purpose of amendments 183 and 184, but I think that we can dispense with that and cut straight to the chase or, in this instance, the hunt.

At present, section 61 gives community bodies specific rights to acquire the unexpired period of a lease of sporting rights where those rights run with the land that has been bought under the right to buy but are let to third parties who wish to assign them to others. However, in the normal course of events, such leases allow only the person who is identified in the lease to shoot over the land. The leases are generally not assignable and they are not valuable, as they relate only to rough shooting. We also understand that they are not used much except on croft land, as Alasdair Morrison will know, and they are generally not recorded.

Given that the community body will become the landlord under such a lease, it will be in a strong position to negotiate any changes to that lease with the tenant. Our conclusion is that the community would gain little from section 61 and, in most cases, would be better off taking over the ownership of the sporting rights and negotiating them with the sporting tenants. That is why we lodged amendment 368, which would leave out section 61.

Amendments 183 and 184 would, on the other hand, further extend the scope of section 61. They would extend the community body's right of acquisition to a situation where the sporting lease covers more land than the community has bought—extending beyond the boundary—even though the community could only obtain the rights pertaining to the land that it had acquired. That would be an unnecessarily complex process, the mechanics of which are not provided for in amendments 183 and 184.

I ask Alasdair Morrison to consider withdrawing amendment 183, not moving amendment 184 and agreeing to amendment 368, which would leave out section 61.

Mr Morrison: I am happy to withdraw amendment 183. I fully accept what the minister has said in relation to the enhanced status that the community body will have in opening up negotiations.

Amendment 183, by agreement, withdrawn.

Amendment 184 not moved.

Amendment 368 moved—[Allan Wilson]—and agreed to.

Section 62—Effect of right to buy on other rights

The Convener: Amendment 369 is grouped with amendments 370, 382, 383 and 386. Before I ask the minister to speak to the amendments, I ask members to indicate to me in the next five minutes whether they wish to break for five minutes or whether they wish to continue.

16:15

Allan Wilson: We have lodged this group of amendments to ensure that the bill is ECHR compliant. The amendments reflect a revised approach to the handling of rights of pre-emption, reversion and redemption, and statutory rights to buy. The bill currently provides for those rights to be terminated when the right to buy is implemented and, in part 3, for the owners of those interests in the land to be compensated for their loss.

On reflection, we have concluded that that is not necessary, and that the rights in the land to which I have referred should continue to exist once the land is transferred to the ownership of the community body or crofting community body. The rights should be exercisable if and when that body chooses to sell the land. This revised approach removes a complicating factor from the right to buy and significantly reduces potential compensation costs in part 3.

The effect of amendments 369 and 370 in part 2, and 382 and 383 in part 3, is that rights in the land should be revived after completion of the purchase by the crofting community body. Amendment 386 removes the requirement in part 3 for owners to be paid compensation for the loss of those rights. I commend the amendments to the committee.

I move amendment 369.

The Convener: As no member has indicated that they wish to speak, I invite the minister to sum up.

Allan Wilson: It is important to ensure that the legislation is ECHR compliant in its compensation provisions.

Amendment 369 agreed to.

Amendment 370 moved—[Allan Wilson]—and agreed to.

Section 62, as amended, agreed to.

Section 63 agreed to.

Section 64—Construction of references to land in which community interest registered

Amendment 371 moved—[Allan Wilson]—and agreed to.

Section 64, as amended, agreed to.

Section 65—Land which may be bought: eligible croft land

The Convener: Amendment 475 is grouped with amendments 476 to 489 and amendment 492. If amendment 475 is agreed to, I cannot call amendments 476 and 477. If amendment 484 is agreed to, I cannot call amendment 485.

Bill Aitken: As I peer through the Stygian gloom of this room, I see a large number of amendments on an issue of serious principle.

As we know, part 2 introduces the community right to buy. In effect, it gives the community a right of first refusal when land comes up for sale. Part 3 introduces the crofting community right to buy. As I have said before—and as we have debated at length—in effect that means compulsory purchase to acquire certain land for properly constituted crofting communities, as defined by the bill.

Leaving aside the debate on the right-to-buy provisions, it must be conceded that, unlike other legislation such as the Tenants' Rights, Etc (Scotland) Act 1980, the bill allows crofting community bodies the right to buy neighbouring land, rather than just the land that they occupy. I do not think any member present would disagree that that proposal is unique in Scottish legal history. The bill goes further, because only one sort of neighbouring land—salmon fishings—has been singled out for attention. The Executive has provided little justification. The two reasons that have been given are that it is more likely that a crofting community will be sustainable if it can buy the neighbouring fishings and that, because the owner of the salmon fishings will be compensated, they have nothing to worry about. That is simply not the case.

The Executive's reasoning is totally inadequate. Although, in many cases, it would undoubtedly be convenient for a landowner to purchase a neighbour's land and to exploit it, that does not mean that there is any justification for giving the landowner the power to do so. The fact that the bill does not adequately provide for the compensation that the Executive mentions adds fuel to the argument that the bill is wrong-headed.

The only thing that a crofting community body needs to demonstrate when applying to acquire a salmon fishing is that it is acquiring enough croft land to make the crofting community more viable or sustainable. The crofting community body does not have to show that the salmon fishing is necessary or even that it will improve sustainability. That brings us to the nub of the argument. The main purpose of part 3 is to allow crofting communities to purchase croft land and salmon fishings, which have been included to make the croft land more economic.

I have argued that much of the bill is about social engineering. The engineering of a situation in which, in an attempt to artificially sustain a community, that community is allowed to acquire land and the owner receives inadequate compensation is problematic.

Although it is often said that second thoughts are best thoughts, that does not apply in the present case. When the draft bill was introduced, it included salmon fishings in eligible additional land, which crofting communities could buy only if the Scottish Land Court considered such purchase to be essential to the sustainable development of those communities. In spite of the fact that, as far as my colleagues and I have been able to ascertain, there was no apparent demand for change, the bill had been changed by the time it reached its present manifestation. The compulsory purchase provisions had been firmed up to ensure that those wishing to acquire land compulsorily, in the public interest, needed to show not that such acquisition was vital, but only that it was necessary.

The intention of amendment 484 is to return salmon fishings to the status of eligible additional land, which would mean that a similar test would be applicable. Amendment 484 does not seek to prevent the acquisition of salmon fishings. It seeks to make their acquisition subject to the same tests that apply under normal compulsory purchase legislation.

I draw members' attention to local authorities' requirements in relation to compulsory purchase, which they exercise in connection with many of their day-to-day activities. For a compulsory purchase to be granted in such an instance, it must be demonstrated that the purchase is essential for the development involved. The bill applies a different set of criteria. It is about social engineering. The proposals in question are likely to end up in disaster and the likely effect on the salmon fishing industry in Scotland is a matter of grave concern.

Even though they are well intentioned, I question whether many of the crofting communities would be able to sustain the salmon fishings at the level that is required to attract tourism. Like everything else in life, the provision of salmon fishing and of the holidays and services that go with it is highly competitive. People can go to Iceland, Russia and Norway. Many people will do so if the facilities that are provided in Scotland are seen to be inadequate in comparison with the facilities that are provided in other countries.

The only way in which communities will be able to maintain salmon fishings as attractive places to

go to will be through the investment of significant levels of public cash, which might not be forthcoming. Jobs are under threat. The industry is under threat. The committee and the Executive should think again.

I move amendment 475.

Stewart Stevenson: We have cut to the chase now. We know exactly where the Tories stand. They do not believe that there are any entrepreneurial skills among the people of the Highlands. They do not believe that communities in the Highlands can compete with communities in Norway, Iceland or elsewhere. The Tories see the bill as delivering artificial sustainability. In fact, we have had an artificial constraint on the development of communities over many years.

For many years when I was a child, my family would go to Achmelvich, on the west coast of Sutherland. The crofter there gave us some space on the machair for our tent. The Vestey family owned the whole of the area and had a dead hand upon the development of communities there. At the core of that was control over the land and over the fishings. In those days, it was a great delight when, out of sheer perversity, we went to fish brown trout out of Lord Vestey's salmon rivers. If our 2lb-breaking-strain brown trout line was able to catch something else, then so be it.

The basic point is that the bill has to address land poverty and the inability of communities to address their own destiny. There is entrepreneurial skill in Highland communities, as is demonstrated in many parts of Scotland. If we accept the argument that Bill Aitken has put forward, we will condemn people in the Highlands to many more years of oppression by the likes of landlords such as Vestey, who put back economic development in many parts of the Highlands for generations. Furthermore, they contributed not a penny in tax to the coffers that might have sustained communities. I have utmost vigour in opposing every one of the amendments in the group.

Mr Morrison: I endorse everything that Stewart Stevenson said, although I lost him slightly on the brown trout detail—I was slightly confused about that. Furthermore, Stewart should apologise for introducing unparliamentary language, in mentioning the Vestey family—but that is something for the Standards Committee to deal with. However, his example was very relevant. The Vesteys are a classic example of a family that presided over the demise of communities and they certainly held communities back over many years.

If we are seeking a real, living example of a community running a fishery efficiently, we can again refer—I consistently refer to this example—to Assynt, which is about to celebrate 10 years of community ownership, and which has managed to transform the fortunes of its fishery. Last year, it realised a profit of some £6,000, doing everything that Bill Aitken claims a community is incapable of doing: properly running and investing in a fishery and making it attractive to members of the community, to fee-paying tourists, and indeed to the toffs whom we want to see pouring in. [*Interruption.*] Of course we want the toffs, and we want their money in particular.

Proper management and investment were exactly what was achieved in the case of Assynt. It is absurd for anyone to claim that a community is incapable of taking control and ownership of land and fisheries and making a go of that. It is a nonsense to claim that old money is needed to run such fisheries.

16:30

George Lyon: I support what Stewart Stevenson and Alasdair Morrison have said. Once again, we hear a clear argument from Bill Aitken and his colleagues that the ordinary crofters and others who live in crofting communities are incapable of running salmon fisheries.

Bill Aitken is arguing that only those who currently own a salmon fishery or those who have access to other income streams can properly operate or run a salmon fishery. He is arguing that rural development in Scotland should be based on enticing wealthy people into Scotland and expecting them to deficit-fund rural Scotland from other income sources. Frankly, I think that we should completely reject that principle. This part of the legislation is about strengthening crofting communities and giving them opportunities. Of course, those opportunities might not be taken. Clearly, if the crofting community cannot access the investment that it needs, it will not be interested in using the rights that we are about to confer. That is quite simple. The argument that the community would not be able to run the fishery because it could not get investment does not work because, if that were the case, the power that we are conferring would not be used.

I firmly reject the amendment and Bill Aitken's proposition that crofters and the ordinary people of Scotland are incapable of running salmon fisheries. I hope that Bill Aitken is resoundingly beaten on this issue.

The Convener: In opposing Bill Aitken's amendment, I commend the Executive for including this departure from the normal property rights in Scots law. The Executive has departed from the normal process for a good reason.

After listening to the evidence that was given on the matter—it seems long ago now—I believe that, individually and collectively, those communities

with a direct interest in the sustainability of the land and what goes with the land are an important driving force for rural Scotland. I was able to see that first-hand when I visited the Stornoway Trust.

The provision is radical, but it is correct. I am sure that, in examining a case in which a crofting body wanted to take over the salmon fishing rights in relation to contiguous land, the Executive will ensure that there is a proper and stringent test of the community's plan. Furthermore, the community would have only a year in which to pass that test. The bill contains such safeguards to ensure that the community's plan is viable.

Mr McGrigor: I do not think that Bill Aitken said that he did not think that crofters and ordinary people could manage fisheries. Salmon and sea trout fisheries depend on expertise and knowledge that has been gained over a long time. At the moment, the Scottish Executive has a policy of encouraging salmon and sea trout fisheries but those fisheries would be destroyed by the policies that George Lyon and Alasdair Morrison advocate, which would push investment out of the sector. That is extraordinary. He mentioned the Assynt crofters. I am led to believe that a hydro scheme has been built in Assynt that has stopped the passage of microfish and is destroying not only the fishery but the freshwater mussel beds that rely on the microfish. He might be misleading the committee on this issue.

I agree with Bill Aitken and I believe that his amendments should be supported.

The Convener: I am not going to take any more speeches in the debate. I will take points of clarification—

Mr Morrison: I have a point of clarification.

The Convener: Please let me finish. The debate is controversial, and I want to ensure that there is balance, but if you want to clarify something, I am happy for you to do so.

Mr Morrison: Mr McGrigor levelled a very serious charge in saying that I have misled the committee. He said only "he", and I take it that he was referring to my good self.

On the Assynt hydro scheme, everybody concerned has stated clearly that it killed only 26 smolts. Mr McGrigor would do well to furnish himself with facts before he comes to the committee and levels a serious charge against a fellow MSP.

On expertise in fisheries, I only ask him—although I know that he will not have an opportunity to respond—whether expertise in running a fishery is hereditary.

The Convener: In the interest of balancing the debate, I will allow one more speech.

Mr McGrigor: Alasdair Morrison is asking whether expertise in fishery is hereditary. Many families have been employed as river workers and ghillies for four generations, so knowledge sometimes does have an hereditary element. It is passed on from father to son.

Allan Wilson: Given the comments that have been made, I will dispense with a large part of my script, welcome the support that members on my right and left have demonstrated for the Executive proposal and oppose amendments 475 to 489 and 492.

Amendment 486 removes a clear indication that "sporting interests" does not include any right under a lease of salmon fishings. Given the definition of "eligible sporting interests" in section 67(4), that appears to open up the possibility that amendment 486 creates a right to buy out a salmon fishing lease where no such right previously existed.

I am sure that that was not the intention. Perhaps it was, but I do not want the committee to be tempted to vote for amendment 486 on that basis, because it would introduce unnecessary ambiguity. It would be better to oppose all the amendments in the group, because we wish the salmon fishings that crofting communities will be able to buy to include salmon fishings held under a separate title. If we did not provide for acquisition of salmon fishings held under separate title, a loophole would, as Mr Aitken knows, be created that would allow owners of land to separate their salmon fishings from their land and thus ensure that the salmon fishings could not be acquired. We changed the approach in the draft bill because it did not deliver that policy. That is why we want to ensure that the salmon fishings can be procured with the land.

I simply conclude by resisting amendments 475 to 489 and amendment 492 and by asking the committee to do likewise.

Bill Aitken: The minister agreed to change the draft bill because it certainly did not deliver that policy. Of course, it should not have delivered that policy at all, because of the damage that it could do, of which the minister is aware. Only after he and his colleagues found themselves browbeaten by the extreme left of the Liberal Democrats, the Labour party and certain sections of the Scottish National Party did he feel the necessity to introduce such provisions, which have the capacity to cause immense damage to the rural economy.

I put it to the committee that, if Stewart Stevenson were to install double-glazing, if Alasdair Morrison were to change his central heating system, or if George Lyon were to extend his property in Bute, some money would be invested in the local economy—local tradesmen

would be employed to carry out work—and that that would be a highly desirable set-up. Would any of those gentlemen carry out that investment if, after the work was done, someone could come along and buy their home? Of course they would not, so why should anyone whose business is providing facilities connected with salmon fishing invest in that business at the moment? Obviously they will not, so those three gentlemen should consider what effect that will have on jobs in the rural communities that they represent.

I did not say, as George Lyon inferred, that I considered that people in crofting communities are incapable of managing those assets—of course they are not. As Jamie McGrigor articulated well, many of them have been managing the assets for generations. However, I question whether they would be able to obtain money from the standard financial institutions that would enable them to make the necessary investment to ensure that the facilities provided are attractive to visitors. If they do not and cannot obtain the money, people will simply not come and other jobs in the area will be affected.

For some members sitting round the table a degree of emotionalism is attached to this argument, sometimes in respect of tremendous wrongs that were done 200 or 300 years ago. I am not being dismissive of those arguments or viewpoints, because I know that the memories have lingered, possibly for too long, in parts of Scotland. The fact of the matter is that by seeking to set those wrongs right in the bill, members will damage the communities; they will not improve matters, as is their intention. I suspect that my amendments will not find favour with the committee, but members should think long and hard about the effects of the bill, because it has the capacity to be extremely damaging.

The Convener: The question is, that amendment 475 be agreed to. Are we all 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 475 disagreed to.

The Convener: Fresh coffee is available if members, the minister and his officials want some. I am sure that we would appreciate a quick cup of coffee. I suspend the meeting for three minutes.

16:42

Meeting suspended.

16:48

On resuming—

The Convener: I am sure that that break was in breach of some working time directive, but it gave us a chance to have a cup of coffee.

Amendment 476 moved—[Bill Aitken].

The Convener: The question is, that amendment 476 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 476 disagreed to.

Amendment 477 moved—[Bill Aitken].

The Convener: The question is, that amendment 477 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 477 disagreed to.

Amendment 478 moved—[Bill Aitken].

The Convener: The question is, that amendment 478 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 478 disagreed to.

Amendment 414 moved—[Allan Wilson]—and agreed to.

Section 65, as amended, agreed to.

Section 66—Land which may be bought: salmon fishings and mineral rights

Amendment 479 moved—[Bill Aitken].

The Convener: The question is, that amendment 479 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 479 disagreed to.

Amendment 480 moved—[Bill Aitken].

The Convener: The question is, that amendment 480 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 480 disagreed to.

Amendment 307 moved—[Mr Jamie McGrigor].

The Convener: The question is, that amendment 307 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 307 disagreed to.

Amendment 481 moved—[Bill Aitken].

The Convener: The question is, that amendment 481 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 481 disagreed to.

Amendment 482 moved—[Bill Aitken].

The Convener: The question is, that amendment 482 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 482 disagreed to.

Amendment 483 moved—[Bill Aitken].

The Convener: The question is, that amendment 483 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 483 disagreed to.

Section 66 agreed to.

Section 67—Land which may be bought in addition to eligible croft land

Amendment 484 moved—[Bill Aitken].

The Convener: The question is, that amendment 484 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 484 disagreed to.

Amendment 485 moved—[Bill Aitken].

The Convener: The question is, that amendment 485 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 485 disagreed to.

Amendment 486 not moved.

Section 67 agreed to.

Section 68—Crofting community bodies

Amendment 254 not moved.

Amendment 415 moved—[Allan Wilson].

The Convener: The question is, that amendment 415 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)
Morrison, Mr Alasdair (Western Isles) (Lab)
Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST

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

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

Amendment 415 agreed to.

Amendments 185 and 186 not moved.

Amendment 372 moved—[Allan Wilson]—and agreed to.

Amendment 416 moved—[Allan Wilson].

The Convener: The question is, that amendment 416 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)
Morrison, Mr Alasdair (Western Isles) (Lab)
Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST

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

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

Amendment 416 agreed to.

Section 68, as amended, agreed to.

Section 69 agreed to.

Section 70—Application by crofting community body for consent to buy croft land

Amendment 487 moved—[Bill Aitken].

The Convener: The question is, that amendment 487 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 487 disagreed to.

Amendment 417 moved—[Allan Wilson].

The Convener: The question is, that amendment 417 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)
Morrison, Mr Alasdair (Western Isles) (Lab)
Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST

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

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

Amendment 417 agreed to.

Amendments 418 and 419 moved—[Allan Wilson]—and agreed to.

The Convener: Amendment 373, in the name of Ross Finnie, is in a group on its own.

17:00

Allan Wilson: Amendment 373 will set out timing arrangements for certain procedural stages in the processing of applications, which are not provided for adequately in the bill. The time scales that are involved are consistent with others in the bill and the effect of amendment 373 will be to ensure that ministers will not be able to decide whether to consent to an application before all the relevant information is available to them. I hope that the committee will agree that Executive amendment 373 will make the bill more workable as a consequence.

I move amendment 373.

Amendment 373 agreed to.

Section 70, as amended, agreed to.

Section 71—Criteria for consent by Ministers

Amendment 488 moved—[Bill Aitken].

The Convener: The question is, that amendment 488 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 488 disagreed to.

Amendment 420 moved—[Allan Wilson].

The Convener: The question is, that amendment 420 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)
Morrison, Mr Alasdair (Western Isles) (Lab)
Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST

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

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

Amendment 420 agreed to.

Amendment 489 moved—[Bill Aitken].

The Convener: The question is, that amendment 489 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 489 disagreed to.

Amendment 421 moved—[Allan Wilson].

The Convener: The question is, that amendment 421 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)
Morrison, Mr Alasdair (Western Isles) (Lab)
Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST

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

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

Amendment 421 agreed to.

Amendment 422 moved—[Allan Wilson].

The Convener: The question is, that amendment 422 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)
Morrison, Mr Alasdair (Western Isles) (Lab)
Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST

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

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

Amendment 422 agreed to.

Amendments 308 and 396 not moved.

Amendment 423 moved—[Allan Wilson].

The Convener: The question is, that amendment 423 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)
Morrison, Mr Alasdair (Western Isles) (Lab)
Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST

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

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

Amendment 423 agreed to.

Amendments 309 and 310 not moved.

Section 71, as amended, agreed to.

Section 72—Ballot to indicate approval for purposes of section 71(1)(n)

Amendments 374, 375, 376, 424 and 425 moved—[Allan Wilson]—and agreed to.

Amendment 313 moved—[Bill Aitken].

The Convener: The question is, that amendment 313 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 313 disagreed to.

Amendment 426 moved—[Allan Wilson]—and agreed to.

Section 72, as amended, agreed to.

Section 73—Right to buy same eligible land exercisable by only one crofting community body

Amendment 314 moved—[Bill Aitken].

The Convener: The question is, that amendment 314 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 314 disagreed to.

Amendments 427 and 428 moved—[Allan Wilson]—and agreed to.

Section 73, as amended, agreed to.

Section 74—Reference to Land Court of purchase of eligible additional land without owner's consent

The Convener: Amendment 377 is grouped with amendments 378, 379 and 380.

Allan Wilson: Amendment 377 is a drafting amendment that will correct an omission in section 74(1). Amendment 378 is also corrective in that it will remove meaningless text, which is always a good idea. A crofting community body has no powers in relation to land that it does not own.

The wording of section 76(2) could lead to confusion about the role of the Scottish Land Court in considering a landowner's request that additional land should be included in the right to buy. It is intended that the Land Court's role in that respect should not be the same as the role that it is given in section 74 of determining whether additional land should be included at the request of the crofting community body. The Land Court's role in the circumstances that are covered by section 76 is to establish the facts—we debated that earlier. Amendment 379 is intended to provide clarity by removing any ambiguity in the wording of section 76.

Amendment 380 has been designed to clarify arrangements for a procedural stage in the processing of applications, for which the bill does not adequately provide. Amendment 380 will ensure that ministers cannot decide whether to consent to an application before all the relevant information is available to them. I hope that the committee will agree that amendment 380 will make the bill more workable.

I move amendment 377.

Amendment 377 agreed to.

The Convener: Amendments 429, 430, 431 and 378 have already been debated. Unless any member objects, I will invite the minister to move the amendments en bloc and will put a single question on all of them.

Mr Hamilton: I object, because I am still fighting my one-man campaign on sustainable development.

The Convener: Okay, we will deal with each amendment separately.

Mr Hamilton: It might help to save time if I indicate that I will oppose amendments 429, 430 and 431. Perhaps we can deal with the amendments in two blocks.

The Convener: I am afraid that we cannot do things in that way. If we do not deal with the amendments en bloc, we must deal with each one separately. I am sure that we will manage.

Amendment 429 moved—[Allan Wilson].

The Convener: The question is, that amendment 429 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)
Morrison, Mr Alasdair (Western Isles) (Lab)
Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST

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

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

Amendment 429 agreed to.

Amendment 430 moved—[Allan Wilson].

The Convener: The question is, that amendment 430 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)
Morrison, Mr Alasdair (Western Isles) (Lab)
Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST

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

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

Amendment 430 agreed to.

Amendment 431 moved—[Allan Wilson].

The Convener: The question is, that amendment 431 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)
Morrison, Mr Alasdair (Western Isles) (Lab)
Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST

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

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

Amendment 431 agreed to.

Amendment 378 moved—[Allan Wilson]—and agreed to.

Section 74, as amended, agreed to.

Section 75 agreed to.

Section 76—Additional land included at request of owner

Amendments 379 and 380 moved—[Allan Wilson]—and agreed to.

Section 76, as amended, agreed to.

Section 77 agreed to.

Section 78—Reference to Land Court of questions on applications

The Convener: Amendment 381 is in a group on its own.

17:15

Allan Wilson: Executive amendment 381 would enable the Scottish Land Court to decide on the relevance of matters that are brought before it under section 78. That should enable the court to ensure that proceedings focus on relevant issues and eliminate opportunities for unnecessary litigation that would add to costs for the crofting community body, the landowner and other interested parties. I suspect that the amendment will command the committee's support for that reason.

I move amendment 381.

Mr Hamilton: Could disputes be referred as a matter of procedure, or would referrals be made purely on the facts of the case, which would make disputes unchallengeable?

Allan Wilson: I am not clear what you mean by dispute. Are you talking about the Land Court's decision?

Mr Hamilton: Yes. What would happen if the Land Court considered that a question was irrelevant and its decision was disputed?

Allan Wilson: That would fall into the category of questions that had been considered by the Land Court. The party concerned could appeal to the Court of Session on a matter of law.

The Convener: That matter is clarified.

Amendment 381 agreed to.

Section 78, as amended, agreed to.

Section 79 agreed to.

Section 80—Leaseback to owner of sporting interests

The Convener: Amendment 432 is grouped with amendments 433 to 436 and 457.

Allan Wilson: Section 80 provides a procedure for agreeing the terms of a leaseback when the crofting community body and the landowner have failed to do so. However, the section fails to specify when that agreement must be reached. That problem would be rectified by Executive amendment 432, which says that agreement must have been reached, and a copy of the agreement supplied to ministers, before ministers consent to the application. If that is not done, the process that is set out in section 80 will operate. That change should ensure that parties agree the terms and conditions of a leaseback expeditiously and that their failure to do so does not disrupt the right-to-buy process.

Amendment 433, which is contingent on amendment 432, would set a time limit within which ministers must refer a leaseback proposal to the Land Court. It would have no other impact on the working of the bill.

Executive amendment 436, which is consequential on amendment 432, would delete the existing provision that allows for agreement between the parties. Section 80 already provides that the crofting community body must grant a lease once the Land Court has determined the terms and conditions of leaseback to the former owner. Executive amendment 434 would specify precisely when, after completion of the transfer of the land, the lease should be granted. Without amendment 434, a dispute might arise between the crofting community body and the former owner that would have to be resolved by the aforementioned costly litigation in the Court of Session.

Section 80 does not indicate the consequences of a failure by the crofting community body to grant a lease. Without specific provision, the former landowner would be able to take court action to force the crofting community body to grant a lease. Amendment 435 would provide for such action to be taken by the Land Court. That approach is based on a provision of the Crofters (Scotland) Act 1993, which is used to enforce leaseback arrangements under the crofter right to buy. We hope that that approach would minimise costs for the parties concerned.

Amendment 457 reflects concerns that have been raised about the adequacy of the compensation provision. As drafted, section 85(10) requires the valuer to discount the value of

the property by the value of the sporting interest if a leaseback is offered to the owner, whether or not that offer is accepted. Amendment 457 would provide that the value placed on the sporting interest reflects the terms and conditions of the leaseback. Amendment 449, which is linked to amendment 457, would ensure that the terms and conditions must be agreed before the valuer is required to make his valuation of the land that is to be transferred.

I move amendment 432.

Amendment 432 agreed to.

Amendments 433 to 436 moved—[Allan Wilson]—and agreed to.

Section 80, as amended, agreed to.

Section 81—Effect on other rights of Ministers' decision on right to buy

Amendments 382 and 383 moved—[Allan Wilson]—and agreed to.

Section 81, as amended, agreed to.

Section 82—Confirmation of intention to proceed with purchase and withdrawal

The Convener: Amendment 437 is grouped with amendments 438 and 439.

Allan Wilson: I move amendment 437.

The Convener: Does any other member wish to speak?

Bill Aitken: I am persuaded by the minister's eloquence.

The Convener: I sense that members are getting tired.

Amendment 437 agreed to.

Amendment 315 moved—[Bill Aitken].

The Convener: The question is, that amendment 315 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 315 disagreed to.

Amendments 438 and 439 moved—[Allan Wilson]—and agreed to.

Section 82, as amended, agreed to.

Section 83—Completion of purpose

Amendment 384 moved—[Allan Wilson]—and agreed to.

Section 83, as amended, agreed to.

Section 84—Completion of transfer

Amendments 440, 385 and 441 to 446 moved—[Allan Wilson]—and agreed to.

Section 84, as amended, agreed to.

Section 85—Assessment of value of croft land etc

Amendment 447 moved—[Allan Wilson]—and agreed to.

Amendment 316 moved—[Bill Aitken].

The Convener: The question is, that amendment 316 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 316 disagreed to.

Amendment 448 and 449 moved—[Allan Wilson]—and agreed to.

Amendment 317 moved—[Bill Aitken].

The Convener: The question is, that amendment 317 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 317 disagreed to.

Amendment 450 and 451 moved—[Allan Wilson]—and agreed to.

Amendment 318 moved—[Bill Aitken].

The Convener: The question is, that amendment 318 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 318 disagreed to.

Amendments 452 and 453 moved—[Allan Wilson]—and agreed to.

Amendment 255 not moved.

Amendment 454 moved—[Allan Wilson]—and agreed to.

Amendment 490 moved—[Bill Aitken].

17:30

The Convener: The question is, that amendment 490 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 490 disagreed to.

Amendments 455 and 456 moved—[Allan Wilson]—and agreed to.

Amendment 319 moved—[Bill Aitken].

The Convener: The question is, that amendment 319 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 319 disagreed to.

Amendments 457 and 458 moved—[Allan Wilson]—and agreed to.

Amendment 320 moved—[Bill Aitken].

The Convener: The question is, that amendment 320 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 320 disagreed to.

Section 85, as amended, agreed to.

Section 86—Compensation

Amendment 386 moved—[Allan Wilson]—and agreed to.

Section 86, as amended, agreed to.

Section 87 agreed to.

Section 88—Appeals against consent

Bill Aitken: In view of the substantive issues that arise, I will not move amendment 491 now, although I reserve the right to return to it at stage 3.

Amendment 491 not moved.

Amendment 387 moved—[Allan Wilson]—and agreed to.

Section 88, as amended, agreed to.

Section 89—Appeals to Land Court: valuation

Amendment 388 moved—[Allan Wilson]—and agreed to.

Section 89, as amended, agreed to.

Sections 90 to 93 agreed to.

Section 94—Scottish Land Court: jurisdiction

The Convener: Amendment 389, in the name of the minister, is grouped on its own.

Allan Wilson: Amendment 389 is intended to ensure that Scottish Land Court consideration of issues arising under part 3 of the bill will be conducted expeditiously and effectively. Amendment 389 removes an opportunity to appeal delegated decisions of the Land Court to the full court. However, without that provision, the most expeditious way for the Land Court to proceed would be to arrange that the full court should deal with all matters that might arise under the bill in the first instance. In that circumstance, there would be no appeal, but it would be impractical to proceed in that way.

It is clear that many if not all the matters that the bill's provisions require the Land Court to consider are appropriate to be considered by one suitably qualified member of the Land Court acting under delegation from the full court. Although there would then be no appeal to the full court, there would remain an appeal to the Court of Session on a point of law. The crucial decisions in the bill are those to be taken by ministers on whether the right to buy can be exercised. Those decisions are subject to a distinct appeal regime—set out in section 88—that involves an appeal to a sheriff.

Further explanation of the application of those rights of appeal will be included in the what must be by now famous letter to the convener.

I move amendment 389.

The Convener: The first mention of that letter seems so long ago.

Amendment 389 agreed to.

Section 94, as amended, agreed to.

Section 95—General and supplementary provisions

Amendment 492 moved—[Bill Aitken].

The Convener: The question is, that amendment 492 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 492 disagreed to.

Amendment 17 moved—[Bill Aitken].

The Convener: The question is, that amendment 17 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Aitken, Bill (Glasgow) (Con)
Stevenson, Stewart (Banff and Buchan) (SNP)
Hamilton, Mr Duncan (Highlands and Islands) (SNP)
Lyon, George (Argyll and Bute) (LD)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)

ABSTENTIONS

Barrie, Scott (Dunfermline West) (Lab)

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

Amendment 17 agreed to.

Amendment 18 moved—[Bill Aitken]—and agreed to.

Section 95, as amended, agreed to.

Section 96 agreed to.

Schedule 2

AMENDMENT AND REPEAL OF ENACTMENTS

Amendment 49 moved—[Bill Aitken].

The Convener: The question is, that amendment 49 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 49 disagreed to.

The Convener: Amendment 470 is grouped with amendments 471 to 473.

Stewart Stevenson: Amendment 470 relates to sections 14A to 14C of the Public Order Act 1986, which created the offence of trespassory assembly. In essence, the offence relates to events such as raves. However, no definition of what constitutes serious disruption to the life of the community is offered in the 1986 act. The Association of Chief Police Officers in Scotland is unaware of any instances in which section 14A has been used in Scotland. No offences under section 14B have been reported to the fiscal, nor have any offences under section 14C(3), which requires people to obey a police officer's instruction not to proceed to an assembly. The essence of amendment 470 is that it is irrational to retain an offence that runs contrary to access rights and which is not used anyway. The bill could be subverted if the offence is kept on the statute book.

Amendment 471 relates to section 61(4) of the Criminal Justice and Public Order Act 1994, which concerns the power of police to deal with trespassers on land, such as new-age travellers. Since 2001, one case involving seven people has been reported to the fiscal for a contravention of that section, although no proceedings were taken. There is no information from previous years. The offence of breach of the peace is generally held to be sufficient to cover such instances. Removing the offence in the 1994 act would simplify matters.

Amendment 472 also relates to raves. The case of Deakin v Milne in 1882 established in Scots law that the police have powers to prevent and disperse assemblies that are likely to cause a breach of the peace.

Amendment 473 relates to sections 68 and 69 of the 1994 act, which deal with aggravated trespass. That offence was introduced when protesters were trying to prevent fox hunts. I refer members to *Hansard* of 13 April 1994. I will quote selectively. Speaking against those sections, Jim Wallace made the point that Lord James Douglas-Hamilton

"quite clearly fails to appreciate that there is a distinctive legal system in Scotland."

Brian Wilson, that fount of all knowledge for some people, said:

"'as we have no wish for there to be any possibility of this legislation restricting normal public access to the countryside or of limiting the public's legitimate right to protest, we would have no objection to any amendments which would narrow the focus of the Clauses'".

Sam Galbraith said:

"I am sure that the Minister must be somewhat ashamed of himself in having to introduce the amendment tonight."

John McFall, who was then Labour home affairs spokesman, said:

"It is inappropriate to Scotland; it has no place in Scotland. When a Labour Government are elected we will make sure that the law is repealed."—[*Official Report, House of Commons*, 13 April 1994; Vol 241, c 364-79.]

On that basis, I seek support for amendment 473.

I move amendment 470.

Allan Wilson: I am somewhat surprised that Stewart Stevenson has lodged the amendments. Amendment 470 relates to the Public Order Act 1986; the other three amendments would affect the Criminal Justice and Public Order Act 1994. In that context, amendments to the Criminal Justice (Scotland) Bill would probably be the most appropriate vehicle for pursuing the issue if Stewart Stevenson was indeed intent on turning Banff and Buchan into a haven for raves and new-age travellers.

Stewart Stevenson: We need the business in Scotland.

17:45

Allan Wilson: I am also somewhat surprised that Stewart Stevenson should seek to undermine the powers of the police to deal effectively with issues such as public assemblies and raves. However, the amendments would go further, in so far as they would not only undermine the powers of the police in the context of the rights that will be created under the bill, but entirely remove the powers from the police in Scotland.

I consider the approach that we have adopted in the bill to be the more appropriate one, which I suggest Stewart Stevenson should consider. That approach involves, as colleagues have said, the creation of rights of public access. Even if we were to assume that the provisions of the public order acts required reconsideration, the Land Reform (Scotland) Bill would not be the appropriate vehicle for doing so. We have sought to ensure that access rights do not interfere with the relevant provisions of those acts. Although Stewart Stevenson has a problem with those provisions, I hope that the committee will agree with me that such a debate is not appropriate to our consideration of the bill.

There is much more that I could say, but let me simply make reference to schedule 2 to the bill, which includes amendments to other legislation that is consequent on the access provisions in part 1. I do not consider the bill to be the appropriate vehicle for considering the provisions of the Public Order Act 1986. If the committee wants to consider that act, another opportunity can be made available for doing so. Otherwise, I hope that Stewart Stevenson will agree to withdraw amendment 470 and not to move amendments 471, 472 and 473.

Stewart Stevenson: I shall not delay the committee much longer, but the minister's remarks would have more credibility if, at line 25 of page 68, schedule 2 did not already seek to amend the Criminal Justice and Public Order Act 1994. It is quite proper that, in our consideration of a bill that will change the statutory basis on which people can access the countryside, we undo some of the legislation that, in the light of experience, is no longer appropriate. Indeed, some of that existing legislation could cut across the rights of people to access the countryside. The provision that amendment 473 would remove was quite vigorously opposed by all but the Tories at the time of its introduction. On that basis, I will press amendment 470.

The Convener: Will Stewart Stevenson clarify whether he thinks that the amendments are necessary only as a precaution or whether he believes that schedule 2 may already cut across access rights?

Stewart Stevenson: The information that I have been given—the issue is technical, so I have taken advice—suggests that there is potential for the legislation to conflict with the access rights that are granted in the bill. I cannot assert that that will be the case; nonetheless, that is my understanding.

The Convener: So you are pressing amendment 470.

Stewart Stevenson: Yes, ma'am.

The Convener: The question is, that amendment 470—

Allan Wilson: You cannot put the question on a matter that requires clarification. I do not believe that section 14A of the 1986 act would enable the police to apply for an order to prevent the holding of an assembly on land for a specified period when there is a public right of access to the land. An order may be sought only when the police reasonably believe that an assembly is likely to be held without the consent of the occupier of the land and may result in either a serious disruption to the life of the community or, in the case of an important building or monument, sufficient damage. It is clear that such an order cannot be made when there is a public right of access to the land.

The intention behind our amendment to the 1986 act, in paragraph 8 of schedule 2, is to make it clear that access rights in the bill do not constitute public rights of access for the purposes of section 14A of the 1986 act. That is the change that will be instituted as a result of the debate on the matter. I do not consider it appropriate—perhaps Stewart Stevenson does—that the public should be able to use the argument that they are exercising access rights to allow them to reside on land without the permission of the occupier of the land. The issue is not about wild camping, which we have debated and provided for in the bill; it is about legislation that is designed to tackle a specific problem. We are simply seeking to ensure that the legislation is not affected by the provisions of the bill. In that context, the analogies that Stewart Stevenson draws with the debate in the 1980s do not apply. That is an important point.

The Convener: Yes, that is an important point. You are saying that a protester who has a legitimate right to protest may do so under the Public Order Act 1986. What you are trying to ensure is that they do not use their statutory right of access in a protest. However, they will still be able to protest—that will be their civil right, as it is now—and nothing in the bill will cut across that, as far as you are concerned.

Allan Wilson: Absolutely. That is an important distinction to make.

The Convener: Yes, otherwise I would support Stewart Stevenson's amendment 470. Is everybody happy with that?

Members *indicated agreement*.

The Convener: I ask Stewart Stevenson to press or seek to withdraw amendment 470.

Stewart Stevenson: I shall seek to withdraw the amendment. I am perfectly content to listen to what the minister says, with the benefit of advice, on that subject—if not on everything he says, as we will see.

Allan Wilson: The people of Banff and Buchan will be pleased.

Amendment 470, by agreement, withdrawn.

Amendments 471 and 472 not moved.

Amendment 473 moved—[Stewart Stevenson].

The Convener: The question is, that amendment 473 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)
Lyon, George (Argyll and Bute) (LD)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)

ABSTENTIONS

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

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

Amendment 473 disagreed to.

Schedule 2 agreed to.

Section 97 agreed to.

Long Title

The Convener: Amendment 40, in the name of Scott Barrie, has been debated with amendment 19. Are you moving amendment 40, Scott?

Scott Barrie: Yes. I remind members—given the fact that I made an error earlier—that amendment 40 is consequential to one that every member of the committee voted for 18 weeks ago, on day 1. I move amendment 40.

The Convener: The question is, that amendment 40 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)
Hamilton, Mr Duncan (Highlands and Islands) (SNP)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST

Lyon, George (Argyll and Bute) (LD)
Morrison, Mr Alasdair (Western Isles) (Lab)

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

Amendment 40 agreed to.

The Convener: Amendment 399, in the name of Alasdair Morrison, has been debated with amendment 397. Alasdair, are you moving the amendment?

Mr Morrison: What do you think, convener? [*Laughter.*]

The Convener: Is that a no?

Mr Morrison: That is a no.

Amendment 399 not moved.

Long title, as amended, agreed to.

The Convener: You can shout hurray. [MEMBERS: "Hurray!"] That ends stage 2 consideration of the bill. I thank the members of the committee and the minister and his team for ensuring that we got to the end of the bill this evening. If we had not, we would have been here again tomorrow morning.

I also thank Allan Wilson and all his team for the many interesting debates that we have had in committee. We look forward to the letter that we will receive from the minister in due course, clarifying one or two matters. My particular thanks go to the clerks for their work on the bill. It has not been unknown for me to call Richard Hough, Gillian Baxendine or Irene Fleming at 10 o'clock in the evening to find them still at their desk producing the convener's brief and so on. I take this opportunity to thank them for all their work on the bill.

However, our work goes on. Now that we have concluded this stage 2 process, we will begin stage 2 consideration of the Criminal Justice (Scotland) Bill next Wednesday, 13 November. There is no rest for the wicked.

Meeting closed at 17:57.

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