RURAL DEVELOPMENT COMMITTEE

Tuesday 14 January 2003
(*Afternoon*)

Session 1

£5.00

Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by The Stationery Office Ltd.

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RURAL DEVELOPMENT COMMITTEE
2nd Meeting 2003, Session 1

CONVENER

*Alex Fergusson (South of Scotland) (Con)

DEPUTY CONVENER

Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP)

COMMITTEE MEMBERS

*Rhoda Grant (Highlands and Islands) (Lab)
*Richard Lochhead (North-East Scotland) (SNP)
*Mr Jamie McGrigor (Highlands and Islands) (Con)
*Mr Alasdair Morrison (Western Isles) (Lab)
*John Farquhar Munro (Ross, Skye and Inverness West) (LD)
Irene Oldfather (Cunninghame South) (Lab)
*Mr Mike Rumbles (West Aberdeenshire and Kincardine) (LD)
*Elaine Smith (Coatbridge and Chryston) (Lab)
*Stewart Stevenson (Banff and Buchan) (SNP)

COMMITTEE SUBSTITUTES

Nora Radcliffe (Gordon) (LD)
Mr John McAllion (Dundee East) (Lab)
Alasdair Morgan (Galloway and Upper Nithsdale) (SNP)
John Scott (Ayr) (Con)

*attended

THE FOLLOWING ALSO ATTENDED:

Allan Wilson (Deputy Minister for Environment and Rural Development)

CLERK TO THE COMMITTEE

Tracey Hawe

SENIOR ASSISTANT CLERK

Mark Brough

ASSISTANT CLERK

Catherine Johnstone

LOCATION

The Hub

Scottish Parliament

Rural Development Committee

Tuesday 14 January 2003

(*Afternoon*)

[THE CONVENER *opened the meeting at 14:03*]

The Convener (Alex Fergusson): Right, ladies and gentlemen, we are a little late starting and we have a lot to get through. I welcome committee members, witnesses and members of the public to this meeting of the Rural Development Committee. I give my usual reminder that all mobile phones should be switched off. That applies particularly in this room, because even if the phones are put on silent running, they affect the technological arrangements for recording the meeting. I urge everybody to ensure that mobile phones are switched off until I say otherwise.

Jamie McGrigor will be late and I intimate apologies from Irene Oldfather and Fergus Ewing.

Items in Private

The Convener: I invite the committee to agree to consider agenda items 3 and 4 in private. Item 3 is consideration of our future work programme, which involves housekeeping issues and consideration of possible witnesses. Item 4 relates to witnesses' claims for expenses under the Parliament's witness expenses scheme. As that involves details of named individuals, I ask that we take it in private, as is our practice. Do members agree?

Members *indicated agreement*.

Agricultural Holdings (Scotland) Bill: Stage 2

The Convener: We begin stage 2 consideration of the Agricultural Holdings (Scotland) Bill. I declare my interest as a partner in a limited partnership under the Agricultural Holdings (Scotland) Act 1991. Does anyone else have an interest to declare? If John Farquhar Munro would like to declare an interest, that would be useful.

John Farquhar Munro (Ross, Skye and Inverness West) (LD): I declare my interest in a croft in the Highlands.

Stewart Stevenson (Banff and Buchan) (SNP): I have a three-acre field that I allow a farmer to use for no consideration.

The Convener: Lucky farmer.

I welcome Allan Wilson, the Deputy Minister for Environment and Rural Development, who will steer us through stage 2 from the Executive's perspective, and I welcome his officials. However, I record my disappointment and concern that amendments in the minister's name for today's meeting were not lodged until near the deadline on Friday and were therefore not published in the business bulletin until Monday. I understand that that might have been because the minister did not clear the amendments earlier.

I understand that the Executive has said publicly that it will aim to lodge amendments five sitting days before any stage, which would have obvious advantages in giving members notice. The committee, in its stage 1 report on the bill, urged the minister to lodge amendments as early as possible, because he had said that he intended to deal with several substantive points at stage 2. I hope that the late lodging will not be repeated before further stage 2 days, given the importance that committee members attach to them.

As it is some time since the committee last dealt with a bill at stage 2, I will take a moment to explain the process. Members should have a copy of the bill, the first marshalled list of amendments, which was published yesterday, and the groupings of amendments, which is a document marked "SP Bill 62-G1". Please check whether you have those papers. If you do not, spares are available.

The amendments have been grouped on my authority to facilitate debate, but the running order is set by the rules of precedence, which govern the marshalled list. Members should remember to move between the groupings and the marshalled list. All amendments will be called in strict order from the marshalled list, through which we cannot move backwards.

Last week, the committee agreed to a motion on the order of consideration of the bill. As a result, the target that has been set for today is to complete consideration of parts 1 and 3 of the bill. I have every confidence that we will achieve that.

There will be one debate on each group of amendments. I will call the proposer of the first amendment in each group, who should speak to and move that amendment and comment on all the other amendments in the group. I will then call the proposers of all the other amendments in the group in sequence, followed by other members, including the member in charge of the bill—the minister—if he has not already been called. Members who did not propose amendments in the group but who wish to speak should indicate that by catching my attention in the normal way. If other speakers make substantive points, the minister will be given an opportunity to comment before I invite the proposer of the first amendment in the group to wind up.

The minister can participate in debate on all amendments. Other visiting members are entitled to participate in debate only on their amendments, but they can participate in the rest of the proceedings at my discretion. Only committee members may vote.

Members should move no amendments during a group debate other than the first amendment in a group; I assure them that their time will come. Members should also rest assured that I will call them to move their amendments at the appropriate time. If any member does not want to move their amendment when called, they should say, "Not moved." Please note that any other MSP may move such an amendment under rule 9.10.14 of standing orders. If no one moves the amendment, I will immediately call the next amendment on the marshalled list.

Following debate on each group, I will check whether the member who moved the first amendment in the group wishes to press it to a vote or to withdraw it. If they wish to press ahead, I will put the question on that amendment. If any member disagrees, we will proceed immediately to a division by show of hands. It is important that members keep their hands clearly raised until the clerk has recorded the vote.

If any member wishes to withdraw their amendment after it has been moved, they must seek the committee's agreement to do so. If any committee member objects, the committee immediately votes on whether to agree to the amendment, without a division on whether to withdraw it.

After we have debated the amendments, the committee must decide whether to agree to each section of the bill as a whole. A short debate on that point may be allowed if it would be useful to allow discussion of points not raised by amendments.

One point that I would like to make at the outset is that if a situation arises in which I am called on to use my casting vote, I will do so, as is the norm, in favour of the status quo. By common agreement, the status quo in such cases is the bill as introduced. I would therefore use my casting vote against any amendment.

Having said all that, I am sure that we are now all totally clear about the procedural aspects of this afternoon's meeting. We can move to the first group of amendments.

Section 1—Application of the 1991 Act to agricultural holdings

The Convener: The first decision that we have to make is fairly easy, because the question is, that section 1 be agreed to.

Section 1 agreed to.

The Convener: I hope that that is an example of how we will get through the rest of the bill, but I doubt it.

Section 2—Conversion from 1991 Act tenancy to limited duration tenancy

The Convener: Amendment 16, in the name of Stewart Stevenson, is grouped with amendments 17 and 18, 20 to 34 inclusive, 37, 38 and 39. Amendments 16, 17 and 18, and each subsequent set of three amendments in the group, are alternatives. Even if amendment 16 is agreed to, I will still call amendments 17 and 18, as it is possible for the committee to vote in turn to increase the number of years to 30, then to 35 and then to 40. In other words, if all three amendments were agreed to, the bill as amended would then refer to 40 years.

Stewart Stevenson: I will address the general issue that the 21 amendments in this group cover. The limited duration tenancy, as laid out in broad terms in the bill, is for a minimum of 15 years, except in the instance where it succeeds upon an Agricultural Holdings (Scotland) Act 1991 tenancy, when it is set for a term of not less than 25 years.

As members will be aware from the evidence sessions at stage 1, the Scottish Tenant Farmers Action Group felt cut out of the decision-making process that led to the bill. The group felt that, in some respects, the National Farmers Union of Scotland had not entirely represented the viewpoint of tenant farmers. It is fair to recognise that, since the bill's publication, there has been a series of discussions involving the Scottish Landowners Federation, the National Farmers Union of Scotland and the Scottish Tenant

Farmers Action Group. Many of the concerns of the tenant farmers are now moving by agreement to a slightly different position.

The specific issue of the limited duration tenancies and how long they should last for remains an open question. Ideally, the tenant farmers would have liked an LDT to be for life. However, they have recognised that an amendment that proposed making life the duration of an LDT would create a series of significant complications, not least in relation to the heritability of such LDTs. It is therefore in the spirit of testing the validity of 15 years as the minimum term that this group of amendments has been proposed.

In general terms, it would be perfectly possible for the committee to take an individual view on each set of three amendments within the group. However, it is fair to say that there are a number of interdependencies, and I shall seek to highlight what they are. It was helpful of the convener to point out that we can successively vote on different levels to ramp up the duration, if we choose to do so at all, as that gives us a fair opportunity to test the committee's opinion.

The first set of amendments—amendments 16, 17 and 18—which apply to page 2, line 12 of the bill, relate to the conversion of a 1991 act tenancy to a limited duration tenancy. Where the bill provides that the LDT thus created will be for a term not less than 25 years, the amendments would make that term 30, 35 or 40 years. One of the things that it would be interesting to hear in the minister's response on this group of amendments is why the duration should be 25 years in this context and 15 elsewhere. The fact that the duration is different at different points in the bill suggests that there might be a degree of arbitrariness in the choice of the 15-year time scale for the greenfield—if I may use the phrase—creation of LDTs. That opens the door to our testing of what the appropriate length for LDTs might be.

14:15

Amendments 16, 17 and 18 would change the 25 years in the bill to 30, 35 and 40 years. Like other amendments, they are designed to give the tenant farmer the opportunity to get a return on their investments over a comparatively long period of time. Tenant farmers have generally felt that having a minimum of 15 years for LDTs is inadequate, although I accept that the bill provides for LDTs in excess of 15 years. It might be argued that, rationally, I should try to change the 25 years to the same duration as elsewhere in the bill, but I am interested in hearing the minister's argument in that regard.

Amendments 20, 21 and 22 relate to section 5(1), which deals with the primary creation of the limited duration tenancies for a term of not less than 15 years. They provide the options of making that minimum term either 20, 25 or 30 years.

The next sets of amendments relate to sections 5(2), 5(3) and 5(4), which deal with the creation of a limited duration tenancy when a short limited duration tenancy runs on beyond its term of five years. They seek to ensure a degree of consistency.

Amendments 37 to 39 relate to continuation and give the option of substituting 20, 25 or 30 years for the 15 years that is specified in section 8.

The tenant farmers have spoken to me and to others on this matter. I am persuaded that there would be advantages to tenant farmers if the minimum duration for an LDT were increased.

I commend this group of amendments to the committee and I move amendment 16.

Rhoda Grant (Highlands and Islands) (Lab): There is concern that the minimum period of 15 years that is specified in the bill would become the norm. What does the minister foresee that the norm would be? Some tenancies might quite rightly be for 15 years, but some people who take on a farm might view it as a working-life commitment. What pressure could a tenant who was taking up a tenancy put on a landowner to get a term that was longer than the minimum?

The Convener: Minister, are you happy to answer those questions during your final remarks or would you like to do so now?

The Deputy Minister for Environment and Rural Development (Allan Wilson): I am happy to answer them later.

The Convener: Mr Stevenson might like to comment on my view that there is a danger that amendments 16, 17 and 18 might make it much less attractive for people to let land under the new tenancies. The bill has always been intended to reinvigorate the tenanted sector and my view is that that will happen only if the notion of letting land is as attractive as possible. The amendments could be seen to militate against that.

On the other amendments in the group, I stated during stage 1 that I was happy to support any parts of the bill that were mutually agreed by all the parties in the run-up to its publication. It is important to point out that the 15-year period is a minimum; the duration can be longer if the parties agree. My strong argument in favour of the continuation of the 15-year period is that it was agreed by all parties prior to the bill's being introduced, so I am in favour of it.

Allan Wilson: I will try to address the points that were made by Stewart Stevenson and Rhoda Grant and by the convener.

I agree that the introduction of a more liberal land market, which is the presumption behind this bill and others, is in the best interest of the tenant, because it introduces greater competition to the tenant-landlord relationship. Benefits to the tenant should flow from that beyond simple references to the length of tenure.

I was interested in Stewart Stevenson's reference to the Scottish Tenant Farmers Action Group. If there was a historical omission in terms of the group's involvement in the process, that has certainly been rectified of late. Is it all right for me to use the acronym LDT for a limited duration tenancy and SLDT for a short limited duration tenancy, as well as other acronyms, during the debate?

The Convener: I like to think that we understand them by now, but if we do not, I am sure that we will say so.

Allan Wilson: As I understand it, the group had a figure for the minimum tenure of circa 21 years, which does not feature in the amendments. To an extent, that demonstrates the arbitrary nature of the process, to which Stewart Stevenson referred.

I will concentrate on what I believe to be the more substantive point. Our proposition centres on the fact that a longer minimum term might not be in the interests of the tenant, as Stewart Stevenson might be arguing and as Rhoda Grant implied. I acknowledge some of the motives for wishing to ensure that a tenant is not coerced by a disreputable landlord into converting his or her secure tenancy under the 1991 act into an LDT. However, I assure Stewart Stevenson and others that we believe that the industry is content with the 25-year term. As the convener said, the term is the product of consultation and agreement within the industry. The NFUS and the SLF agreed the term originally and I understand that no demand emerged from either organisation, from either the consultation on the draft bill or the committee's consideration, that that term be changed on the ground that it was insufficient.

A tenant who wants security of tenure exceeding 25 years can, of course, refuse to allow conversion to occur unless the term of the new LDT is longer. However, there are good reasons why many tenants might find that an LDT is preferable in their circumstances to a tenancy under the 1991 act and why a longer minimum period might not be in their interests. For example, tenants might be able to negotiate reduced rent or other preferential lease terms through conversion of their lease to an LDT. It is arguable that a longer minimum period would reduce the negotiating clout that those tenants would be able to exercise in the new liberalised market for land. It is a matter for their judgment on what is more important to them: longer-term greater security of tenure, reduced rent or any other lease condition.

Furthermore, unlike tenants under the 1991 act, LDT tenants would have a general right to assign their interest in the lease. That is a particularly valuable right for tenants without clear family succession in the farm plan. A farmer who was planning to retire might want to convert to an LDT and assign his or her interest in the remaining term of the lease for financial benefit. In agreeing to convert to an LDT, the landlord would run the risk of either being left with an assignee in whom they had less confidence, or having to buy out the tenant's remaining interest in the land. In that context, too long a minimum term would leave fewer landlords willing to accept conversion in those circumstances and that might affect the demand and availability that would arise from those tenancies. In the longer term and from a wider perspective, that would place tenant farmers in a less strong position than they would be in if there were competition and greater availability of land for assignation.

Amendments 20 to 34 and 37 to 39 propose that the minimum term of the new LDT should be either 20, 25 or 30 years instead of the 15 years that is provided for in section 5(1). The 15-year LDT is a central feature of part 1 and I am pleased that the committee broadly supports it. As the convener said—I referred to this in the context of the 25-year term—the figure is the outcome of a balancing act, and I accept that it is therefore arbitrary. It is also the outcome of lengthy and detailed consideration, initially between the NFUS and the SLF and more recently through consultation across the industry.

The 15-year minimum term will provide tenant farmers with the security of tenure that they need to establish a business, to invest in it and to reap the benefits of that investment. Some tenants might want a longer LDT, so the bill provides that the landlord and the tenant could agree any term over the 15 years. That point reflects the balance in the availability of land, competition for that land and the respective positions of farmer and landlord. It would be wrong to assume that a longer minimum term would necessarily be in the best interests of those tenants. As the convener said, landlords would simply not offer LDTs if they considered that the terms were too restrictive. The success of LDTs will depend on there being the supply of land to let to meet demand.

If that supply of land were not there, opportunities for tenants to take advantage of LDTs would be limited. Those who could find LDTs would be likely to find that the fact that

landlords could choose from a number of potential tenants would give them the upper hand, if that is the correct term to use, in the negotiations. It would certainly strengthen their position in terms of securing greater security of tenure, if that were the primary objective of their negotiating position at that point. It might not be; it might be that they are seeking a reduction in rent for the 15-year period in question, which might be more of a priority than an extension of the period of tenure.

In addition, it should not be assumed that tenants want a longer minimum term. We believe that most tenants would prefer to have the flexibility to be able to prioritise for themselves which terms of the lease they want to negotiate. Many would prefer to negotiate preferential rent terms, or to seek other concessions, rather than having a longer lease term. That is the weakness in Stewart Stevenson's amendments; that flexibility would not exist in the fixed-term minimum periods.

Consultation with tenants has revealed only modest support for a longer minimum term and absolutely no evidence that the 15-year minimum period would be too short to allow a tenant to establish and invest in a business and run it efficiently.

For those reasons, I ask Stewart Stevenson to withdraw amendment 16 and not to press amendments 17, 18, 20 to 34 and 37 to 39. If those amendments are moved, I urge the committee not to agree to them.

Stewart Stevenson: I thank the minister for an argument with which, in many respects, it is hard to disagree. I do not think that our objectives are materially different.

I recognise the tension between term and rent in commercial negotiations between tenants and landlords. I also recognise that the bill does not compel landlords to offer tenancies of any kind whatever, but merely creates a framework within which particular tenancies may be offered. As the convener said, there are dangers, and I see the validity of the argument that if we increase the minimum term, the supply of such tenancies might be reduced.

14:30

Equally, I recognise that the 15-year term was agreed between the two primary parties—the SLF and the NFUS—during the main consultation on the bill. However, I wanted to respond to what the tenant farmers, who view the figure of 15 as inadequate, have said. Their proposals, translated by me, for 20, 25 and 30 years are as arbitrary as 15 years; they are not based on a scientific calculation that shows that any of those numbers is correct, but they reflect a desire to have greater security.

I recognise that in relation to amendments 16, 17 and 18, which relate to conversion of 1991 act tenancies, from which the figure of 25 years arises, there is a justification for the higher figure, which relates to the surrender of security that is inherent in the transfer from a 1991 act tenancy to an LDT. That is fair enough.

I was particularly taken with the point that was made by Rhoda Grant, although I do not think that she was taking a view on it. She asked whether 15 years would become the norm—the fact that it would rapidly become the norm is part of the reason for the tenant farmers' concerns.

In that spirit, I should like to press amendment 16. Regardless of what happens to amendments 16, 17 and 18, I shall also move amendment 20, but if no support exists for that amendment, I shall not press any of my remaining amendments. It will be useful for the tenant farmers to know the committee's view, because it will inform them in their future negotiations with the other parties involved in the bill. It will also inform the Parliament and those who are party to consultation on the bill on whether subsequent action will be pursued at stage 3.

The Convener: The question is, that amendment 16 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Lochhead, Richard (North-East Scotland) (SNP)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST

Fergusson, Alex (South of Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
Smith, Elaine (Coatbridge and Chryston) (Lab)

The Convener: The result of the division is: For 3, Against 5, Abstentions 0.

Amendment 16 disagreed to.

Amendments 17 and 18 not moved.

The Convener: Amendment 19, in the name of the minister, is in a group on its own.

Allan Wilson: Section 2 provides for a tenant and landlord to convert a tenancy by agreement from an Agricultural Holdings (Scotland) Act 1991 tenancy to an LDT of at least 25 years. We have just discussed that issue.

Amendment 19 will clarify that the new LDT need not necessarily comprise only the same land as the original 1991 act tenancy. The provision will, critically, cover situations in which both the

landlord and the tenant agree that the landlord should offer the tenant additional land in return for the conversion of the existing secure tenancy to an LDT. That is an interesting aspect—to which I did not refer—of the debate on the previous group of amendments and it might feature in negotiations on length of tenure, for example.

Under amendment 19, the parties will be able to include both the land under the original lease and the additional land in a single LDT that would have a minimum term of 25 years. Without the amendment, it would be possible for the land to be covered by two LDTs—one of 25 years or more covering the land that was held previously under the 1991 act tenancy and another of 15 years or more covering the additional land.

I assure the committee that amendment 19 will not in any way affect the rights of tenants. It will not prejudice their right to continue in a 1991 act tenancy, which we discussed when debating the previous group of amendments. Tenants will have the option of surrendering that security, but there is no compulsion involved, even if the landlord would prefer them to convert to an LDT. The amendment will not affect a tenant's negotiating position with their landlord if they seek additional land.

Those are very important safeguards for tenants. However, amendment 19 will eradicate what would otherwise be an anomaly under the terminology that is used in the bill.

I move amendment 19.

The Convener: No member has indicated that they wish to comment on the amendment. Does the minister have anything further to say?

Allan Wilson: No, I have covered the issues. There are links between amendment 19 and the previous group.

Amendment 19 agreed to.

Section 2, as amended, agreed to.

Sections 3 and 4 agreed to.

Section 5—Limited duration tenancies

The Convener: Amendment 20 was debated with amendment 16. Amendments 20, 21 and 22 are alternatives, but all three will be called.

Amendment 20 moved—[Stewart Stevenson].

The Convener: The question is, that amendment 20 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Lochhead, Richard (North-East Scotland) (SNP)
Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST

Fergusson, Alex (South of Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
Smith, Elaine (Coatbridge and Chryston) (Lab)

The Convener: The result of the division is: For 2, Against 6, Abstentions 0.

Amendment 20 disagreed to.

Amendments 21 to 34 not moved.

Section 5 agreed to.

Sections 6 and 7 agreed to.

Section 8—Continuation and termination of limited duration tenancies

The Convener: The next amendment for debate is amendment 35, in the name of the minister, which is grouped with amendments 36 and 40. I ask the minister to speak to and to move amendment 35 and to speak to all of the amendments in the group.

Allan Wilson: The amendments deal with the issue of notice.

Amendment 36 is a technical amendment that we have lodged for clarification purposes—usually a euphemism for, "We made a mistake in the first draft of the bill."

Amendment 40 will clarify the notice period that a tenant requires to serve in order to terminate an LDT. A standard feature of commercial leases is that, if either a landlord or a tenant wishes to terminate the lease, they are required to serve notice to quit upon the other party. Section 21 of the Agricultural Holdings (Scotland) Act 1991 obliges both the landlord and the tenant to serve notice of not less than one year and not more than two years. However, section 8 of the bill requires the landlord of an LDT to serve the tenant with two distinct notices to quit: a preliminary notice to quit, which is to be served not less than two years and not more than three years before the end of the LDT; and a final notice to quit, which is to be served not less than one year and not more than two years before the end of the LDT.

The bill's schedule disapplies the provisions of the Sheriff Courts (Scotland) Act 1907 from SLDTs and LDTs, which would otherwise have provided default notice-to-quit requirements. Such a step will ensure that no notice to quit is required by landlords at the end of an SLDT and that the notice to quit procedure in section 8 of the bill applies where landlords wish to terminate an LDT.

A further consequence of the disapplication of the 1907 act is that a tenant under an SLDT or LDT need not serve notice of intention to quit.

After due consideration, we believe that, given the short-term nature of the lease, neither tenants nor landlords under an SLDT should be required to serve such notice.

However, LDTs are different. Both parties need to know of the other's intention, so that they can plan for change should the lease end. That principle is well established in commercial leases and already applies to tenancies under the 1991 act. We do not propose to require tenants to serve the double notice to quit that the bill will impose on landlords. However, we believe that it is appropriate that the period of notice required be sufficient to give the landlord adequate warning of change. That measure is only fair and equitable in all circumstances.

Amendment 40 will also insert a notice period for tenants of at least one year and not more than two years. That provision mirrors both the notice-to-quit requirement that section 21 of the 1991 act already imposes on tenants in tenancies made under that act, and the final notice-to-quit obligation that the bill places upon the landlord. We do not propose to require the tenant also to serve preliminary notice to quit. I should point out that amendment 40 is the product of discussions with the NFU and the SLF, both of which support the proposal. Amendment 35 is consequential upon amendment 40.

I move amendment 35.

Rhoda Grant: I am concerned about what will happen if a tenant's circumstances change—perhaps because of marriage break-up, bereavement and so on—and they have to give such a long period of notice. Will the provisions make things easy for tenants if they have to give up their farms quickly? After all, it might be difficult for such people to keep their tenancies going for a year.

Stewart Stevenson: I want to raise a technical point in relation to section 5(3), which provides for a short limited duration tenancy's becoming a limited duration tenancy if such an extension is agreed. Such an extension might be for a very short time—perhaps even shorter than the period of notice that the minister has proposed—simply for reasons related to unexpected operational difficulties that a tenant might have in vacating the tenancy after five years. Would you expect that one year's notice would still have to be given? That could lead to circumstances in which notice would have to be given in advance of the knowledge that such notice would need to be given because of the conversion to an LDT. Minister—I have just answered one of my own questions; the answer is a minimum of 15 years.

Let us suppose that someone with a five-year SLDT simply wants another six months' agreement. Would amendment 40 trap them?

The Convener: If no other members wish to comment, I ask the minister to wind up when he is ready.

14:45

Allan Wilson: I am just trying to work out Stewart Stevenson's question in order to answer it.

The Convener: Do you wish to put the question another way, Mr Stevenson?

Stewart Stevenson: What I am getting at is, where a short LDT of five years exists, it might be that the tenant requires, and the landlord agrees to, an extension of six months for operational reasons. By virtue of section 5(3), that would convert the tenancy to an LDT. How, in that case, could the year's notice that amendment 40 requires be given to allow the duration of the tenancy to be five years and six months?

Allan Wilson: First, in the circumstances that Rhoda Grant described, one could give longer notice if one chose to do so—we refer to a minimum period of notice. Secondly, one could enter an agreement with the landlord to conclude the tenancy at short notice, subject to a marriage break-up or whatever other circumstances. That is provided for.

The SLDT converts to an LDT, which would be of 15 years' duration minimum. The tenancy could be terminated by assignation or by agreement between the parties in exactly the same circumstances that are referred to under the provisions of section 8.

The Convener: Are you content with that answer, Mr Stevenson?

Stewart Stevenson: It was a question that occurred to me in flight, minister, rather than a considered one.

Amendment 35 agreed to.

Amendment 36 moved—[Allan Wilson]—and agreed to.

Amendments 37, 38 and 39 not moved.

Amendment 40 moved—[Allan Wilson]—and agreed to.

Section 8, as amended, agreed to.

Section 9 agreed to.

Section 10—Increase in rent: landlord's improvements

The Convener: Amendment 1, in the name of John Farquhar Munro, is grouped with amendment 13.

John Farquhar Munro: Amendment 1 concerns section 10(1)(c). I suggest that paragraph (c) be removed completely, simply to ensure that a landlord cannot automatically increase rent because of statutory improvement requirements.

The intention behind amendment 1 is to ensure that we can prevent landlords from increasing rent as a consequence of their having to carry out improvements to fixed equipment on a holding in order to comply with statutory requirements.

I am sure that everybody will appreciate that agriculture is becoming increasingly regulated, with the onus on the producer to ensure that he complies with stringent conditions, including those that are governed by agencies such as the Scottish Environment Protection Agency and the Health and Safety Executive. Standards in farming have changed dramatically over the past couple of decades, and much fixed farm equipment is no longer fit, or deemed suitable, for purpose.

Farmers are required, for example, to store slurry for longer, in line with environmental considerations, and buildings must—for welfare and safety reasons—adhere to more rigorous standards. The principle should be that, when a farm is offered for let, it should be fit for purpose and should meet all statutory requirements. Similarly, when the landlord has responsibility for fixed equipment, he should ensure that it meets the relevant standards; however, it would be unreasonable for him to charge extra rent for so ensuring. Amendment 1 aims to ensure that landlords do not raise rent unreasonably and automatically because of their having to comply with current stringent regulations.

I move amendment 1.

Rhoda Grant: I have a lot of sympathy with amendments 1 and 13. One of the problems that tenants face is that their rents might change when landowners carry out work that they must carry out under a lease agreement. Landowners can sometimes use such work as a bargaining tool when it comes to a tenancy, which can mean that work that must be carried out is not carried out. It might mean tenants themselves carrying out the work under what might become part of a write-down agreement. It is only right for landlords to fulfil their obligation to provide tenancies that are fit for purpose. That should not have implications for the rental of the farm.

Mr Mike Rumbles (West Aberdeenshire and Kincardine) (LD): I listened to what John Farquhar Munro and Rhoda Grant said, but I am a little bit concerned. Amendment 1 would amend section 10(1), which relates to landlords' carrying out improvements on land. The amendment would delete:

"or

(c) in compliance with a direction given by the Scottish Ministers under powers conferred on them by or under any enactment".

If a regulation or power is given to ministers to ensure that landlords improve their farm holdings to a particular level in the future—which we do not know about—then the bill, if amended by amendment 1, would not allow the landlord to reflect that in a future rent. That does not seem to be equitable, so I do not support the amendment.

Stewart Stevenson: We are very much minded to support John Farquhar Munro's amendment 1, which recognises that there have been many instances throughout Scotland of legal obligations on landlords turning out in practice to be legal and financial obligations on tenants, which has rarely—if ever—been legislators' intention.

I invite the minister to say whether the Executive, were it to create any new duties on Scottish ministers at some point in the future, might provide the appropriate powers at that time and concurrently. Will he indicate whether amendment 1 would therefore apply simply to those powers and enactments that presently exist, which could—of course—not bind this or any other Executive's future legislation?

John Farquhar Munro: May I reply to those points, convener?

The Convener: You will have a chance to wind up at the end. I ask the minister for his comments.

Allan Wilson: I will try to address the points that have been made and make one of my own. Section 15 of the 1991 act sets out the circumstances in which a landlord may charge a tenant additional rent to reflect improvements that the landlord has made to the tenanted land. Among the circumstances in which a landlord may charge additional rent is where an improvement is made in order to comply with a direction given by ministers.

Section 10 of the bill, which will apply to new SLDTs and LDTs, reflects closely the terms of section 15 of the 1991 act. Section 10 includes a provision that will allow a landlord to charge additional rent when they have made an improvement to tenanted land in order to comply with a direction given by ministers. John Farquhar Munro's amendment 1 would remove the ability of landlords to charge additional rent in situations in which the land was let under an LDT or SLDT. Amendment 13 would have the same effect in relation to 1991 act tenancies.

The point to which Mike Rumbles and Stewart Stevenson referred is worthy of consideration. As the convener mentioned at the outset, we have—as the situation has arisen on the horizon, so to speak—sought to discover the extent to which ministers have used directions that required

landowners to make improvements to agricultural land. We are not aware of any recent cases. The power could simply be a throwback to the post-war period when such directions might have been made to address domestic food shortages or such like. I say to Stewart Stevenson that I suppose that we could envisage such provision being necessary again in the future. Who knows? At this juncture, however, we are—for the reason that I just gave—unwilling to recommend deletion of the provisions. We are also unwilling to do so because of the short time that has been available to research the matter.

It is important to address the point that Rhoda Grant made about what the increase in rent relates to. It does not relate to the cost to the landlord of carrying out the improvement; rather, it is based on the value to an incoming tenant. A tenant would have to pay increased rent in return for an improvement that was of benefit to the tenant.

In the hypothetical situation that we are discussing in which the direction was accompanied by grant, section 10(3) of the bill would require the increase in rent to be reduced in proportion to the value of the grant. I argue that there is nothing unfair about the concept of the value of an improvement to an incoming tenant; that is accepted in other situations as a reasonable basis for assessing levels of compensation payable, including at waygo. Discussions continue with the industry on that very important consideration.

I am not aware of occasions on which provisions such as those that amendments 1 and 13 seek to strike out have been used in the recent past. It might be that the situation will no longer arise and that we can strike out the provision with impunity. However, that might not be the case. I repeat that we have had insufficient time to undertake the necessary research to see whether there could be circumstances in which we might envisage issuing directions. Such research will mean that the provisions retain some relevance and that they are not a post-war throwback.

I ask John Farquhar Munro to seek to withdraw amendment 1 and not to move amendment 13. If he does that, we will take another look at the circumstances in which ministers could issue such directions. At the moment, we cannot think of any but that it is not to say that there are none.

The Convener: Thank you. Some members have indicated a desire to speak and I am happy that they should do so.

Richard Lochhead (North-East Scotland) (SNP): Can we take it from the minister's comments that he might at stage 3 be sympathetic to John Farquhar Munro's amendments, should his research discover that there has been no precedent in recent years?

Stewart Stevenson: I recognise the validity of the minister's comments, but is he prepared to share with the committee in advance of stage 3 the results of his further research so that members in the committee and elsewhere can assess whether they wish to pursue the subject?

15:00

Allan Wilson: The answer to both questions is yes. As I said, we have had only a short time in which to consider the issue since amendments 1 and 13 were lodged. I will be happy to come back to the committee with the outcome of our investigations prior to the conclusion of stage 2, or as soon as possible thereafter.

John Farquhar Munro: The minister's comments are favourable and supportive of the principle that I am trying to establish. Given the minister's assurance that he is prepared to consider the matter further and to debate it again at stage 3, I will be happy to withdraw amendment 1.

Amendment 1, by agreement, withdrawn.

Section 10 agreed to.

Sections 11 to 14 agreed to.

Section 15—Fixed equipment

The Convener: Amendment 2 is grouped with amendments 3, 4, 5 and 12.

John Farquhar Munro: The purposes of the amendments are to seek to ensure that landlords provide suitable fixed equipment when letting land under limited duration tenancies, and to ensure that landlords cannot contract out of their obligations through the use of post-lease agreements. Amendment 12 would repeal section 5(3) of the Agricultural Holdings (Scotland) Act 1991, thereby stopping post-lease agreements that allow landlords to contract out of their obligations to replace and renew fixed equipment.

One area of dissatisfaction with the current system is landlords' ability to make agreements by which they can transfer the burden of maintaining, repairing, renewing and—in many cases—supplying fixed equipment. When buildings become redundant or unsuitable for their original purpose—through wear and tear, for instance—the landlord should replace them. Steadings that were built in the days of the horse and cart are not suitable for modern machinery and production methods. Accordingly, I have lodged amendments 2 to 5 and 12 in the hope that the committee will support them, which would ensure that landlords provide fixed equipment and fittings and cannot

contract out of that obligation through post-lease agreements.

I move amendment 2.

Rhoda Grant: Again, I have sympathy with the amendments because, like the previous group of amendments, they would ensure that tenanted properties are fit for their purpose. It is important, especially with shorter tenancies, that equipment and buildings should be of a reasonable standard. To leave the matter to negotiations between the landlord and the tenant puts the landlord in a position of power over the tenant. It is important that landlords should keep buildings and other equipment in a condition that is fit for use.

Stewart Stevenson: Does John Farquhar Munro intend to address amendment 4 at this stage?

The Convener: I am sure that he will refer to amendment 4 in his winding up. Would you like your question to be answered now?

Stewart Stevenson: Amendment 4 may require some explanation and, following that explanation, I may wish to interact with John Farquhar Munro. He may have inadvertently omitted to refer to his other amendments in the group in his opening remarks.

The Convener: Do you have any comments to make on amendment 4, John?

John Farquhar Munro: What is the problem?

The Convener: Could you put your question again, Mr Stevenson?

Stewart Stevenson: I simply wish to understand what amendment 4 seeks to achieve and what its effect will be as part of the group. I understand that we are in your hands, convener but, procedurally, when we come to the summing up on amendment 2, we will not have a debate on the other amendments in the group. I just wondered whether John Farquhar Munro had inadvertently failed to refer to the other amendments in the group that are in his name.

The Convener: Stewart Stevenson is correct to say that there will be no further chance to debate amendment 4.

Stewart Stevenson: I do not want to lose the opportunity to have that debate.

The Convener: I invite Mr Munro to expand on amendment 4, if he wishes to do so.

John Farquhar Munro: There may be some complication that I am not aware of. In section 15, on page 10, at the end of line 22, I wish to insert:

"Any agreement made between the landlord and the tenant after the lease has been entered into whereby one party purports to undertake to execute on behalf of the other, whether wholly at that party's own expense or wholly or partly at the expense of the other, any work which the other party is required to execute in order to fulfil that other party's obligations under the lease shall be of no effect."

That is, such an agreement would be null and void.

The Convener: I do not know whether this is of any help to Mr Stevenson, but an assumption has made by some that the amendment would apply to responsibility for repairs and renewals.

Stewart Stevenson: I suspect that John Farquhar Munro is pursuing a perfectly reasonable objective, but I am quite prepared to be open and honest with my colleagues on the committee and say that I am left somewhat in the dark as to the practical effect of amendment 4, and that I would very much like to be able to support John Farquhar Munro on amendment 4.

The Convener: The minister may be able to provide clarification.

Allan Wilson: I may be able to help, convener.

The Convener: We would all be grateful for that.

Allan Wilson: Is this my slot?

The Convener: Indeed.

Allan Wilson: Good.

Section 15 of the bill reflects the response of the NFUS and the SLF to their strong concerns, which I am sure we share, that landlords and tenants too often end up in disputes at waygo over what constitutes fixed equipment and what the condition and suitability of that equipment was at the start of the tenancy. Those organisations are keen to encourage good practice on the part of both parties, where the nature and condition of fixed equipment is recorded in writing at the start of the tenancy, to avoid such disputes. We and, I am sure, committee members applaud that aim and we were happy to provide for section 15 in line with that intention. For that reason, section 15(1) requires the parties to specify within the lease the nature of fixed equipment on the land, while section 15(2) encourages the parties to keep those details up to date.

Section 15(4) applies sections 5(2) to 5(4) of the 1991 act to LDTs and SLDTs. As a result, the landlord is required to put the fixed equipment on the land into a thorough state of repair when the tenancy starts, or as soon as is reasonably practicable thereafter. That creates a bit of a problem, which I will come to. All the tenant has to do is ensure that the landlord has fulfilled that duty.

Section 15(3) of the bill aims to achieve certainty by stating:

"The tenant is deemed to accept the condition of any fixed equipment, and its suitability for the purposes of the tenancy, as it is so specified in the lease or by agreement."

If the tenant does not believe that the landlord has fulfilled his or her responsibility to put the fixed equipment into a thorough state of repair, they can and should challenge the landlord at that point, thus reducing the risk of dispute at waygo.

The problem is that our attention has been drawn to a possible inconsistency between section 15(3) and the landlord's duty to put the fixed equipment into a thorough state of repair when the tenancy starts or as soon as reasonably practicable thereafter. As it stands, section 15(3) requires the tenant to accept the condition of the fixed equipment even though the landlord might not yet, at that juncture, have put it into a thorough state of repair. Such a consequence is unintended. Unfortunately, it has not been possible to draft a suitable amendment since that anomaly was brought to light. I propose to consider the matter with a view to lodging such an amendment at stage 3 so that we can dispense with that anomaly. In doing so, I will have regard to the comments that have been made by John Farquhar Munro, Stewart Stevenson and others.

I turn to Stewart Stevenson's question to John Farquhar Munro about amendment 4. Amendments 4 and 12 aim to address what has been to date the vexed issue of whether the landlord or the tenant should be responsible for the renewal of fixed equipment. As all members present know, that is one of five concerns about aspects of their relationship with landlords that tenants have flagged up recently. The Executive, the industry and the committee all wish to address that issue. Indeed, we have been striving to do so up to and including this point and discussions on the matter continue.

I am pleased to be able to tell the committee today that the industry has reached agreement on how the issue should be addressed. We have accepted the industry's recommendations and, as a result, we will wish to lodge amendments so that, whenever a notice is served for a rent review of a 1991 act tenancy, tenants would have the unilateral right to revoke terms in post-lease agreements that make them responsible for renewals. Before responsibility was transferred, the tenant would ensure that the holding was in a reasonable state of repair. The rent payable in future by the tenant would reflect the fact that they were no longer responsible for renewals.

In addition, we will need to lodge amendments to ensure that terms within any future post-lease agreements that purport to transfer responsibility for the renewal of fixed equipment from landlord to tenant would be of no effect. Such provisions will apply both to 1991 act tenancies and to new SLDTs and LDTs. We aim to lodge the appropriate amendments for 1991 act tenancies later during stage 2 and for SLDTs and LDTs at stage 3. Those amendments will reflect the agreement that now exists within the industry, which we will implement.

Having made those commitments and covered the points that Mr Munro raises in amendments 2, 4 and 12, I hope that he will withdraw amendment 2 and not move the other amendments, in favour of supporting the amendments that the Executive will lodge. Our amendments will reflect the agreement that exists within the industry and will therefore be the optimum means of proceeding.

The Convener: For total clarification, will the minister confirm that all sides in the industry have agreed to the changes to which he referred? [*Interruption.*]

Allan Wilson: Yes.

The Convener: The minister took a long time for such a short answer, if I may say so.

Richard Lochhead: The convener has stolen half of my question. Will the minister clarify which organisations were party to that agreement?

Allan Wilson: For the record, I shall list all the parties to the agreement.

The Convener: I assume that the agreement was reached by all the parties that were involved in the stakeholder group that has been engaged in on-going discussions, but it is perfectly fair for Richard Lochhead to seek that clarification.

Allan Wilson: The agreement was reached by the NFUS, the Scottish Tenant Farmers Action Group, the SLF, the Scottish estates business group and the Royal Institution of Chartered Surveyors. If there are other parties on the group, they are not party to the agreement. However, I think that that is everybody.

The Convener: Thank you, minister. I think that that is clarification enough.

I ask John Farquhar Munro to wind up and to press or withdraw amendment 2.

John Farquhar Munro: I am happy to press amendment 2 and to leave the matter to the committee to deliberate.

Rhoda Grant: On a point of clarification, convener. If John Farquhar Munro presses amendment 2 to a vote, does that preclude the Executive coming back with amendments that reflect the wishes of the industry later during stage 2 and at stage 3?

15:15

The Convener: My advice is that it would make things a little more difficult, but that it would not preclude such future amendments.

John Farquhar Munro: The minister seems to be in a cordial and amiable state of mind regarding my amendments. Discretion might be the better part of valour for me at this stage; therefore I seek the committee's approval to withdraw amendment 2.

Amendment 2, by agreement, withdrawn.

The Convener: Amendment 3, in the name of John Farquhar Munro, has already been debated. You are free to move or not to move that amendment, John.

John Farquhar Munro: I am happy to move the amendment—[*Interruption.*] Which amendment did you mention, convener? [*Laughter.*]

The Convener: Amendment 3. As a matter of procedure, I have to ask you to move or not to move the amendment.

John Farquhar Munro: Under the circumstances, I will not move the amendment.

Amendment 3 not moved.

The Convener: Can we assume that amendments 4 and 5 will also not be moved?

John Farquhar Munro: Agreed.

Amendments 4 and 5 not moved.

Section 15 agreed to.

Section 16—Resumption of land by landlord

The Convener: Amendment 41 is grouped with amendments 6, 8 and 47.

Allan Wilson: Amendment 41 is a technical amendment that seeks to correct a descriptive error in the original text of the bill. The much more substantive discussion will be on amendments 6, 8 and 47.

I look forward to hearing what John Farquhar Munro has to say about amendment 6. I assume that he is attempting to ensure that land under an LDT or an SLDT cannot be resumed. Alternatively, he may want to ensure that land cannot be resumed other than as set out in the terms of the lease. We have had a long discussion about those important objectives, but we do not believe that amendments 6, 8 and 47, which are all in his name, would secure either of them. There may be some argument about what he wants to achieve; nevertheless, the amendments would not achieve either objective.

If section 16 were deleted, the absence of any reference to resumption in the bill would not result in it being unenforceable. Instead, resumption would be possible if agreed in the lease. In practice, it is self-evident that landlords who envisaged the possibility of using land for a non-agricultural purpose in the future would be most likely to insist on the inclusion of a resumption clause in the lease. Relying on the lease could then result in resumption being agreed in terms that were less advantageous to the tenant than the provisions that we propose in section 16.

Resumption would not necessarily be restricted to non-agricultural purposes for which planning permission had been granted. The tenant would not necessarily receive the notice of resumption set out in section 16(2), nor would they necessarily be able to take advantage of other rights and protections provided elsewhere in section 16. The landlord's right to resume and the tenant's corresponding rights would be set out in the lease. Proposing the removal of that provision would arguably restrict the tenant's rights. I am sure that that was not John Farquhar Munro's intention.

I reassure John Farquhar Munro that section 16 will protect tenants from resumption of land. In accordance with the agreement reached between the NFUS and the SLF, section 16 will allow a landlord to resume land let under an SLDT or an LDT, but only in restricted circumstances. The conditions will include that the land is subject to planning permission, that the lease does not prohibit resumption for that purpose and that the landlord serves due notice.

The requirement for planning permission provides a means for considering the public interest of a proposed new use for agricultural land before it can be resumed, and we wish those issues to continue to be addressed in that way. We do not wish a development that a planning authority had determined was acceptable for the purposes of planning permission to be blocked because the bill does not allow land in that category to be resumed from the tenancy.

It is important that the committee does not assume that simply extending tenants' statutory rights best protects their interests. A careful balance must be struck. In particular, a landlord who could not resume land would be less likely to offer that land for let, especially under an LDT.

For many tenants, the availability of letting opportunities is more important than the guarantee that resumption would not be permitted under any such terms. Such a guarantee would influence the amount of land available for letting, the market in let land and, via that market, the competition for said land. By direct implication, it would also influence the tenant's ability to negotiate terms with the landlord. Tenants who wish to guarantee themselves protection against resumption could, obviously, still negotiate lease terms with landlords for whom the ability to resume was not important. However, the tenant's negotiating position in that circumstance is much better served by the liberalisation of the letting market to which I referred than by any statutory provision that might be included in the bill.

With the convener's permission, this might be a useful opportunity for me to comment further on how we intend to respond to the admittedly related issue of the resumption of land under 1991 act tenancies. Industry representatives have now agreed to recommendations that would ensure that the Scottish Land Court's right to refuse resumption of land under a 1991 act tenancy should extend to situations in which planning permission is obtained, even though it is not required. As members are aware, such situations sometimes arise with permitted developments. We intend to lodge amendments that will achieve that effect and which will restrict the types of planning permission that do not trigger the tenant's right to apply to the Land Court to refuse resumption. Distinct resumption provisions apply to SLDTs and LDTs, and we will consider lodging corresponding amendments at stage 3.

Given the assurance that we will introduce amendments at stage 3 to reflect the industry's agreement on the Scottish Land Court's right to refuse resumption of land under 1991 act tenancies, I ask John Farquhar Munro not to move amendment 6 or amendments 8 and 47, which are ancillary to that amendment. I do not think that amendment 6 secures what he seeks to secure, and it is likely to reduce or remove existing protections from resumption for tenants under SLDTs and LDTs. Transferring that protection solely into the lease would not in itself improve the tenant's position in that regard.

I move amendment 41.

John Farquhar Munro: As the minister has pointed out, he is aware of the anomalies in section 16. As drafted, that section gives a blank cheque to the landlord for resumption. However, given the statement that the minister has just made, his assurance that he is aware of the difficulties with section 16 and his willingness to address the matter when we debate the bill at stage 3, I am happy not to move my amendments.

The Convener: I am sure that the committee will agree to that, but I cannot put that question to you just now. When we reach that point in the marshalled list, I shall make the situation quite plain. Thank you for those comments.

Amendment 41 agreed to.

Amendment 6 not moved.

Section 16, as amended, agreed to.

Section 17—Irritancy of lease and good husbandry

The Convener: Amendment 7 is grouped with amendment 14.

John Farquhar Munro: I lodged amendments 7 and 14 simply because many existing leases contain a residency clause that binds the tenant to reside on the holding during the term of his tenancy. When a tenant is also prohibited from assigning the tenancy to an heir and cannot reach agreement to do so, he is bound to reside on the farm until his death. That has led to a number of injustices where sons have been unable to take over and their fathers have been unable to leave the farmhouse to retire without irritating the lease.

There are many instances of elderly farmers being compelled to remain in the farmhouse while their sons are forced to live off-farm and commute. Non-compliance with a residency clause can lead to a notice to quit and a loss of succession. We have a recorded case on Islay of a son losing succession to a tenancy because his father had broken the residency clause by having to spend his declining years in a Kirk Care residential home. It is essential that a tenant should be permitted to reside off his farm to make way for the next generation without irritating the lease and possibly triggering a notice to quit.

I move amendment 7.

Mr Rumbles: I support amendment 7. In the 21st century it is iniquitous that a residency clause should be stipulated. It is important that such an amendment be made to the bill, so that tenants cannot be told that they must reside in a particular place. It is a useful, progressive and liberal amendment.

Mr Alasdair Morrison (Western Isles) (Lab): Mr Rumbles used the word "liberal"; I shall have to look at the *Official Report* to see how it was applied.

I certainly have no difficulty in supporting what John Farquhar Munro outlined.

The Convener: I assume that the word "liberal" was being used with a small "l".

15:30

Stewart Stevenson: I whole-heartedly support what John Farquhar Munro wants to achieve through amendment 7, and have the greatest sympathy for the difficulties that have been experienced.

I invite committee members to consider, however, that it may be appropriate at stage 3 to further examine the issue. I support the amendment in its present form, in so far as it raises the question of the tenant being the resident. However, wider community issues may arise from there being no one resident. Although it is entirely proper that we outlaw the practice of requiring the tenant to be resident, there may be wider issues associated with whether someone should, as a result of the tenancy, be resident. The idea of not stipulating that the tenant need be the

resident could be worthy of further consideration. If we were to see tenancies operating in a way that permitted rural depopulation, particularly in certain areas, issues might arise, but, for tenants, the amendment is necessary and welcome.

The Convener: There may be circumstances in which it could be important for the tenant to be resident on the holding. I am thinking of security matters that exist in some places. Perhaps the minister can refer in his remarks to whether any flexibility could be introduced to allow specific circumstances to be taken into account.

Rhoda Grant: I should like to add a note of caution to Stewart Stevenson's comments. If the farmhouse were in a state of disrepair, it would be difficult to insist that anybody stay there. If we were to introduce another amendment to illustrate Stewart's point, we would have to be careful how it was framed. One way of getting rid of a tenancy is to allow the farmhouse to fall into such a state of disrepair that no one will stay in it, and there are issues involved with that.

Stewart Stevenson: With your indulgence, convener, I agree entirely with Rhoda Grant. Nothing that I have said should indicate any disagreement with her comments.

Allan Wilson: I am happy to add to the air of consensus. John Farquhar Munro's amendments would prevent landlords from being able to irritate an agricultural lease and evict a tenant because of their failure to reside on the land.

Irritancy is a potentially powerful weapon in the hands of the landlord. As John Farquhar Munro said, residence clauses are a common feature of leases. Their inclusion is to ensure that a tenant's husbandry operations are performed.

I accept that, as Stewart Stevenson said, it is perverse to argue for a legislative change that provides for what could be classified as absentee tenancies. I also accept the important proviso to which Rhoda Grant and others referred. However, provided that a tenant fulfils his or her husbandry responsibilities, it is not clear to me—on this, I completely agree with John Farquhar Munro—why non-residence is so important that it provides reasonable grounds on which to permit a landlord to irritate a lease.

For those reasons, I propose to accept amendments 7 and 14, subject to the proviso that we need to return to the subject at stage 3 to address any legitimate concerns that may arise. The convener has raised one today that we shall consider between now and stage 3. We shall also want to make a minor drafting amendment at that juncture.

John Farquhar Munro: I am glad that we seem to have a general agreement on that amendment. As a consequence, I intend to press my amendment.

Amendment 7 agreed to.

The Convener: Amendment 42 is grouped with amendment 48.

Allan Wilson: I hope that this group of amendments will not be contentious.

Section 17 ensures that tenants with short limited duration tenancies or limited duration tenancies can undertake conservation activities without fear that the landlord will irritate—that is, terminate—the lease by ruling that such activities contravene the rules of good husbandry. Section 57 makes similar provision for tenancies under the Agricultural Holdings (Scotland) Act 1991. As drafted, conservation activities are defined as activities carried out in accordance with the conditions of a public grant scheme.

Amendments 42 and 48 extend that definition to include activities carried out in accordance with management agreements—including those not attracting grant payments—which have a statutory footing. At present, those are principally agreements that are entered into by Scottish Natural Heritage in accordance with its powers under the Countryside (Scotland) Act 1967 and other legislation. Agreement to the proposed change will prevent a landlord from evicting a tenant for conducting such conservation activities.

I move amendment 42.

Amendment 42 agreed to.

Section 17, as amended, agreed to.

Section 18—Resumption and irritancy: supplementary

Amendment 8 not moved.

Section 18 agreed to.

Sections 19 to 22 and 34 agreed to.

Section 35—Notice of and objection to diversification

The Convener: Amendment 43, in the name of Ross Finnie, is grouped with amendments 44 to 46.

Allan Wilson: From my participation in the stage 1 debate, I understand that the matter that is dealt with in this section is one that exercised the minds of the committee's members during and after the consultation process. I hope that our amendments will address the concerns that have been raised.

Section 35(2) requires the tenant to give the landlord at least 70 days' notice of his or her intention to diversify. The landlord then has 60

days in which to object to the diversification. If the landlord believes that the information provided by the tenant is insufficient to allow him or her to decide if he or she is content with the proposal to diversify, he or she may request additional information from the tenant, either within the first 30 days of the 60-day period or within 30 days of receipt of additional information. However, in such situations, the 70-day notice that tenants must give might have passed.

Amendment 44 clarifies the date from which the authority to diversify commences, if the landlord does not object to the notice. Where the landlord does ask for additional information, the date is that date falling 70 days from the making of the most recent request for information, unless landlord and tenant agree an earlier date. That ensures that the landlord has 70 days to respond from the point of being given reasonable details of a tenant's proposal.

I have been mindful of the risk that a landlord could use the ability to request further information as a means of delaying or blocking a diversification proposal. However, I believe that the bill addresses that risk. The tenant is obliged under section 35(8) to provide only information that the landlord has "reasonably requested". If the tenant believes that a request is not reasonable, then the landlord's objection—under section 35(9)(c)—can be challenged as unreasonable under the proposed new section 35A.

As the bill stands, where a landlord objects to a tenant's proposal to diversify, he or she is required under section 35(11)(a) to notify the tenant in writing of the objection and the grounds for it. That should give the tenant an understanding of the landlord's position and a basis on which to judge whether the objection is reasonable. If the tenant believes that the objection is unreasonable, they can apply to the Scottish Land Court for an order ruling that the objection is of no effect. Again, that is a provision that would be introduced under the proposed new section after section 35.

Section 35(11)(b) requires the landlord to notify the tenant in writing of any conditions that they are imposing on the tenant's proposed diversification. Amendment 45 requires the landlord to explain why he or she is doing so. That should give the tenant an understanding of the landlord's position and a basis on which to judge whether such conditions are reasonable.

Amendment 46 is an important amendment because it clarifies how the Land Court should consider applications from tenants in response to a landlord's objections. I hope that it helps to address concerns that were raised during the stage 1 report about whether the grounds on which a landlord might object to a tenant's proposal to diversify under section 35(9) strike the right balance between the respective rights of tenant and landlord.

We want to cultivate a situation where tenant and landlord work together to ensure that the tenant has a workable and valuable opportunity to diversify, while the landlord is able to have his or her reasonable concerns addressed or alleviated. The provisions in section 35 and our new amendments would establish that.

When a tenant submits a proposal to diversify to the landlord, the landlord will have three options. First, to accept the proposal—and we hope that that option is agreed on most occasions. Secondly, where the landlord has concerns about the proposal they can accept it subject to conditions or, thirdly, object to it.

Section 35(9) therefore provides the grounds on which a landlord is allowed to object to a proposal to diversify. Those grounds encapsulate the wide range of non-agricultural activities that a tenant might enter into. However, I make it clear that the test is very strict. That is why, for instance, "would" is used instead of "could" in the second line of section 35(9)(a) and why terms like "significantly", "substantially" and "undue" feature.

15:45

It is appropriate that the test is strict, because objecting to the notice is not the only option available to a landlord who is concerned about a proposed diversification. Section 35(10) permits the landlord to accept the application to diversify subject to any "reasonable" conditions in relation to the use of land for a non-agricultural purpose. Nonetheless, a condition that does not fall within the criteria outlined in section 35(9) may be reasonable for such a purpose. It is against such a background that we have sought to clarify the powers available to the Land Court. Amendment 46 sets out those powers.

Subsection (1) of the proposed new section to be inserted after section 35 states that the Land Court is to rule that a landlord's objection is of no effect if the court considers it to be unreasonable. In assessing how reasonable an objection is, we would expect the court to have regard to the question whether a landlord's reasonable concerns could otherwise have been addressed by accepting the proposal to diversify subject to conditions. For example, if the landlord has concerns about the tenant's ability to afford the restoration of land to agricultural use at the end of the tenancy, the Land Court could require the tenant to put in place some financial guarantee. In such cases, the court will be able to use the power afforded by subsection (2) of the proposed new section to impose conditions, on its authority, to allow diversification to take place.

Subsection (3) allows the tenant to challenge a condition imposed by the landlord by virtue of section 35(10). Where the Land Court considers the condition to be unreasonable, it will be able to remove or modify it. I am sorry to go on at such length about this amendment, but it is important to record this in the *Official Report*.

I believe that, with the addition of the new section, the provisions in section 35 should meet the committee's concerns at stage 1 and ensure that, as far as possible, a tenant is allowed to diversify, subject to appropriate safeguards that address a landlord's legitimate concerns in a relevant and proportionate way. Amendment 43 is consequent upon amendment 46.

I move amendment 43.

Mr Jamie McGrigor (Highlands and Islands) (Con): Minister, you referred to 70 days. Do you mean 70 working days?

Allan Wilson: It is 70 days, as writ.

Amendment 43 agreed to.

Amendments 44 and 45 moved—[Allan Wilson]—and agreed to.

Section 35, as amended, agreed to.

After section 35

Amendment 46 moved—[Allan Wilson]—and agreed to.

Section 36 agreed to.

The Convener: As the remaining amendments on the marshalled list refer to sections in the bill that are beyond the point at which we have to stop today, we come to the end of this agenda item. I have agreed that the committee's target for day 2 consideration of the bill is part 4, entitled "Compensation under agricultural tenancies" and part 5, entitled "Miscellaneous amendments to the 1991 Act". An announcement to that effect will appear in tomorrow's business bulletin. I should also refer the minister and his team to my earlier comments about the late lodging of amendments. The earlier that we can see the Executive amendments, the more grateful we will be.

Allan Wilson: I acknowledge your earlier points, convener. I assure the committee that my colleague officials are working around the clock to ensure that we comply as far as we can with the request to give the committee sufficient notice of our amendments and to lodge them for the committee's consideration at the earliest possible opportunity. It was not possible to comply with the five-day norm in the case to which you referred; however, I assure committee members that wherever possible we will strive to give such notice. Indeed, it is in our interests to do so to ensure that the amendments receive the maximum scrutiny and consideration. However, given the other pressures on departmental officials, it is not always possible to comply with such a time scale.

The Convener: I appreciate that comment and your commitment to take every possible step in this respect. I trust that you will do so.

Next week, the committee will consider parts 4 and 5. If we do not complete that consideration, we will start day 3 at the point at which we left off. That means that amendments to parts 4 and 5 should be lodged by two o'clock this Friday if they are to be sure of being included in our consideration.

As agreed, we will now discuss agenda items 3 to 5 in private.

15:50

Meeting continued in private until 16:57.

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Printed in Scotland by The Stationery Office Limited

ISBN 0 338 000003 ISSN 1467-0178