RURAL DEVELOPMENT COMMITTEE

Tuesday 4 February 2003
(*Afternoon*)

Session 1

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5th 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:

Mrs Margaret Ewing (Moray) (SNP)
Tavish Scott (Shetland) (Liberal Democrats)

WITNESS

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 Chamber

Scottish Parliament

Rural Development Committee

Tuesday 4 February 2003

(*Afternoon*)

[THE CONVENER *opened the meeting at 14:05*]

The Convener (Alex Fergusson): Good afternoon, ladies and gentlemen. We have a great deal to get through today, so we will make progress without further ado. I have received no apologies. I begin with the usual stricture, which also applies to people in the public gallery, that all mobile phones should be turned off. I welcome the members of the public and the witnesses.

Aquaculture

The Convener: Agenda item 1 is on the aquaculture industry. I declare an interest in the issue: during the summer recess, I was taken to Norway on a study tour on aquacultural issues by Aquascot Group Ltd. John Farquhar Munro also has an interest to declare.

John Farquhar Munro (Ross, Skye and Inverness West) (LD): I hereby declare that I was part of the delegation that went on the study tour to Norway, which, I understand, was hosted by Aquascot.

The Convener: I welcome the Deputy Minister for Environment and Rural Development and the officials Jinny Hutchison, Gordon Brown, Dave Wyman, Professor Ron Stagg and Andy Rosie—I hope that I pronounced that correctly. Sorry. I see that Mr Rosie is not here. Members of the Transport and the Environment Committee were invited to join us, but, sadly, none of them has taken up the invitation.

Members will recall that the Parliament's consideration of the issue has a long history. In response to petition PE96, the Rural Affairs Committee—as it was then—and the Transport and the Environment Committee called on the Executive to launch an independent inquiry into the environmental effects of aquaculture. As the Executive declined to do so, the Transport and the Environment Committee subsequently undertook a rolling inquiry into the subject. Members have a summary of the inquiry's conclusions.

The Executive announced that it intended to develop a strategic framework for the aquaculture industry and it has engaged in a consultation process with relevant stakeholder groups. The draft strategic framework document, which we have in front of us, is a result of that process. I understand that the consultation period has now closed and that the intention is to publish the final strategy prior to the dissolution of Parliament. The Executive seeks the views of the committee. This is our opportunity to have input into the process and to comment before the strategy is finalised.

Members will recall that, while considering petition PE272, which was from the National Farmers Union of Scotland, we dealt with the issue of infectious salmon anaemia. The petition sought changes to various rights under the Diseases of Fish (Control) Regulations 1994 and compensation for stock that is slaughtered or damaged as a result of slaughter or containment orders. When we considered the issue, the committee was in favour of investigating the option of insurance for farmers. I understand that the issue has now moved on and that the minister will bring us up to date on that.

I ask the minister to make a brief opening statement on both those issues.

The Deputy Minister for Environment and Rural Development (Allan Wilson): I apologise on behalf of the two members of our team who are unable to be here—they were prevented from attending by the adverse weather conditions.

As you say, convener, this is the opening gambit in what promises to be a long meeting. My previous record for the length of time that I was before the committee was when we discussed the Cairngorms national park and I am expecting to achieve a new record today.

I am grateful for the opportunity to discuss the draft strategic framework for aquaculture with members of the Rural Development Committee and the Transport and the Environment Committee, as both committees have played a key role in its formulation. The timing is important, as we meet at the end of the final round of consultation, with the task nearing completion. We have indicated that we are prepared to extend the consultation deadline to accommodate those who have said that they might be a bit late in submitting their views.

Before we proceed, I pay tribute to all those who have put so much effort into developing what is a comprehensive strategic framework document. I congratulate on their ideas and suggestions all the many stakeholders whom my officials and I have been meeting over a protracted period of time and I pay tribute to everybody in the working group. Members of the group came from a diverse range of backgrounds and sometimes had very different perspectives on aquaculture. I pay tribute to those whom the working group co-opted for advice during the framework document's drafting stages and to all those who have commented, or are

commenting, in the recent consultation phase. I also pay tribute, of course, to the officials who have provided the secretariat over the piece.

Developing the strategic framework document was never going to be an easy task. It has taken 15 months so far, which is longer than I envisaged, but it became apparent at the outset of the working group meetings that it was more important to get things right than to proceed quickly. Give and take has been required all round. It has been a challenge to try to balance the socioeconomic benefits, which undoubtedly exist in relation to providing employment in some of our remotest communities, with the environmental impact, which any development entails. The process has provided an opportunity for an overdue public debate about the issues surrounding aquaculture and, more important, its future direction.

There were prolonged and sometimes absorbing discussions in the working group about certain issues, which have benefited all participants. Together we have drawn up a programme for action that is designed to raise public awareness of the benefits of aquacultural products, which is important from a number of perspectives. The programme is also designed to make the industry internationally competitive—we operate in a global marketplace—to tackle some of the environmental concerns that have been raised and to improve the relationship between the industry and the communities within which it operates, which is not always as good as it could be.

Members will note that the draft strategic framework document is based principally around a vision, which in itself took the best part of a full meeting of the working group to agree and which was subject to subsequent amendments. There are a number of guiding principles around the overarching principle of securing a sustainable future for the industry, which runs right through the document. There are a series of objectives and a programme for action. The document also recognises the regulatory framework within which the industry is currently required to operate and the various policy and other initiatives that are under way to address issues of concern from whatever quarter.

We intend the strategic framework document to be a working document in which progress will be reviewed regularly and any new issues addressed. Self-evidently, our task is not yet complete. We have still, as I said, to consider responses received in the latest round of consultation and to decide with working group members how we reflect those in revising the draft document for publication. That will obviously incorporate the committee's comments where that is apposite and appropriate.

14:15

Since the draft strategy was issued for consultation on Christmas eve, there have been developments that will lead to changes—for example, the enabling provision in the Water Environment and Water Services (Scotland) Bill, which the Parliament passed only last week, to pave the way for the introduction of local authority planning powers over fish farming. We have to consider the responses to the final consultation round, as the closing date was only yesterday.

I will, therefore, chair one final meeting of the working group later this month, at which the final version of the document will be agreed, in particular the programme for action. That will also secure the buy-in of the various stakeholder interests to resourcing and delivering the programme. Neither the Executive nor the industry can do that alone; it requires the commitment of all stakeholders in the various fora in which they meet to address the objectives as laid out. It will then be my aim officially to launch the strategic framework for aquaculture at the "Sea Change" conference in Stirling on 24 March.

Before we discuss the document and hear members' views, I would like to close with a word about the process through which we have come. It has taken 15 months. Some people thought that that was too long; others thought that we unnecessarily rushed the process. More recently, the Executive has been accused of failing to consult and of secretly trying to conclude the process. I state at the outset that that is complete nonsense. Before any documentation was prepared, my officials and I spent the first six months of last year meeting and listening to a wide range of key stakeholder interests about the issues in the strategic framework that we needed to address.

We also undertook a range of visits over the past year to hear at first hand people's views. The working group and its sub-groups co-opted others with specific expertise to develop proposals. We invited a member of the Parliament's Transport and the Environment Committee, which has been conducting a rolling inquiry into aquaculture, to join the strategy working group. Notes of the working group's meetings, once approved by members, have been made publicly available. Finally, we are in the process of concluding a six-week public consultation to round off the exercise. That is shorter than usual, admittedly, but it is entirely appropriate, when so much consultation was conducted over the preceding 12 months. The right balance must be struck between concluding that consultation and producing the documentation, which is the culmination of the deliberations. To suggest that the process was anything other than public and transparent, in

which everybody had the means to participate and influence the outcome, is fallacious.

On that note, I am happy to take questions from members of the Rural Development Committee or the Transport and the Environment Committee on the draft strategic framework.

The Convener: Do you want to say anything about infectious salmon anaemia at this point?

Allan Wilson: No. There are a couple of references to the issue in the strategic framework documentation, which points out that the matter was considered. However, it is fair to say that the working group did not, by and large, discuss the response to ISA—either historically or in the future—in depth or in the detail in which the committee intends to discuss it this afternoon. Nonetheless, there is a crossover, so I am happy to address the issue now or later. I intended to speak separately about ISA, if that is what the question was asking.

The Convener: Right.

Allan Wilson: Because we thought that we were coming before the committee for an hour to discuss ISA, I have a fairly substantial speaking note on the subject, which I have cut down to a few minutes—after I have dealt with that, I can take questions on the subject. However, if you wish, I can speak about ISA now and take questions on the entirety of the aquaculture industry.

The Convener: Committee members are indicating that they would find it helpful if we covered both subjects together, if that is all right with you, minister.

Allan Wilson: No problem.

The meeting today is an opportunity to discuss compensation and insurance for fish disease losses in concert with, as opposed to subsequent to, the discussion on the draft aquaculture strategy. I will begin by updating the committee on the outcome of our discussions to date. As the committee is aware of the history of the issue, I do not intend to go into that in detail. I can, however, answer questions on what is quite a long story.

There are two principal reasons why the insurers have been reluctant to provide cover for losses that are attributable to the serious notifiable fish diseases such as ISA that had a major impact on the Scottish aquaculture industry in 1998 and 1999. The first reason is that, at that time, European law required the immediate slaughter of all stock on an infected farm. The second reason is that the decision to slaughter the stock was the responsibility of the national fish health authority—in other words, the Scottish Executive—guided, in our case, by the advice of our scientists at the Fisheries Research Services.

Following the lessons that we learned from that experience with ISA, the Executive successfully persuaded the European Commission and other member states to change European law to provide greater flexibility over the slaughter and clearance of stock from infected farms. Heaven forbid that there should be another recurrence of ISA, but it would now be open to member states in such an event to order a phased slaughter and withdrawal of stock from those parts of the farm—those cages—that are confirmed as being infected with the disease. I think that everyone would welcome the fact that that flexibility for ISA became law in May 2000. The change was important, as it gave member states much-needed discretion over how to respond to and manage a serious disease outbreak.

At the same time, the Executive and the fish farmers worked closely together to introduce better practices on farms. In August 2000, the ISA code of practice was introduced. It is clear from compliance checks that the Executive has carried out that farm working practices in biosecurity have improved greatly. That situation is, for the most part, being maintained.

Those of us who have read the *Official Report* of the last committee meeting at which the subject was discussed, as I have done, will find it interesting to note that some of the predictions that were made at the time have—thankfully—not come to pass. We believe that better working practices have reduced significantly the chances of a recurrence of ISA.

Against that background, officials entered into discussions with representatives of the fish farmers and insurers. One of the first tasks was to provide detailed oral and written information about the 1998 and 1999 ISA outbreaks. I am happy to go into detail about that information or to answer questions on it.

The insurers took many months to review their position. When discussions with officials resumed last year, the insurers' representatives made it clear that the insurance underwriters were still not prepared to cover losses as a result of ISA. Despite welcoming the more flexible statutory framework to which I have referred and the improvement in farm working practices, the underwriters felt that the main stumbling block continued to be the legal requirement that allows national authorities, which in our case is the Executive, to have the final say over the fate of infected stock.

Our view is that it is entirely appropriate that the Executive as the national fish health authority should have the final decision in such matters. We are not prepared to raise that issue with the Commission and/or other member states. Despite everyone's best endeavours, the insurers have

ruled out the prospect of any form of commercial insurance cover for losses resulting from ISA. In our view, that commercial decision is regrettable. I am not sure whether it was influenced by the commercial influences that prevail at present in the sector, but in any event it is the commercial decision that was reached.

As members know, the industry challenged our position in the domestic courts, which referred the matter to the European Court of Justice for a view. The reason for the referral was that the issues related to human rights legislation on which our courts felt unable to take a decision at the time.

Since the spring of 2001, the matter has been with the ECJ. In the autumn of 2001, the Advocate General to the European Court of Justice offered his opinion, which was strongly supportive of the United Kingdom Government's arguments. Although that of itself is reassuring, we await the court's final judgment. Our officials have made several informal inquiries to the court authorities, but they have failed to elicit an indication of when we might expect to hear the outcome. Although the ECJ's view will be an important milestone for all concerned, it will not mark the end of the road. The issue will then revert to the domestic courts, which will have to reconsider the argument in the light of the ECJ's judgment.

Until the legal process that I have described has been concluded—which has not yet happened—the position of the Executive and of the UK Government will not change. Thereafter, it will be for the ministers of the day to decide future policy. If the courts uphold the Executive's arguments, as the Advocate General to the ECJ has done, it is likely that the status quo will continue to apply. However, if the ECJ rejects the opinion of its advocate—which can happen, although it does not happen too often—and upholds the industry's argument, ministers in the Executive and the UK Government will want to reflect on the implications of that judgment.

Such an outcome could not only set a precedent for the provision of compensation to fish farmers, but mean that similar arrangements would have to be considered for the compulsory destruction of crops and plants, as well as for other areas unrelated to agriculture or aquaculture. That could expose the taxpayer to significant levels of new public expenditure. We are talking about a hypothetical situation, but we must bear the possibility in mind.

I understand that fish farmers must feel vulnerable. The fish on their farm represent the main asset of their business. It takes almost two years for a fish to grow and for its full market value to be realised. The prospect of stock becoming infected by or sick with a notifiable disease, which may result in compulsory slaughter without the ultimate safety net either of commercial insurance cover or of some form of state compensation, is a cause for concern.

However, there is no suggestion that the Executive would not help if the industry were confronted by another serious and potentially damaging disease outbreak. In 2000, after ISA had broken out, my predecessor John Home Robertson introduced a three-year scheme, backed by £9 million, to assist those businesses that were directly affected by the disease. It would be open to the Executive to consider providing similar assistance in the future, should circumstances warrant that.

I have provided the committee with a truncated version of the explanation that I intended to give. We are seeking to create the conditions within which the insurance sector might be able to offer some form of commercial cover. Because of the constraints of European law, we can go no further without running the risk of compromising the disease-control regime that has served us well in the interim period. Together with others, we await with interest the judgment of the ECJ on the issue of compensation. After that has been made, we will review the position, as I have explained.

The Convener: Thank you, minister. I inform members that I intend to move to item 2 on our agenda at 3.15 pm at the latest.

Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP): As the minister knows, Scottish Quality Salmon has responded to the draft strategic framework document by saying that it has

"fundamental concerns about the discrepancy between the Vision and the detail of the remainder of the draft document."

I will ask about some detailed matters, the first of which relates to the Crown Estate Commission. The minister said that he wanted the industry to be internationally competitive, but surely he agrees that Scotland is alone among countries that fish salmon in paying rent to a body—the Crown Estate Commission—to use the sea bed. Last year, that burden was £2.5 million. The charge is a tax for nothing that the industry in Scotland must pay, but which the industries in Chile, Norway, Ireland and in our other competitor countries do not pay. That has been the case for as long as salmon farming has operated in Scotland.

According to Brian Simpson of Scottish Quality Salmon, to whom I spoke this morning, that £2.5 million constitutes about one third of the Scottish industry's profits. How on earth can that contribute to the industry's being internationally competitive? Why has the Labour Government at Westminster allowed the situation to persist? Does the minister agree with me and other members that

responsibility for dealing with the Crown Estate Commission should be devolved to this Parliament, so that we can end that ridiculous tax, which one would expect from Fidel Castro or the like, but not from a Government that seriously believes in what the draft strategic framework document says?

14:30

Allan Wilson: I disagree with Fergus Ewing on several important aspects. I understand that Scottish Quality Salmon's response, which Mr Ewing paraphrased, is in draft form. As the closing date for the receipt of responses has only recently passed, it will come as no surprise to hear that I have not read every response, although I fully intend so to do. Therefore, it would be inappropriate for me to comment on any one response over another or to make rash judgments about what might or might not be contained therein.

Had Mr Fergus Ewing performed a cursory examination of the draft strategic framework, he would have seen that the Executive intends to examine the industry's overall competitiveness. Competing claims are made about the industry's competitiveness globally. It is clear that the industry has expanded and continues to expand in an extremely competitive international market, so the evidence is that the constraints to which Mr Ewing referred have not in total impacted adversely on the industry's competitiveness or on its ability to expand and to fill gaps.

Mr Ewing has a habit of using statistics particularly selectively. His comments were not dissimilar to his comments on the vehicle fuel tax, which he consistently claims is the single factor in the transport costs equation and renders the British haulage industry uncompetitive against its European counterparts. An examination of the whole shows that, if vehicle licensing, road taxes and road tolls are taken into account, the British transport industry is competitive in Europe.

A similar argument can be made about the overall competitiveness of the UK aquaculture industry in comparison with European and other global competitors. We cannot take one factor in isolation and say that the industry is competitive or uncompetitive as a consequence of that factor. We must consider the whole. That is what the Executive will do. As part of that process, we, the Crown Estate Commission and other stakeholders, including the industry, will be involved in a professional analysis of the impact, if any, of sea-bed rentals on our industry's competitiveness. The study is designed to consider competitiveness as a whole and not to isolate one factor from others.

The Convener: Given the brevity of the time available, I encourage members to keep questions short and the minister to give short answers, if possible.

Fergus Ewing: The minister says that I have not read the document. That is nonsense, because I have read it. Paragraph 3.4 talks about the response on the matter, which is that an independent study might be conducted to consider the regulatory costs of operating aquaculture businesses in Scotland and to compare them with other countries.

We learn that the Crown Estate is to be involved in considering whether a study should be undertaken. The minister did not say that any piece of information that I gave in my first question was wrong, because he could not, as he knows that what I said was correct. If the Crown Estate is to consider whether a study should be commissioned, is not that like asking Al Capone to determine whether prohibition should be removed? That is ludicrous.

Will the minister give one example of a country where those in the salmon fishing business bear a tax such as that which Scottish producers bear? Does any country have a similar burden to the rental for the sea bed that Scottish producers pay?

Allan Wilson: Mr Ewing obviously did not take account of what I had to say. I made it abundantly clear that I would need to look in detail at the responses of Scottish Quality Salmon and everyone else to the consultation document; I have not had the opportunity to do that. That will properly involve the Crown Estate Commission—there is no question of consulting with one factor of the equation and not the others, as Mr Ewing would have us do. We must take an holistic view. When considering the Scottish industry's international and global competitors, we must take into account all the relevant factors, which include the premium that a quality product can attract in global markets. The industry is well aware of that, and Mr Ewing does its case no service by his disparaging references to the other partners in that process.

Rhoda Grant (Highlands and Islands) (Lab): I welcome the document and its emphasis on research and development. However, I am a little concerned. The minister will be aware that the shellfish institute in Ardtoe is currently up for sale. That seems to go against the whole thrust of this document, in that Ardtoe is the only independent aquaculture institute in the UK. It is funded through the Sea Fish Industry Authority, which will be part of a forum that will examine their support to the aquaculture industry. It appears to me that the two things do not add up.

I understand that the Sea Fish Industry Authority is funded through the Department for Environment, Food and Rural Affairs—DEFRA—so the Scottish Executive might not be involved in the future of Ardtoe. Could the Scottish Executive do anything to help to keep Ardtoe in the public sector for the next few years, as it will be self-financing in a few years and 90 per cent of the UK's aquaculture is based in Scotland?

Allan Wilson: That is principally an operational matter for the Sea Fish Industry Authority. The authority is accountable to its levy payers, and ministers have no locus to intervene. I understand that the Sea Fish Industry Authority plans shortly to publish a strategy for its future involvement in aquaculture.

The enterprise network—through which the Executive takes an interest in any enterprise-facing closure—stands by, ready to offer any assistance available under the myriad programmes established. Beyond that, I am unable to intervene.

Rhoda Grant: Do you feel that it would be difficult for the aquaculture industry if it were to lose the research centre, given that it is the only one in the UK? Could the Scottish Executive do anything to intervene? Perhaps it could not intervene through DEFRA, but could it pull together some industry groups to ensure that the research centre stays within the industry and stays independent? I fear that one company might buy the facilities and expertise at Ardtoe and then go against all the other companies in Scotland that might benefit from the research.

Allan Wilson: I am conscious of the issues that you raise. We have to wait and see what the SFIA says and respond to real rather than hypothetical issues.

The Convener: It was remiss of me not to welcome visiting member Tavish Scott. We are pleased to have him with us, and I invite him to put his questions.

Tavish Scott (Shetland) (LD): Thank you for the invitation. I declare an interest as someone who also attended the study tour courtesy of Cermaq back in August. I have the pictures to prove it.

My first question relates to the global pressures that were discussed earlier. Does the minister accept that any fish farm, whether owned by someone within or outwith Scotland, is under acute financial pressure because of the competition that he mentioned in a reply to an earlier question? In that context, is it not important that the framework document focuses hard on the costs that are within his department's and the Government's control, and aims to make the industry more competitive against the pressures that I am sure he is acutely aware of?

For example, I am aware that the comparative cost of production in Scotland and Chile varies by about one third. There are potential changes to the pigment regime as a result of European legislation, which could add 2p to 3p per kilo to Scottish producers' costs, as well as to those of producers within the European Union. There is a multitude of additional costs.

What can the minister tell members about the strategy's approach to reducing costs to the industry at such a desperately competitive time?

Allan Wilson: Generally, I agree with you. Where I could influence the outcome of issues that were strategically important to the development of the industry—in the areas that come within my direct remit—I have been at pains to try to do so. That has been my objective in the talks and in the development of the strategic framework. I have discussed infrastructure issues with my transport colleagues and I have discussed skills training and equipping the industry with the appropriate information technology tools with my colleagues in enterprise and lifelong learning. Throughout the strategic framework document, there are numerous references to bringing together Scottish Executive departments to answer the industry's calls for greater co-ordination in promoting a sustainable aquaculture industry.

Against that, we must set the demands from other quarters. An increasing number of regulations and cost burdens are being imposed through the need for environmental controls and conservation measures. The strategic framework document represents a fair balance of those interests and shows a way forward to a sustainable future for the industry.

I repeat that the industry has been growing, despite the constraints that it has been said exist in a number of areas. We anticipate that the industry will continue to grow, not least as the fish gap widens and as the wild catch decreases. If demand for the product remains at existing levels, the gap will have to be filled by alternative sources. I see the Scottish aquaculture industry expanding to fill that fish gap and to meet market demands.

We can exploit that growing market competitively and globally. It is to be hoped that we can secure a greater share of the quality market and of the developing new-species market. The industry has tremendous opportunity. I am, and have been, happy throughout the process to assist the industry in achieving objectives, targets, and increased production levels that are compatible with the carrying capacity of our waters and other important environmental and quality control constraints. It is vital for consumer confidence that we address some of the issues that several of our global competitors do not.

Those issues will increasingly come to bear as consumers exercise a choice about product quality.

14:45

Tavish Scott: I agree with the minister about the tremendous opportunity that the world demand for protein will bring. Does he accept that there is an argument for a one-shop-stop approach, similar to that in Norway, to the regulatory regime imposed not only by his department but by other departments, local government and—dare I mention it?—the Crown Estate? Will the final strategy consider a one-shop-stop approach with the specific aim of reducing costs and making the industry more internationally competitive, which the minister rightly mentioned?

The Convener: I think you mean a one-stop shop rather than a one-shop stop.

Tavish Scott: I am sorry; did I say that the wrong way? I meant to say one-stop shop.

Allan Wilson: When the responses to the consultation come back we will look again at the regulatory regime. Our intent has been clear, but the different statutory responsibilities and the statutory implications of moving quickly to a one-stop-shop approach must be taken into account. I am happy to give reassurance on that.

We continue to take an holistic view of competition. You referred to Norway, but Norway charges significant sums for licences to operate a fish farm. That licensing regime is different from ours. The variations in different countries have an impact on their respective competitiveness. I made the same point to Fergus Ewing: one cannot remove one factor and consider it in isolation; one must consider the position holistically. However, generally I agree with you.

Tavish Scott: The minister previously mentioned ISA. My recollection is that the ISA restart scheme, which was announced a couple of years ago, had a budget of £9 million for three years. I understand that that was underspent, and that it now sits with Highland and Islands Enterprise—HIE. I appreciate that the minister may not be able to answer today, but it would be useful to know whether HIE will retain the moneys that are still available from that scheme and whether they will be specifically targeted at aquaculture. That is the industry's and my preferred solution.

Allan Wilson: It is for HIE to allocate any prospective balance.

Mr Mike Rumbles (West Aberdeenshire and Kincardine) (LD): When this matter was before the committee, the industry and the Executive were left to co-operate to devise an insurance scheme to cover the problems of mass slaughter. The Executive—rightly—fully compensates our livestock farmers for disasters such as foot-and-mouth disease, but it struck the committee that there was no such scheme for mass slaughters ordered by the Executive in relation to this issue.

Later, we will consider the Agricultural Holdings (Scotland) Bill. I have certainly been impressed by the Executive and the industry. With one or two exceptions, tenant farmers and landowners have come together and almost agreed the way forward. There is a remarkable degree of consensus, which there has not been with ISA and insurance.

You said that insurance companies have been reluctant to provide cover and have ruled out commercial cover. If that is so, surely the only way forward is for the Executive to step in. Will the Executive do so in the interests of policy fairness and consistency across the board? If it does not do so, ministers will not have been fair and consistent.

Allan Wilson: The answer to your question is no. The Government is not an insurance business and the taxpayer cannot be exposed to unquantifiable liability. I am aware of the arguments that fish farmers have made about discrimination against them in the light of compensation arrangements for terrestrial livestock farmers for serious diseases such as foot-and-mouth disease. However, the comparison with livestock farmers is not valid. When diseases such as foot-and-mouth disease regrettably strike, cattle and sheep are destroyed and carcases are disposed of, but things are different under fish disease control legislation. With ISA, for example, a farmer can market his stock unless it shows clinical signs of disease. Therefore, no ready comparison can be made with livestock disposal.

Mr Rumbles: May I follow up that point?

Allan Wilson: Please do, although I have not finished what I was going to say.

Mr Rumbles: What you are saying is a little false. I am not saying that you are intentionally misleading the committee, but what you are saying is a little misleading, as it would be commercially unacceptable for fish farms to market the dead fish as having been slaughtered as a result of a disease programme—the fish would not be bought. You are not making the right comparisons. Ordering the mass destruction of fish to prevent disease is similar to the Executive ordering the mass slaughter of livestock to prevent disease. Is not the case clear?

Allan Wilson: No. The two issues are different. The mass slaughter of animals with foot-and-mouth disease will result in carcases that are not marketable, whereas the vast majority of

slaughtered fish have been marketed—in percentage terms, the figure is certainly in the high 90s. I have some sympathy with arguments about the depreciation in market value of stocks—there is a grey area in that respect. However, even if we had the legal obligation or powers to provide compensation—which we do not—successive Governments have argued that the industry must take the necessary steps in the first instance to mitigate its exposure.

The industry can take steps. We have eradicated the disease since its outbreak, which people argued was impossible—we have shown that it is possible. To be honest, I am surprised that the industry has not taken steps to set up a levy among members, for example, to prepare for such an eventuality under the new control regimes that will operate. We would like to discuss that matter with the industry in the context of the grey area to which I referred.

Mr Rumbles: So the issue is not dead. You have not put a stopper in it.

Allan Wilson: It is not dead for two reasons. We await the judgment of the European Court of Justice, which might well impose a legal obligation on us, in which case we would obviously have to comply with the judgment. Beyond that, we have always indicated a willingness to discuss with the industries measures by which they might mitigate their loss, such as a levy system among operators.

Richard Lochhead (North-East Scotland) (SNP): I turn the minister's attention to a part of the paper that deals with the concept of genetically modified farmed fish, which has not been addressed so far. I am concerned by some of the comments in the strategy paper on that extremely controversial issue.

The paper says that, in the past,

"there have been expressions of public concern about the use of genetically modified crops in the food chain."

As I am sure the minister is aware, concern about genetically modified fish is even greater than that about genetically modified crops.

There are a couple of real concerns. First, genetically modified farmed fish might jeopardise Scotland's reputation for good food production. Secondly, we know that wild fish populations have been affected by farmed fish populations. If those farmed fish populations were to be genetically modified, that could have horrific ramifications for wild fish stocks.

As the minister says in the paper, there is no commercial production of genetically modified fish at present and I understand from speaking to the industry that no one in the industry supports that concept. Scottish Quality Salmon told me last year that it was opposed to the concept and I understand that consumers are opposed to it, too.

I want to know why the minister says that

"the application of genetic techniques may be expected to play some role in the future."

He expressed no opposition to that, so he is leaving the door open to it. Why is he leaving the door open and is the Executive opposed to genetically modified fish?

Allan Wilson: You raise an important point. The draft strategic framework is very clear from an industry point of view. The industry in Scotland has declared that it will not use the genetically modified vegetable products that you mentioned, not least, I suspect, because of the consumer confidence issue to which you referred. Consumer confidence in the product is an important part of Scottish salmon marketing, and I believe that it will become increasingly important in a global context.

The paper says:

"The second application is the use of GMO technologies … in breeding fish for commercial aquaculture use."

Again, that plays no part whatsoever in Scottish commercial aquacultural production.

However, I have the advantage over Richard Lochhead in so far as I have travelled to look at some of the experimentation in genetically modified fish in other parts of the world, particularly North America. That experimentation continues apace. I noticed a comparatively recent press report that mentioned the applications for potential commercial exploitation of that product.

The situation is hypothetical but, given the global market that exists in farmed fish production, I assure you that the product would have a substantial impact on that market. Members might argue that it would have a negative impact in relation to consumer choice and that the Scottish product, which eschewed GM feed or GM production, would rise in value and demand and that there would be a consequential downturn in the industry of countries that had turned to GM production. I assure members that, were the opposite to happen—if there were no consumer reaction, all environmental concerns were heeded and consumer confidence grew—the competitive position of the industry would be damaged severely by our opposing genetic modification of fish. That would have considerable implications.

We cannot be Luddites and turn our backs on scientific development. We must take account of developments elsewhere, even if we are not directly involved in them. We do not leave open the door to such developments here, but we say that we must have regard to developments elsewhere. If we ignored those developments, we would be doing our industry and our consumer interests a disservice.

15:00

Richard Lochhead: If every other country adopted genetically modified fish and Scotland did not, that might help the Scottish market and Scottish producers. We would have a niche market and people would be more likely to buy non-modified fish.

Allan Wilson: We do not know that. Such an approach could have a damaging effect. I have seen at first hand that genetic modification can more than halve production costs and the ultimate cost of the product. People's inherent fear or distrust of GMOs might lead them to reject genetically modified products and to have increasing confidence in Scottish fish. However, if the consumer response were driven purely by market considerations—by the price of the product—rejection of genetic modification could have a very damaging effect on the Scottish industry, which might be priced out of the market. All that the strategic document says is that we cannot ignore developments elsewhere that may impact on our market in future.

Richard Lochhead: We will disagree on that issue.

My final question relates to an issue that is hanging over salmon farmers in Scotland, especially in the independent sector: the perceived threat of dumping cheap imports on the European market. That issue is causing great concern in Shetland and elsewhere. What influence is the minister bringing to bear on the European Commission, given that next month there will be an important meeting at which decisions will be taken on that matter? How does he envisage European policy impacting on the aquaculture sector in the future, given that we know from painful experience that European policy and fisheries do not always have a productive relationship? That relationship is often disastrous for Scotland. Does he believe that Europe will play an even bigger role in determining the development of the aquaculture sector in Scotland?

Allan Wilson: Richard Lochhead raises an important issue. I hope that I am having considerable influence on the outcome of the process to which he refers, as that is certainly my intention. I have been very active in support of the Scottish indigenously owned sector of the industry, which—as he knows—is not the same as the industry per se.

The issue of dumping must be addressed by the member states of the European Union. The position is not dissimilar to the one in which we found ourselves when dealing with wild stock recovery action plans—we must build a coalition of states. It is difficult to secure a consensus around the position of one member state. Because of the fish gap to which I referred earlier, the Commission, the European Union and the member states will have an increasingly important role to play in determining the future direction of EU aquacultural development. It is quite proper that that should happen.

Our advantage is that Scotland is ahead of the game in developing its strategy. We must take account of the fact that the Scottish strategy is being developed in parallel with an EU strategy but, by virtue of the fact that we are ahead of the game, we are in the fortunate position of being able to shape the outcome of events. Inevitably, the Commission will have an increasing role to play in the development of our indigenous industry, European aquaculture and, beyond that, the global market to which I referred in, for example, transgenics.

Mr Alasdair Morrison (Western Isles) (Lab): I welcome the draft strategic framework. The process has been invaluable in bringing together every stakeholder in these important industries.

I will pick up on the minister's last point about the dumping of salmon. It is of phenomenal importance that he and his colleagues at the Department of Trade and Industry and the Commission all work together to prevent the illegal dumping of salmon and to reduce the amount of salmon that is being dumped within the European Union. He mentioned that the matter is exercising indigenous companies. Is he aware that it is also concerning non-EU-owned companies that operate in Scotland although, for reasons of divided loyalty, they have as yet been unable to articulate those concerns?

Some of the questions that I was going to ask about the regulatory regime and other issues have been answered.

I listened to what the minister said about the European strategy. Will the Executive's strategy genuinely help to inform what the Commission is about? How does the Executive's timetable fit in with the timetable that has been established by the Commission?

My final point is on the type of support for which Scottish aquaculture is looking. As someone who lives in the Highlands and regularly engages with aquaculture operators and fish farmers, I know that what they are looking for from the Executive and the Parliament is not constitutional nit-picking, but sensible, pragmatic and intelligent steps to help to sustain those industries and allow them to expand. I make the point again to Mr Ewing—the industry continues to expand and, as someone who lives in the Highlands, I am aware of that daily.

My question is on the EU strategy and new species. In the context of the European strategy, how does what the minister and we are doing fit in with what our colleagues at the European Commission are doing?

Allan Wilson: I am glad that Alasdair Morrison welcomes the production of the documentation, because it represents 18 months of hard work. We had to bring together all the parties, who often have conflicting viewpoints and interests. The fact that we have reached this stage and that there is such consensus is a considerable achievement. I take his comments, together with those of Tavish Scott, as recognition of the work that everybody has put into the process and of the tremendous opportunity that the strategy affords the industry and other stakeholders in developing the opportunities to which Alasdair Morrison referred.

As I said in my response to Richard Lochhead, I think that the European Union will increasingly set attitudes in the market in farmed fish. We are developing our strategy in parallel and in concert with the Commission and with the European Union more generally. The person who is principally responsible for driving that forward is Constantin Vamvakas, a Greek who is in the lead in Europe on the issue. He will speak with me at the conference to which I referred, when the final documentation will be unveiled for public approval. Although we are working in parallel and in concert with the EU, we have the advantage of having put in 18 months of hard work in developing the strategy. I continue to hold to the view that the strategy offers the opportunity for our industry to grow and expand in a sustainable manner.

Mr Jamie McGrigor (Highlands and Islands) (Con): I echo Tavish Scott's comments about the single-stop shop.

I notice that under research priorities, paragraph 25 in appendix 4 of the draft strategic framework recommends:

"Studies into the causes and ecological consequences of the decline of wild salmonids."

I do not know whether the minister remembers but, in 1996, the Scottish salmon strategy task force under Lord Nickson produced about 63 recommendations on the subject, one of which was on a single regulatory body for the aquaculture industry. I have spoken to many people in the aquaculture industry who want to live in sustainable co-existence with other stakeholders around the coast, such as people who are involved in wild fisheries. The same applies to people who are involved in fin-fish aquaculture and those who are involved in shellfish aquaculture, which is a different ball-game.

A single regulatory body would make things much easier. For example, it would become easier to get permission to use new medicines that have been certified by the Scottish Environment Protection Agency. I have been told again and again that it is enormously difficulty to get things done quickly in the industry. Will the minister help to make the industry less regulated, which would make it easier for the industry to advance?

My second point is about the transfer of responsibility for planning permission from the Crown Estate to councils. Councillors and others have asked me whether good guidelines will be issued on where salmon and fin-fish cages should be placed. There have been cases—for example, in Ardlair in Wester Ross—in which it was proven that the tidal flow was not sufficient to carry away the detritus on the sea bed. Such pollution can be a time bomb. The aquaculture industry wants to live sustainably with other industries. I am asking for good, well-thought-out guidelines for councils so that they know which places are good, and which are not good, for fish cages.

Allan Wilson: Jamie McGrigor raised a couple of important points, but, to an extent, his second question answered his first. A single regulatory authority was an option, but it did not find favour among the majority of stakeholders, whose preference was for the introduction of planning powers for local authorities, to which he referred. I provided for that measure last week in advance of the finalisation of the strategy. If we accept, as I do, that the optimum means of developing planning for fish farms involves local authorities and that the optimum means of controlling discharge consents is through SEPA, we must accept that a minimum of two regulatory bodies will be involved.

The guidance on the new planning duties that we will issue to local authorities, which will become a national planning policy guideline, will be critical to the operation of local authorities' new powers—there is a broad consensus on that in the industry. We might be better able to co-ordinate the process if an existing regulator oversaw and co-ordinated applications. We are exploring that possibility actively. A range of regulators might be involved in the process, as happens with terrestrial agricultural production, but the idea under consideration is to have a lead authority to co-ordinate applications.

15:15

Stewart Stevenson (Banff and Buchan) (SNP): The vision, which was developed with such effort, says:

"Scotland will have a sustainable, diverse, competitive and economically viable aquaculture industry".

In response to other members, the minister said that we should not consider one factor in isolation.

In response to Alasdair Morrison, he said that we must develop the industry in a sustainable manner. I direct the minister to the feed sustainability study that is referred to in paragraphs 3.57 et al, which point to the real difficulties in the total ecology of the industry. The large majority of feed stock is derived from industrial fisheries and, as we know, in the North sea in particular, the Danes are extracting something in the order of 1.5 million tonnes per annum of sand eel, pout, and other smaller species.

In the document, the minister says that after the European seafoods workshop in April 2003, we shall receive information on global aquaculture feed supplies. However, are we in line for any support—at long last—to eradicate the pernicious industrial fisheries that are so damaging to the wider wild fish stocks in the North sea? Can the minister give us any hope that the Danes and the industrial companies behind their fisheries—a very small number of very large industrial companies—will finally be brought to heel? Can he at the same time offer us a way forward for an increasingly important aquaculture industry?

Allan Wilson: I agree, in large part, with Stewart Stevenson's fundamental point, which has concentrated my mind and the minds of the working group. For the industry to be sustainable in the long term, we must address the sustainability of its feed stock; that is a fundamental issue. A wide range of research and other activities is being generated largely by the Executive, in concert with colleagues in different parts of the world. We want to ensure that we can produce sustainable feed stocks for an expanded level of aquacultural production, and that that does not threaten the current stocks of sand eels and the like, which provide the majority of feed stocks. That is a major challenge, which the strategy document recognises; indeed, it is globally recognised. A range of research is also going on into alternative foodstuffs.

Irene Oldfather (Cunninghame South) (Lab): Does the minister agree that a sustainable future depends on attracting more young people into the industry? I note on page 64 of the document the suggestion that present vocational courses may not be sufficient for the industry's needs. Is the minister optimistic that we can ensure in the future that vocational training not only meets the industry's needs, but encourages young people to get involved in the industry and motivates them to stay in their rural communities?

Allan Wilson: Absolutely. We have had bilateral discussions with Iain Gray and others in the enterprise and lifelong learning department, and with people in academia, all of which were designed to stimulate growth in better-orientated training for the industry. We want to produce trained young people who stay in their local areas, earn their living there, bring up their children there and support local schools and the local community. All that is dependent, in large part, on the local economy and the contribution that aquaculture makes to some of our most remote communities. It is all interlinked. The strategy document recognises that skills training, and investment in skills training, will ensure that kids find an economic future in their locality and secure the future of some of our remotest communities. The strategy deals with important social aspects, and I assure members that the Executive's efforts across a range of departments will be directed towards securing those objectives.

John Farquhar Munro: Many of the recommendations that have been drawn from this long-term inquiry would, if implemented, ensure a viable and sustainable sea-cage fishery, which is particularly desirable as much of the activity takes place in remote parts of Scotland. Everybody would support that.

We have heard a lot of criticism—which will continue, and may become more active—about the cage locations and the applications of chemicals and medicines. Who will police the activities of those remote sites in the event that the sea-cage industry moves even further offshore?

Allan Wilson: There are a number of important aspects to the issue. The recently revised relocation guidelines, the area management agreements and the regulation of fish medicines all contribute in various ways towards a more environmentally sustainable industry. Each makes an important contribution to that objective, and that will continue. It is fair to say that, in Scotland, we operate to higher environmental standards than any of our global competitors and that, as a consequence, we can guarantee our product's quality.

There will always be people on the fringes of the argument who will argue against any form of aquacultural production and others who will argue against any form of regulatory regime, claiming that it would interfere with their competitiveness. We have the right balance. Increasingly, we will be seen to be leading the way in aquacultural development in an international context. That offers a sustainable path for future expansion, which will create jobs and other economic opportunities down stream in constituencies such as John Farquhar Munro's and in other remote areas.

John Farquhar Munro: One of the main complaints that we heard in the localities that we visited—but not from the industry—was that, although SEPA was given the authority to control and monitor what was happening and to approve

the location of the cage, the biomass involved and the application of medicines and compounds to a particular formula, there was little scrutiny afterwards. I am sure that the minister, in his deliberations on his final conclusions, will take that point into consideration.

The Convener: Time is against us and we must draw this part of the meeting to a close. In order to have meaningful input into the final strategy, we will have to act swiftly. I hope that members will agree that we should ask the clerks to write a letter highlighting the concerns that have been raised and that the letter should be given to our reporters to sign off by Thursday.

If members have any other points to raise, now is the time to do so.

Fergus Ewing: I understand that the point that the Scottish Salmon Growers Association wants to be pursued relates to the allegation by Brian Simpson that, when the Commission decided that there was no evidence to substantiate the claim that the market had been presented with the dumping of below-cost salmon from Chile, the Faroes and Norway, it did so because it examined only a six-month period that was too early to show the actual impact of the dumping. Westminster should ensure that the European Commission examines the subsequent six-month period when the market was being flooded with low-cost salmon.

I hope that the letter that the clerks will draft will include concerns about the extra costs that are being imposed on Scottish producers because of EU directives or rules reducing the amount of canthaxanthin—a substance that determines pigmentation in fish—that can be added to fish feed from 80mg/kg to 25mg/kg. The salmon growers argue that the EU's approach has been inappropriate and that the regulation is entirely unnecessary. They tell me that, for anyone to suffer, they would have to eat one pound of salmon—six or seven salmon steaks—every day throughout their lives. This is a serious matter as extra costs are being imposed on the industry, and I hope that it will be considered properly.

Finally, I have had the benefit of reading the SQS response to the Executive's draft framework document. The response praises the Executive's aspiration but criticises it on the detail. Does the minister regret that, of the 24 people on the working group, not one was actively engaged in managing a salmon farm? Surely it is not a surprise that that has resulted in criticism from SQS? Many distinguished people with a lot to offer were included in the composition of the group. However, according to Brian Simpson, the two people from the bodies representing the industry are not actively engaged in salmon farming. Does the minister agree that that is poor? Perhaps the convener will pursue that point in the letter.

Allan Wilson: Our continuing discussions with Westminster colleagues and others in the development of wider European policy mean that we are obviously aware of the points that were raised.

On Fergus Ewing's latter point, as the more astute members of the committee will be aware, the industry nominated the people who were to represent the salmon farmers. If Mr Ewing has problems with the talented individuals who comprised the industry representatives on the working group, he should raise the matter with the industry representatives rather than with me.

I assure Fergus Ewing that the contributions that were made by David Sandison of the Shetland Salmon Farmers Association and Mark Davies of the British Trout Association, or by Jamie Lindsay and others in respect of the salmon farmers, were of very high quality. They represented their industry viewpoints very effectively. That is reflected in the strategy document that is before the committee today. I pay personal tribute to the contribution of those individuals. Mr Ewing's criticism of them is extremely misplaced.

Mr Morrison: I want to reinforce that point. As I said, I engage regularly with the industry on a weekly or fortnightly basis. I have heard not one chirp of criticism about the composition of the working group. Everyone welcomes the group; they see it as a useful vehicle to do things for a fundamentally important industry. It is unfortunate that committee members have chosen this stage in the debate to denigrate what are, as the minister rightly said, the substantial efforts and contribution of a great number of talented people.

The Convener: I think that we should leave the discussion at that point. Do members agree to my proposed course of action?

Members *indicated agreement*.

The Convener: The reporters will try to sign off the letter by the end of the week.

I thank the minister and his officials for attending the meeting. Given that there will be a changeover of officials, I suspend the meeting for five minutes to allow members to gird their loins for the session to come.

15:28

Meeting suspended.

15:38

On resuming—

Agricultural Holdings (Scotland) Bill: Stage 2

The Convener: Before we continue our stage 2 consideration of the Agricultural Holdings (Scotland) Bill, I welcome visiting member Margaret Ewing to the committee.

I ask members to declare any interests. I start by declaring my registered interest as a limited partner in a limited partnership agreement.

Mr McGrigor: I declare an interest in that I own a sheep and cattle farm in Argyllshire.

John Farquhar Munro: I declare my interest as a crofter. My son is the tenant and I am the sub-tenant.

Stewart Stevenson: I have lent a three-acre field for no consideration to a sheep farmer.

The Convener: Once again, I welcome Allan Wilson, the Deputy Minister for Environment and Rural Development, who will address stage 2 from the Executive's perspective, and his officials.

Members should have before them a copy of the bill as introduced, the fourth marshalled list of amendments, which was published yesterday, and the fourth groupings list. Please check that you have those papers. Spares are available at the table. There is one other paper that members have just been given, which is a late manuscript amendment—amendment 169A—in the name of Fergus Ewing. Members have just been given a separate sheet showing where that fits in.

Members are reminded that although amendments have been grouped to facilitate debate, all amendments will be called in strict order from the marshalled list. We have a great deal to get through. The target that we have set for today is to complete consideration of the bill. I hope that members will bear with us as we try to achieve that, no matter what time it may take us.

I repeat what I said previously, which is that if I am called on to use a casting vote, I will use it in favour of the status quo. By common agreement, the status quo in these situations is the bill as introduced, and I would therefore use my casting vote against any amendment.

Section 58—Rights of certain persons where tenant is a partnership

The Convener: Amendment 15 is grouped with amendments 165 to 167, 169, 169A—the late manuscript amendment to which I referred—182 and 188.

John Farquhar Munro: I bring amendment 15 to the committee in the hope that it will throw some light on the difficulty that our farming community has experienced through the conversion of limited partnerships to limited duration tenancies. The intention of amendment 15 is to allow limited partnerships to convert to limited duration tenancies in the same way as other tenancies under the Agricultural Holdings (Scotland) Act 1991 can.

I should explain at the outset that a limited partnership tenancy is a business. It is a partnership between two or more individuals—usually the tenant and the landlord—whereas the limited duration tenancy is limited by duration and is quite a different concept. At present, tenants in limited partnerships have little security, and are vulnerable to pressure from landlords or their agents. That has been obvious over the past few months where partnerships have been dissolved because partners have decided that they want to remove themselves from their obligations and tenancy agreements.

The limited partnership arrangement has evolved as an avoidance measure to circumvent the security provision in full tenancies. Partnerships have become the main avenue for letting land over the past 20 years. Indeed, it is interesting that virtually no full tenancies have been created in the last couple of decades. Partnership leases are an unsatisfactory means of letting land, as once the initial period of the lease has elapsed—which is usually 10 to 15 years—the tenant holds his tenancy by virtue of tacit relocation which, as everybody understands, can be terminated at very short notice, and usually within a year. That is an unsatisfactory arrangement. Indeed, the nature of limited partnerships has been recognised by the Executive, and any new partnership arrangements will be permitted to run into limited duration tenancies once they have been terminated. We believe that that provision should be extended to all limited partnerships where the tenant, as the general partner, is still in situ.

As I said, there has recently been a spate of dissolutions of partnership agreements in response to advice given by land agents as a reaction to what is perceived in the proposed legislation. That is an overreaction and should not be tolerated. It is interesting that in this very week, in the run-up to today, there has been a proliferation of dissolution notices being handed out to tenants. In fact, I heard this morning of a tenant whose landlord contacted him yesterday to say that he was going to present him with a dissolution of tenancy document that very day. The tenant waited up until late in the evening before he despaired and went to bed. Sadly, when he woke up in the morning, the notice was on his

doormat. That is the extent of the activity that is taking place in the countryside at present.

It is interesting that the bulk of land that has been let over the past two years has been let through a partnership arrangement. It is obvious that the agriculture industry is in danger of losing its young blood—the backbone of tomorrow's farmers. That would defeat the stated aim of the bill—to revitalise the tenanted sector—before it has even become law. I urge the Scottish Executive to tackle this problem head on and to prevent the injustices that have happened in the past. We have an opportunity to deal with the situation and to ensure that the law treats the tenanted farming sector in a reasonable, humane and appropriate manner.

I move amendment 15.

15:45

Allan Wilson: This is one of three groups on which I expect there to be extensive debate. That may not be the case to the same extent with the other groups of amendments. I ask members to bear with me.

As John Farquhar Munro indicated, all of us have become aware of recent instances of landlords initiating dissolution proceedings against limited partnerships that were created as tenants in a 1991 act tenancy. Such instances raise two questions. First, why is this happening? Secondly, and more crucially, how do we protect the general partners or de facto tenants from what I regard as an unacceptable position, in which they do not know whether they will have a continuing business or even a roof over their heads in a few months' time? I share that concern with John Farquhar Munro.

It should be remembered that some limited partnerships are dissolved every year. The Executive does not collect statistical information on the number of limited partnerships that are created as an agricultural tenant or that are dissolved. We do not know exactly how many limited partnerships are currently subject to dissolution proceedings or how the present situation compares with other years. We are responding to compelling anecdotal information, to which John Farquhar Munro referred, that a number of landlords who would not otherwise have wanted to dissolve partnerships have initiated dissolution proceedings.

The reasons for such action are telling. Not all landlords are concerned about the bill as introduced or the Executive's intention. Feedback that we have received—including feedback from the National Farmers Union of Scotland—suggests that a number of landlords are seeking genuinely to enter into the new limited duration tenancy and short limited duration tenancy arrangements. However, there is a genuine fear among landlords and their agents about what may happen to the bill. That fear relates mainly to the possible introduction of an absolute right to buy for 1991 act tenants, which we will discuss later. It relates also to the subject of amendment 15, which has been on the agenda for a few weeks and would give existing de facto tenants all the rights and powers of a tenant under the 1991 act.

We have stated consistently in relation to the absolute right to buy that landlords would be reluctant to let land if such a right were introduced. Many who could take land back would do so. The events of recent weeks may be a manifestation of that tendency. When we work out how best to protect general partners from the intolerable position to which I have referred and in which too many partners now find themselves—as John Farquhar Munro pointed out—we must consider the factors that I have outlined. We must also think about the effect that the action we take has on the availability of land to let and on the interests of people who will seek to become tenants in future. As members know, the thrust of the legislation is both to broaden and to stimulate demand in the tenanted sector.

We are expecting landlords and tenants to commit themselves to long-term contracts under the new legislation—LDTs of 15 years or more. If people are to do that, they must feel confident that the expectations with which they entered into the agreement will hold true throughout the term of the tenancy. Certainty is crucial in that context. If we legislators are willing to make fundamental changes to existing agreements now without strong reasons, what reason exists for landlords to feel confident that the terms under which they enter into a new LDT will thereafter be respected? The converse is also true: what grounds would tenants have to feel confident that the new protections that were being offered would remain intact for the duration of the tenancy? That principle lies at the heart of all our deliberations—not just mine, I hasten to add—this afternoon.

On amendment 15, I sympathise with much of what John Farquhar Munro says. In particular, I find that the limited partnership is an unbalanced and unfair model. I have said as much on numerous past occasions. The year-on-year extensions deny security of tenure to the de facto tenant. That is why we have drawn a line in the sand and told landlords that, if they attempt to obviate the tenancy models that are provided for under legislation and deny tenants what we believe to be their legitimate rights, the tenant in law or in fact will have a remedy under section 58.

There are some assumptions with which we do not agree. John Farquhar Munro referred to two of

those specifically. The first is that all limited partnerships were entered into with the purpose of obviating the protections that are available to tenants under the 1991 act—that they are avoidance measures, as John Farquhar Munro said. That is clearly not the case. In a number of instances, particularly involving owner-occupiers of more modest means, the landlord has let a proportion of land under a limited partnership for a foreseeable period—until they knew that they would need the land themselves again. Such people exist and did not enter into such agreements for the purpose of avoidance.

The second assumption with which we disagree is that landlords entered into limited partnerships realising that they were illegitimate. We will discuss that in the context of amendment 169A to a certain extent, but the fact is that the use of limited partnerships has grown over the past 25 years. Conservative Administrations of the 1980s and 1990s failed to address the issue—the Conservative Government even decided not to act when consolidating and updating the legislation in 1991. We must accept the consequences of that, in that the use of limited partnerships was legitimised by a failure to address the issue over such a long period. Until we established the land reform policy group, landlords arguably had no reason to believe that the Government found that practice distasteful, which we manifestly do.

The third assumption that I dispute—and the second that John Farquhar Munro raised—is that a landlord who entered into a limited partnership arrangement would have entered into a 1991 act tenancy directly with the tenant had the option of a limited partnership not been available. On the contrary, given what I have just said on the failure of previous Tory Governments to take corrective action, it would be fair to argue that limited partnerships have kept the tenanted sector alive over the period in which ever fewer landlords would have been prepared to offer new, secure tenancies directly to the tenant. I do not know anyone who disagrees with that.

The fourth assumption, which John Farquhar Munro did not mention, is that amendment 15 would not have a damaging effect on the lettings market in future. Our objective is to stimulate and broaden that market, and we have concerns that the willingness of landlords to let land in future could be compromised seriously. We might be witnessing a manifestation of that. Whether it is in direct response to amendment 15 is a moot point, but landlords will view amendment 15 as retrospective action and doubt the stability of any basis on which to agree to let again. That is an important consideration, given the balance that we have to implement.

Lastly, and perhaps most important, where—except for the need to protect general partners from dissolution of the partnership and termination of the tenancy—does the demand for amendment 15 come from? We consulted heavily on the bill's principles and on the draft bill. It is fair to say that minimal demand for the proposition of amendment 15, whether from tenant farmers or their representative organisations, has flowed from that consultation or subsequently.

Amendment 15's impact could be severe. In particular, the fact that a landlord would lose their current expectation of when they could recover land could reduce the value of land that is held under such tenancies by 20 per cent to 40 per cent. Without adequate compensation, a European convention on human rights risk that is not dissimilar to that which relates to an absolute right to buy could arise. Amendment 15 would tear up thousands of tenancy agreements that were freely entered into. That could have draconian effects. Moreover, the expected evidence of demand from tenant farmers or their representative organisations does not exist.

As I said, I accept that, at this time of uncertainty, general partners want and deserve protection from dissolution of the limited partnership of which they are part. Executive amendment 169 provides that. If the committee agrees to amendment 169, landlords will be on warning from today that they had better have a good reason for initiating dissolution proceedings against a limited partnership. That is from today—we can deal with subsequent application. The general partner will have the right to apply to the Scottish Land Court if the partnership is dissolved. If the Land Court accepts that the landlord did not have reasonable grounds for dissolving the partnership, it will be able to make the general partner the tenant in place of the limited partnership. That is not dissimilar to the intention of amendment 15. The general partner can therefore become a secure tenant in their own right.

The reasonableness test is obviously an important aspect of the new section that amendment 169 will add. We will liaise closely with the industry and the Land Court on how that might be refined. I acknowledge that a landlord might have several legitimate reasons for wanting to dissolve a partnership. It will be our job to work the reasonableness test around them. I also want to encourage landlords' efforts to enter into new LDTs and SLDTs with their general partners, which could be a legitimate reason for dissolution proceedings.

Our amendment 169 provides protection for general partners at what I think we all agree is a difficult time, but the situation need not be as harsh for landlords. Provided that we refine the bill responsibly, there is no reason why a landlord

should want to dissolve a limited partnership from fear of what the bill might include. Provided that landlords behave responsibly, the new section after section 58 need not be used.

The new section also does more. We consider the pre-emptive right to buy a valuable additional right to tenants who have tenancies under the 1991 act. Crucially, it extends tenants' rights while respecting landlords' legitimate interests. At the heart of that right is the principle that the right applies when there is a willing seller, a willing buyer and the transfer is at full market value. That principle is often reflected in fact, because in a voluntary transaction, a landlord can usually obtain a better deal by selling to a sitting tenant instead of a third party, while a tenant can usually obtain a better deal by purchasing the farm that they rent from the landlord than they could from buying a similar farm elsewhere. Those arguments are well rehearsed and are familiar to all members.

Of course, the tenants of a significant proportion of 1991 act tenancies are limited partnerships. As the right to buy works in a way that benefits tenants without prejudicing landlords' interests, it is appropriate that it should apply to all 1991 act tenancies, including those whose tenants are limited partnerships. In such cases, the de facto tenant, who is a general partner, could exercise the right to buy in his or her own right. Subsections (1) to (3) of the new section introduced by amendment 169 provide for that.

The price that was payable would reflect the fact that the purchaser was a general partner rather than a secure tenant in their own right, by virtue of amendment 182. That will ensure that landlords' expectations about value are fulfilled, which is an important consideration. Amendments 165 to 167 and 188 are ancillary to amendment 169.

I will now deal with Fergus Ewing's amendment 169A, to which I made passing reference. The amendment would change the date of effect of the proposed new section from today to 16 September 2002. I recognise the amendment's superficial attractiveness—I do not intend that to be disparaging—because it would deal with the recently issued dissolution notices to which I referred. However, I ask Mr Ewing and other members to exercise caution.

16:00

As I said, our understanding is that most landlords, or at least a substantial proportion of them, will not want to end partnerships if the bill follows the Executive's intention. There appears to be genuine enthusiasm among some landlords to enter into the new tenancy options, but we risk dissipating that enthusiasm if landlords feel that they are being unfairly penalised. We must be careful about taking action on notices that were served before today because landlords did not have forewarning or knowledge of what would happen. I made that point in general terms earlier—it is one reason why amendment 15 fails the five tests that I mentioned. I keep returning to the question of why we are legislating in the first place.

We must also be clear that amendment 169A might undermine tenants' interests. For instance, tenancies might have been renounced or ended after 16 September 2002 as a result of a breach of the tenancy by the limited partner. If such cases arise and the land has been re-let, how will we balance the competing rights of the two de facto tenants?

Most of all, we must allow the industry time to reflect on how the bill is being shaped and how our distaste for the practice of initiating dissolution proceedings is reflected in those developments. We must give landlords and tenants a reason to trust our intentions for the bill and allow them to reflect on their position and get things right.

I am not wholly opposed to amendment 169A and I am prepared to consider introducing a similar measure at stage 3, should that prove necessary to protect general partners. My point is that a knee-jerk reaction to what is a recently lodged amendment might interfere—perhaps for little purpose—with confidence in the decision-making process and the progress of the bill in letting land.

Given the clear understanding that I have not ruled out the measure, I hope that Fergus Ewing will not move amendment 169A. I also ask John Farquhar Munro to withdraw amendment 15, given all the points in favour of our amendments 165 to 169 and 188, which I commend to the committee.

I apologise for speaking at such length, but the amendments involve important considerations. We will reach three such important stages today.

The Convener: As you rightly say, the issues are important and I have no intention of curtailing the debate on them.

Fergus Ewing: I agree with much of what the minister said and with the sentiments that John Farquhar Munro expressed.

Through manuscript amendment 169A, I seek to deal with the problem that John Farquhar Munro identified, which is, to use the minister's word, that "compelling" evidence has emerged of late that some landlords have moved to end limited partnerships and have issued to general tenants notices to quit. Those moves were a result of factors relating to the bill, in particular, amendment 169. Amendment 169 has, in some cases, made land agents and their lawyers advise clients that,

as they see it, it is necessary for landlords to dissolve limited partnerships and evict tenants in order to prevent tenants from obtaining some form of security of tenure.

I became aware of the situation through a constituent who was served with a notice to quit. I cannot name him because, as Angus McCall told the committee, many previous generations' experience has made tenant farmers cautious about speaking out on such issues. We are talking about tenant farmers who lease property that comprises not just their businesses, but their homes. We would not be very sympathetic to a council that suddenly sent eviction notices to council house tenants who had done nothing wrong. We should not forget that we are dealing with people whose homes, as well as their livelihoods, lands and businesses, are at stake.

The Scottish Tenant Farmers Action Group has advised me that there are many such cases throughout Scotland; I know about several of them. If I mentioned the locations, that would probably reveal the identity of many of the tenants, so I cannot and would not do that without their consent, because no one wants to exacerbate individual tenants' circumstances. I became aware that a variety of tenants throughout Scotland were receiving eviction notices. To be frank, I think that that is disgraceful and I have said so.

The landowners in some, or even most, of the cases might intend—as the former chairman of the Scottish Landowners Federation said in *The Scotsman* today—to use the new vehicles of LDTs and SLDTs in place of the arrangements that they seek to draw to a close. I accept entirely Robert Balfour's statement that that might be landlords' intention. However, where I disagree with Mr Balfour—with whom I work closely, not least as a trustee in the Carbeth Charitable Trust—is that we are not talking about a mere technicality; rather, we are talking about people's homes.

If all landowners were showing good faith, surely they would have issued formal legal notices with—this is an easy thing to do—covering letters that say that the tenants should not be too concerned about the legal notices, because the landlords are willing to consider the new vehicles and to enter into the new type of lease arrangements that we all wish to see. That would show an element of humanity on the part of some landlords which, sadly, we have not seen. I deprecate deeply the actions of those landlords. If any of us received a notice to quit, I do not think that we would be very happy and I do not think that we would talk about it as a "technicality".

It is interesting to note that in English law, the Conservatives introduced the Landlord and Tenant Act 1954, which reduced significantly the value of landlords' interest in land. It did so by giving tenants the right to continue, as statutory tenants paying rack rent, to occupy land after the term of their lease ends. Thus, leaseholders can became secure tenants. I mention that because it is ironic that back in 1954 the Conservatives supported a measure that is rather more radical than what we appear to be hearing from the Conservative party almost half a century later.

I support the minister's comments about amendment 169. I welcome the fact that the tenant will have an opportunity to go to the Scottish Land Court and I welcome the broad criterion that reasonableness is to be the test. However, I wonder whether, as the minister hinted, the Scottish Land Court needs to be given a bit more of a steer via guidance or criteria. I wonder whether we could consider whether there are cases in which the onus of proof should be shifted to the landlord, who would have to demonstrate that what he did was reasonable.

The minister said that there is variety among cases; they are not all the same. Some limited partnerships will have been brought prematurely to a close. In others, the period of limited partnership was at a close or was coming to a close and in others, the limited partnership was entered into—perhaps in the 1980s—for 10 or 12 years and had come to an end, but was continued by tacit relocation and farmers' having, in effect, tenancies on a year-to-year basis. In relation to each of those broad situations, I hope that we can at stage 3 ensure that tenants who have received such notices will be entitled to go to the Scottish Land Court, and that the apparent consensus that the new arrangements should be used—we are told that it exists among all the representative bodies—will be achieved in practice. If all that is achieved, we will be able to say that we have done what we can to protect tenants.

The minister asked me not to move amendment 169A. In closing, I will address the thinking behind that amendment. The problem with amendment 169 is that it would catch only cases in which the notice to terminate a partnership and quit a tenancy was made today or after today. Notices that were issued prior to today would not be caught. Therefore, none of the tenants throughout Scotland who has already received notice of eviction and whose lives are not happy at the moment would be protected. I know of 50 such tenants, but there might be many more. Who knows? Perhaps we will find out over the weeks ahead.

It is obvious that a date must be specified, otherwise the law could not be enforced and it needs to be capable of being enforced. I picked the date 16 September 2002, which was when the bill was introduced; it seems to me to be a relevant date for those purposes. It has been brought to my

attention today that some tenants would still be unprotected or would not have the option that amendment 169 would confer, because notice of dissolution had been served prior to 16 September 2002. However, a date must be fixed. I accept the minister's assurance that we can return to the matter at stage 3 and I hope that he will not discount entirely the possibility of making the legislation retroactive.

The minister mentioned one potential practical problem that would arise when he asked what would happen if the land had been relet. If it had been relet on a bona fide basis, I do not think that the Land Court would make an order to set that aside, unless it clearly saw the reletting arrangement as an avoidance technique—in other words, that there was no real new lease, but a phoney lease granted to a person who was not unconnected with the landowner. If a genuine lease is granted in respect of any land where the partnership has been terminated and the lease has already been brought to an end, or missives have been entered into for such an arrangement at a future date, I would not expect the Land Court to make an order to set those arrangements aside, provided that they were made with a third party, in good faith and for value, and not as part of an avoidance scheme.

I mention that argument simply because I hope that in assuring the committee, the minister will consider the possibility of making the provisions retroactive to some degree at stage 3. I think that the minister is nodding—at least we are all still awake at this point in the proceedings. If he will consider the matter, I will be happy not to move amendment 169A.

Rhoda Grant: I have a lot of sympathy for what John Farquhar Munro and Fergus Ewing have said and I think that the minister has taken on board and understands what they have said. I have a helpful suggestion: perhaps at stage 3, another section to the bill could be proposed that would take in tenancies that were partnerships that have been dissolved, possibly over the period of a year. I have heard of partnerships that were dissolved in April and May last year as a result of people looking towards the bill. Until today, people who were affected could go to the Land Court and perhaps have their partnerships transferred into one of the new tenancies under the bill. I think that the Land Court could reach a decision if a partnership was dissolved for an allowable reason or, indeed, if it was done simply as an avoidance tactic. The court could then give some comfort to a huge number of people who have lost the security of their livelihoods and homes and who face a bleak future. Perhaps a retrospective section in the bill to pull in such people would sort matters out.

16:15

Stewart Stevenson: I have a couple of questions. On subsection (7) of the minister's amendment 169, will he assure us that in making an order, the Land Court should not be satisfied that it would be not unreasonable for a tenancy to be terminated simply because the reason for that termination relates to the provisions of the bill? I suspect that that is obvious, but it would be useful if the minister would put the answer on record because the amendment does not define reasonableness or unreasonableness.

It might also be useful for the minister to give us his view about one of the reasons for tenants' being given notice under the provisions of the Agricultural Holdings (Scotland) Act 1991. Tenants are being told that they are being given notice in order to pave the way for the tenancy to become an LDT or an SLDT at a later date. In particular, I am thinking about section 2 of the bill, which is about conversion of 1991 act tenancies to LDTs. That section provides for a minimum 25-year term as distinct from a 15-year term, which would prevail were an LDT to start from scratch. Is that another cynical manoeuvre by some landlords to prevent a 1991 tenancy from being converted to a 25-year LDT? That is how I see it, but I am interested to know the minister's view.

The minister used the word "balance" in his opening remarks. Throughout the discussions on the bill, we have been conscious of the need to achieve a legislative balance between the rights of landlords and the rights of tenants. If landlords are discriminated against unduly, they will be less likely to proffer land for tenancies—a situation that would be of no value to the tenanted sector. However, landlords' recent actions have made it clear that the current balance of power lies with them. Through their actions in seeking to terminate 1991 tenancies, landlords have strengthened the argument for removing more powers from them, rather than the argument for stepping back from doing that.

Last month, during the debate on the Land Reform (Scotland) Bill, the Labour member who has just rejoined us—Mr Alasdair Morrison—said that the day of the landlord is over. However, landlords' recent actions suggest otherwise. In recent days, senior members of the land-owning profession have been emerging from the shadows and encouraging the termination of 1991 tenancies. Frankly, they are at it, and we're nae havin it. I am sure that the minister will agree with that sentiment.

Mr McGrigor: The point of the bill is to invigorate the tenanted sector by providing the new vehicles for tenancies that will bring about confidence and trust between landlord and tenant.

I am not surprised that there has been an increase in the number of terminations. I was informed about that increase by that well-known tenant farmer, George Lyon, who wrote a letter. Having said he was going to keep quiet about the bill, when the chips were down, he found he had to speak up and sent a letter to every member of the committee informing them about the practice.

I am not surprised: the terminations have been caused by the amendments. People are worried and the power to convert a limited partnership to a secure tenancy is unjust. The original limited partnership agreements were perfectly legitimate business arrangements between two willing parties. There is no justification and no public interest in giving tenants a secure tenancy at the end of a limited partnership that did not have that provision written into it in the first place.

Also going back to the public interest, I think it was Fergus Ewing who mentioned the Landlord and Tenant Act 1954. At that time, the legislation was considered to be in the public interest because there was a shortage of food, among other things, but there is no longer any such shortage.

As things stand, limited partnerships would not be subject to the absolute right to buy. However, landlords are worried that the eventual act could contain such provisions, which is shattering confidence within the sector; legal advisers are telling their clients to take precautionary steps. The situation is rather like a person who has a home being told by someone else that they are going to lose that home. Most people would take precautionary steps to avoid that and there is nothing odd about it. The amendments are the cause of the notices to quit.

On notices to quit, the term "notice to quit" is very old-fashioned and should be changed. It sounds very dramatic and it does not enhance how landlords are perceived. In general, however, such a notice is no more than a mechanism through which to change an agreement. Most landlords would dearly like to use the new vehicles that are proposed by the bill, but those vehicles are being wrecked by various amendments and, as we will discuss later, by the absolute right to buy.

Mrs Margaret Ewing (Moray) (SNP): As a visiting member, I thank the convener, the committee and its staff for allowing me to come along and talk, although I will not be able to vote.

The minister spoke about raising roofs over heads and providing security for people. He will have heard me speak before about tied cottages and their implications. The situation in respect of tenant farmers is very similar. The minister also asked where the demand was for John Farquhar Munro's amendment 15. I think that we have heard enough evidence from other contributors to establish that there is demand for that amendment.

The minister came up with a very strange statistic; he believes that the amendments in the group could reduce land values by 20 per cent to 40 per cent. That seems to me to be a very wide range of land valuation. Furthermore, the minister had no statistics on the tenancies that might be affected. How does he square that circle?

Mr Rumbles: The bill was designed to free up farm tenancies, to give tenant farmers rights to diversify and to receive proper compensation for improvements, and to give them the pre-emptive right to buy when their farm comes up for sale between a willing seller and buyer. There is a sad irony, however. The landowners and the tenant farmers have tried hard and have succeeded in reaching agreement on 90-odd per cent of the bill. However, we seem to be getting bogged down in controversy over the issues that we are now debating. The sad irony is that some of the amendments, if passed, will end up restricting the rights of tenant farmers, contrary to what the bill set out to do.

I am speaking to the Executive amendments in this group, which were lodged after the deadline on Friday. I want to make that a clear matter of record. I am not happy about the Executive amendments and the way in which the Executive moved to lodge them; they were submitted after the deadline. The convener accepted them in manuscript form and they were placed on the Parliament's website on Friday night, but the committee has not had an opportunity to debate them or to call evidence on how they would affect the bill. The committee has spent a great deal of time taking evidence from all sections of the community in order to get the bill right.

I saw the amendments only this morning and have not had the opportunity to examine them in detail. When the Executive lodges amendments in haste, often it does not think about their implications—there is a thing called the law of unintended consequences. I have been contacted specifically about the Executive's amendments in the first group. An example of what has been said to me is:

"I am employed in Local Government as a Chartered Surveyor dealing with the development of land for businesses and social housing use in Aberdeenshire … Such an amendment would wipe out the council's land bank, take away all the available business land and land for future social housing. In areas such as the North East of Scotland, where the Council is the only developer willing to provide business land away from the Aberdeen employment area, this would be disastrous."

Aberdeenshire Council's director of law and administration has also contacted me directly on

the matter. Before I quote him, I will quote the Executive's information to the committee about amendment 169, which says that

"the general partner will have the right to apply to the Land Court to become tenant in his or her own right when a partnership is dissolved."

I listened very carefully to what the minister said about the Land Court and reasonableness. I want to put on record some of the concerns that Aberdeenshire Council's director of law and administration has put to me, as a member of the Rural Development Committee, on the amendments. He said in relation to amendment 169:

"Council Officers have sought to terminate partnerships by giving three months notice in letters issued yesterday but these are unlikely to be effective given the terms of the amendment."

He continues to say that although he understands why the Executive is tackling the issue, the law of unintended consequences applies. He says that limited partnerships have enabled

"the temporary agricultural use of land purchased for development purposes. It appears that"

amendment 169,

"if passed in its current terms, would permit the current agricultural users of such land to purchase from the Council at agricultural value."

That applies if we discuss what is intended by some of the other amendments today.

He continues:

"Given that the Council will in all likelihood have paid industrial/commercial or housing value for the land, then there is clearly a significant loss to the public purse. If the land is key to a development then the Council would require to negotiate its reacquisition or pursue a Compulsory Purchase Order with the price for compensation being based on the development value of the land - i.e. paying twice for the same asset. If the law were … amended as proposed in amendment 169 then, in future, it would appear to be in the public interest for development land to lie fallow until the development can proceed rather than risk creating a right to buy at agricultural value."

For the reasons that I have outlined, I am not happy with the group of amendments. Their lodging has been too hasty and there is no assurance that they will hit the intended target, rather than others. If the minister cannot tackle those issues in his summing up, I will not support the amendments.

Stewart Stevenson: I would like Mike Rumbles to clarify a point about the Aberdeenshire Council land. My understanding—I accept that that is limited and not comprehensive—is that none of its tenancies would be covered by the bill. Does Mike Rumbles understand that there are Agricultural Holdings (Scotland) Act 1991 tenancies that would fall within the scope of the bill?

Mr Rumbles: I know of nine such cases. I spoke this morning to the director of law and administration at Aberdeenshire Council, who fears that what I discussed will be the case.

The Convener: It is fair to say that the termination of partnerships has been gathering pace in recent weeks. Any of those partnerships could have been terminated at any time in previous years. However, they have been continuing voluntarily because both parties were happy with the arrangements because they were effective partnerships.

The point has to be made that the notices to terminate the partnerships have been triggered, as we have pointed out on every possible occasion in debate, by the uncertainty that has been caused by the right-to-buy debate and the debate about whether the legislation will affect limited partnerships. In the minister's opening remarks he spoke, rightly, about the need for confidence in the process if the new tenancy vehicles—LDTs and SLDTs—are to be the successes that we want them to be.

We believe in the original concept of the bill as a means through which to reinvigorate the tenanted sector. I repeat that I have a declared interest, but my genuinely held view is that the amendments and the fear that they will engender will kill reinvigoration of the tenanted sector and will virtually ensure that LDTs and SLDTs never get off the ground.

I give the minister the opportunity to respond to the points that have been raised.

16:30

Allan Wilson: I will do so briefly, given that there has been ample opportunity for me to explain why we lodged the amendments and the objective evidence for so doing. To be fair, Mr Ewing properly made a point about the rationale from the landlord's perspective for instigating the dissolution of a partnership. In some instances, landlords have done precisely what they ought to have done more generally: they have indicated to us by fax their prospective intention to convert to LDTs, or to avail themselves of other provisions in the legislation. An unspecified proportion of landlords have taken the option to which Mr Ewing referred to indicate that their intent was not to obviate or otherwise subvert the legislation, but there is anecdotal evidence that others have done just that. I met two tenant farmers in such a situation approximately two weeks ago.

The measure in amendment 169 has not been rushed into in haste; it is a considered response to a developing situation. I am therefore encouraged by Mr Ewing's willingness not to move his manuscript amendment 169A to Executive

amendment 169. I assure him that we most certainly will not discount retroactive action, although, in response to Rhoda Grant's point in relation to such retrospection, the further back that you go the harder it is to make the link.

I am also happy to say that I have, at this juncture, no fixed view on the onus of proof. That is a matter that we will be happy to consider, should we think it necessary. I say to Stewart Stevenson that there are two ways in which we could address the matter. One would be guidance on what constitutes the test of reasonableness that we propose to introduce, to which the Land Court would have to have regard. The other would be by amendment at stage 3, to complement and supplement any amendment on retrospection—either this or a subsequent amendment.

I take Jamie McGrigor's points, although they were directed more at John Farquhar Munro's amendment 15 than our amendments. As I said, we have nothing other than anecdotal evidence to suggest that there has been an increase in the number of partnerships being terminated. What I do know is that that could not have been caused by our amendments, although there is evidence that, in the immediate aftermath of our lodging our amendments, there was indeed a spate of attempts by landlords to dissolve partnerships.

As I said, we lodged our amendments in direct response to a developing situation. Our amendment 169 is not the same as John Farquhar Munro's amendment 15 for the five reasons that I gave. That ought to provide the landlords of this nation and beyond with the requisite assurances they seek that the test of reasonableness to which we would submit all such action should be something that no responsible landlord has any reason to fear. Why should they fear?

To Mike Rumbles—who wavers in his support of the provision—I say that local authorities should always be able to convince the Land Court that they have acted reasonably. A local authority, by the nature of the beast, represents a community interest and ipso facto ought to act reasonably. If it cannot do that in relation to these measures or any others, it is the local authority that is at fault, rather than our legislative intent.

Margaret Ewing referred to my comments on John Farquhar Munro's amendment 15. I assure her that the figures that I quoted in respect of the potential impact on land values more generally, in the region of 20 to 40 per cent, reflect the official, internal valuation advice that the Scottish Executive has in relation to John Farquhar Munro's amendment, not in relation to our amendment 169. Amendment 169 has wider support in the Parliament and I ask members to support it—if it comes to a vote—in opposition to John Farquhar Munro's amendment 15, if he is not prepared to withdraw it as Fergus Ewing has graciously agreed not to move his amendment 169A.

I think that that is a balanced, fair and reasonable response. The amendments were not rushed or drafted in haste. The way in which they were lodged may not have complied with the spirit and intent of deadlines, but that does not mean that the amendments were hasty or ill-considered—the two things are not the same. They were a reasoned response to a developing situation and will, I hope, put an end to that situation. If they do not, we retain the right to return at stage 3 to address any proliferation of the abuse.

Mr Rumbles: I am not at all happy with the minister's response. He said that the Executive's amendments in this group were not drafted in haste, but were deliberate. My question for the minister is this: did the Executive deliberately lodge the amendments after the deadline to ensure that the committee could not call for evidence on them? I find that unacceptable. Had I known that the amendments were being lodged, I would have contacted the convener and asked that the committee take evidence on the issue before we proceeded. I do not feel that that is an appropriate way in which to lodge amendments—in fact, it is quite wrong. I am astounded that the minister does not recognise that.

In his response to me, the minister said that no responsible landowner need worry. However, I can tell the minister that responsible landowners are worrying. They have issued notices already—that is what these Executive amendments have caused. To say that Aberdeenshire Council can have recourse to the Land Court and plead its case there is frankly not good enough.

I am not wavering in my support for these amendments: I resolutely oppose them.

Allan Wilson: I definitely did not say that we acted deliberately in order to obviate custom and practice on the timing of lodging amendments. I said that we had deliberated at length, and that we had not acted in haste in lodging the amendments. Those two things are not the same, as should be self-evident.

Fergus Ewing: Unlike Mr Rumbles, I welcome the fact that amendment 169 has been lodged. I also welcome the fact that it was lodged late, because that restricted the period within which landowners and their agents could scurry around issuing further notices. They would say—one particular firm did say this—that they had no choice but to advise their clients to issue such notices to tenants; otherwise, they would be affected by the amendment.

Was the reason for the amendment's being lodged late to minimise the period within which certain land agents and their advisers could issue such advice? Would it not have been more desirable for the amendment to have been lodged even later, so as to allow no time at all for such notices to be made? That would mean that far fewer tenants would now be in receipt of eviction notices, worrying whether they might be losing their house and home.

Allan Wilson: I would not wish to comment on what landowners, landlords or their agents might wish to say was the motivation for the timing of the lodging of the amendment. That was not done in haste; it was done after due deliberation and in response to a developing situation. I apologise if any slight has been taken by the committee by virtue of the fact that I missed the deadline, but there was no ulterior motive on my part for so doing.

The Convener: You mentioned that good landlords have nothing to fear. Indeed, that phrase has been used quite often in relation to the bill, and I would have accepted that entirely when the bill was first published. Can you understand, however, the feeling that I believe exists among the majority of organisations on your cross-party stakeholder group, and among other bodies, that the goalposts have been shifted considerably, particularly on the right-to-buy and on the question whether the proposed legislation relates to limited partnerships? Can you understand that frustration and anxiety? Will you confirm that Executive amendment 169 has not been agreed by the stakeholder group?

Allan Wilson: I hope that it is accepted that I understand the concerns held out there in the world of landlordism—so to speak—that amendments have been lodged that do not reflect broad industry agreement. We must take the measure as a whole, and take account of the fact that this is stage 2 consideration. As with any legislation that passes through the Parliament, the bill is subject to amendment. Often, the amendments made at stage 2 are revisited at stage 3, when requisite and sometimes corrective action is taken to restore any imbalances that may have been introduced. This bill is no different in that respect, and I give you that assurance. I am conscious of the necessity of ensuring that a balance is maintained.

When we come on to it, I will be arguing a strong line in relation to the absolute right to buy, for example. We must keep our eye on the ball and keep in mind the objective of the bill, which is to stimulate and broaden the tenanted sector. That is precisely what I intend to do.

Stewart Stevenson: I am becoming increasingly baffled by Mike Rumbles's interventions in this part of the debate.

I wonder if the minister will clarify the following points. First, will the right to buy affect a council that has a land bank, such as Aberdeenshire Council, were it to sell land that is currently tenanted? What I have heard so far would appear to suggest that, if there is an issue—and I am not sure that there is—it exists in the bill rather than in the amendments.

Secondly, section 26(1)(g)(ii) sets out transfers not requiring notice that could have been acquired compulsorily. Will much of the land that a council might be likely to hold be land that it could have acquired compulsorily, albeit that it may not have done so by that mechanism?

If that is the case, councils could perfectly reasonably be expected to continue to hold land and lease it out. That would allow councils to avoid the liabilities for maintenance that they seek to avoid and also to generate income. It is the right of councils to hold land banks and manage them in an appropriate way in the public interest. If they do so, the right balance is being struck in respect of tenants, the council and the public interest.

16:45

Mr McGrigor: I want to return to a point that I made earlier about the policy intention of the bill, as it also applies in respect of amendment 169. Most people seem to find the 1991 act and limited partnerships to be undesirable, which is why we have this new bill. If the determination of limited partnerships or limited partnership agreements is perceived to be a problem, surely the solution should be found in the modern tenancy arrangements under section 2 of the bill and not in perpetuating the old-style inflexible tenancies of the 1991 act?

The true effect of the Executive's amendment 165 would appear to be to confer any right of a tenant on any person who does not fall within the definition that is set out in section 58(2)(a) and not only on the working general partner.

Allan Wilson: Mike Rumbles is perfectly entitled to hold the views that he does and to express them in the way that he does.

In respect of tenancies under the 1991 act, local authorities are in exactly the same position as any other holder of agricultural land.

Jamie McGrigor addresses comments to me in respect of amendment 15 that are probably better put to John Farquhar Munro, whose amendment 15 could indeed have the effect that Jamie McGrigor described. Our amendment 165 would not, in so far as it would facilitate the provision whereby landlords who wish to convert to LDTs will be able to do so. The distinction is one of many distinctions between the two amendments to

which I have made copious reference in the debate.

There are landlords who are not acting to obviate the provisions that we intend to introduce. Some landlords have indicated to us that their intention in dissolving partnerships is to move towards the new arrangements under the bill. We will encourage that movement because, as members know, that will stimulate the tenancy sector—it is a good thing.

John Farquhar Munro: As I said at the outset, amendment 15 seeks simply to protect the interests of limited partnerships' tenancies and to give them the opportunity to transfer to limited duration tenancies. The committee has a duty to protect—or at least to attempt to protect—the interests of limited partnership tenants who are finding it very difficult to reach an agreement with their landlords in the current climate. Indeed, as I pointed out in my opening remarks, that has been demonstrated this very week with dissolution notices being handed out like Christmas cards.

The Convener: The question is, that amendment 15 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
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)
McGrigor, Mr Jamie (Highlands and Islands) (Con)
Morrison, Mr Alasdair (Western Isles) (Lab)
Oldfather, Irene (Cunninghame South) (Lab)
Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
Smith, Elaine (Coatbridge and Chryston) (Lab)

The Convener: The result of the division is: For 4, Against 7, Abstentions 0.

Amendment 15 disagreed to.

Amendment 165 moved—[Allan Wilson].

The Convener: The question is, that amendment 165 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Lochhead, Richard (North-East Scotland) (SNP)
Morrison, Mr Alasdair (Western Isles) (Lab)
Oldfather, Irene (Cunninghame South) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST

Fergusson, Alex (South of Scotland) (Con)
McGrigor, Mr Jamie (Highlands and Islands) (Con)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)

The Convener: The result of the division is: For 7, Against 4, Abstentions 0.

Amendment 165 agreed to.

Amendment 166 moved—[Allan Wilson].

The Convener: The question is, that amendment 166 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Lochhead, Richard (North-East Scotland) (SNP)
Morrison, Mr Alasdair (Western Isles) (Lab)
Oldfather, Irene (Cunninghame South) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST

Fergusson, Alex (South of Scotland) (Con)
McGrigor, Mr Jamie (Highlands and Islands) (Con)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)

The Convener: The result of the division is: For 7, Against 4, Abstentions 0.

Amendment 166 agreed to.

Amendment 167 moved—[Allan Wilson].

The Convener: The question is, that amendment 167 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Lochhead, Richard (North-East Scotland) (SNP)
Morrison, Mr Alasdair (Western Isles) (Lab)
Oldfather, Irene (Cunninghame South) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST

Fergusson, Alex (South of Scotland) (Con)
McGrigor, Mr Jamie (Highlands and Islands) (Con)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)

The Convener: The result of the division is: For 7, Against 4, Abstentions 0.

Amendment 167 agreed to.

The Convener: Amendment 168 is grouped with amendments 163 and 164.

Allan Wilson: The definition of family in section 77 already includes stepchildren. Amendment 164 follows a suggestion made by the Equality Network and extends the definition to include step-parents. With the changes made to section 26, the definition of family is no longer required in relation to transfers that do not trigger the right to buy under the bill. The one aspect in which family is important is in relation to section 58, which concerns partnerships. As a consequence, amendment 164 moves section 77 to after section 58. Amendment 168 is ancillary to that.

I move amendment 168.

Amendment 168 agreed to.

Section 58, as amended, agreed to.

After section 58

Amendment 169A not moved.

Amendment 169 moved—[Allan Wilson].

The Convener: The question is, that amendment 169 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Lochhead, Richard (North-East Scotland) (SNP)
Morrison, Mr Alasdair (Western Isles) (Lab)
Oldfather, Irene (Cunninghame South) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST

Fergusson, Alex (South of Scotland) (Con)
McGrigor, Mr Jamie (Highlands and Islands) (Con)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)

The Convener: The result of the division is: For 7, Against 4, Abstentions 0.

Amendment 169 agreed to.

Section 23—The Keeper and the Register

The Convener: Amendment 95 is grouped with amendments 98, 101, 103, 107 to 109, 111 to 114, 116 and 117.

Allan Wilson: These are all drafting amendments that improve the overall presentation and operation of the provisions.

I move amendment 95.

Amendment 95 agreed to.

The Convener: Amendment 96 is grouped with amendments 97 and 102.

Allan Wilson: Amendments 96, 97 and 102 are further minor technical adjustments. Amendment 102 will remove the words "in writing" from section 24(4). That is in keeping with legislation on electronic communications, and will prevent any unintended bar on the acceptability of an e-mail or other electronic communication sent to the Keeper of the Registers of Scotland. That is in keeping with the keeper.

I move amendment 96.

Stewart Stevenson: Can the minister assure us that there are ways in which electronic communications can validate that the e-mail in question has been sent by the person from whom it purports to have been sent?

Allan Wilson: The keeper is in the process of developing just such a provision, which, as I said, is at his suggestion. That would be a prerequisite for the acceptance of just such an e-mail communication.

Stewart Stevenson: Thank you.

Amendment 96 agreed to.

Amendment 97 moved—[Allan Wilson]—and agreed to.

Section 23, as amended, agreed to.

Section 24—Registration of tenant's interest

Amendment 98 moved—[Allan Wilson]—and agreed to.

The Convener: Amendment 99 is grouped with amendment 100.

Allan Wilson: Amendments 99 and 100 clarify that an agricultural lease can comprise more than one person as a tenant. That clarifies the effect of the provision under section 24, which is to ensure that all persons who are named on a lease as tenants act together where a tenant is required to register or serve notice and so forth under part 2.

I move amendment 99.

Amendment 99 agreed to.

Amendments 100 to 103 moved—[Allan Wilson]—and agreed to.

The Convener: Amendment 104 is grouped with amendments 105 and 144.

17:00

Allan Wilson: These amendments clarify the terminology of the bill to distinguish between a heritable creditor with an interest in land and one who is in possession.

Amendment 144 provides a definition of creditors in standard securities.

I move amendment 104.

Amendment 104 agreed to.

Amendment 105 moved—[Allan Wilson]—and agreed to.

The Convener: Amendment 106 is in a group on its own.

Allan Wilson: Amendment 106 provides the keeper with the power to charge fees for extracts from the register. It parallels provisions relating to the community right to buy in section 33(7) of the Land Reform (Scotland) Bill that a number of members will recall. The amendment should help to keep down the cost of registration, as the Registers of Scotland work on the basis of full cost recovery.

I move amendment 106.

The Convener: I am sorry to inform the minister that Stewart Stevenson would like to make a point.

Stewart Stevenson: Can the minister indicate the approximate range within which fees will lie?

Allan Wilson: After due consideration, we are agreed that I cannot do that. Charges will fall within the appropriate range for the services that are being charged for.

Stewart Stevenson: I invite the minister to consider this issue further and to let members know before stage 3 the approximate range within which fees will lie. The exact scale is not required.

Allan Wilson: I will do that.

Amendment 106 agreed to.

Amendments 107 to 109 moved—[Allan Wilson]—and agreed to.

The Convener: Amendment 110 is in a group on its own.

Allan Wilson: Amendment 110 clarifies that the interest to be registered is the tenant's interest in acquiring land held under the lease. It also clarifies that, in response to an appeal by the tenant or the owner of the land about a dispute over the content of a registration, the Land Court

"may make such order as it considers appropriate."

I move amendment 110.

Amendment 110 agreed to.

Amendment 111 moved—[Allan Wilson]—and agreed to.

The Convener: Amendment 132 is grouped with amendment 133.

Allan Wilson: Amendments 132 and 133 would deal with situations in which land held under a tenancy was reduced. Such situations can arise if part of the land is returned to the landlord or given up by the tenant. Amendment 132 seeks to provide that the registration of interest on which the right to buy is founded applies only to land that is still subject to the tenancy. Amendment 133 would oblige the landlord to advise the Keeper of the Registers of Scotland of any reduction in land held under the tenancy.

I move amendment 132.

Amendment 132 agreed to.

Amendments 133, 112 and 113 moved—[Allan Wilson]—and agreed to.

Section 24, as amended, agreed to.

Section 25—Notice of proposal to transfer land

Amendment 114 moved—[Allan Wilson]—and agreed to.

The Convener: Amendment 115 is grouped with amendments 118 to 121.

Allan Wilson: Amendments 115 and 118 to 121 would make minor adjustments to references to the land to which the right to buy applies. They would improve the presentation and operation of the provisions.

I move amendment 115.

Amendment 115 agreed to.

The Convener: In view of the lengthy debate that is almost certain to ensue on the next group of amendments, I suggest that we take a five-minute suspension.

17:06

Meeting suspended.

17:17

On resuming—

The Convener: I thank members for getting back to their seats so quickly.

Amendment 134 is grouped with 22 other amendments: amendments 137 to 143, 173 to 175, 145 to 147, 179, 148 to 151, 156 and 160 to 162. I am required to give some explanation at this point, as there are a number of pre-emptions. A pre-emption means that, if a certain amendment is agreed to, another amendment that is further down the marshalled list cannot be called. Rule 9.10.11 of the standing orders states:

"An amendment at any Stage which would be inconsistent with a decision already taken at the same Stage shall not be taken."

If amendment 143 is agreed to, I cannot call amendments 173 and 174, which we will debate in the second sub-group of the grouping. If

amendment 147 is agreed to, I cannot call amendment 179, which is also in the second sub-group. If amendment 124, which is to be debated later with amendment 122, is agreed to, I cannot call amendment 142. If amendment 138 is agreed to, I cannot call amendments 118 and 119, which have already been debated with amendment 115.

While I am sure nobody understood a word of that—members are welcome to come back to me later if they wish—I now ask Fergus Ewing to speak to the 19 amendments in the sub-group on the tenant's right to buy land at any time, and to move amendment 134.

Fergus Ewing: Perhaps I can begin by advising members that the key amendments in the group are amendments 138 and 145. The combined effect of all the amendments would be to provide tenants of secure heritable tenancies in Scotland with an absolute right to buy.

I thank all bodies—the representative groups that have contributed to the debate as well as the clerks and committee members—for the work that they have done to reach this stage of the debate. Support for an absolute right to buy is sometimes represented as being small. However, when the NFUS sought opinions, 57 per cent of secure tenants who were NFUS members supported an absolute right to buy.

I am also aware of the work that the Scottish Tenant Farmers Action Group has done. That group is owed a great deal of credit for the role that it has played and the positive response that it has produced in working with other bodies to try to remove what have been described as pinch points in the debate.

At stage 1, the committee concluded by a majority of six votes to three that it was

"sympathetic to an absolute right to buy for secure tenants under the 1991 Act, but reserves judgement on this issue pending amendments to be brought forward by the Scottish Executive at Stage 2."

It is fair to say that that view was not unanimous: there were six votes for and three against, and we all know who is who. However, there is sympathy for the absolute right to buy, and I hope to persuade members of other parties that that sympathy should be converted into concrete support.

I am proud to be a member of the Parliament—the day that I was elected was the proudest of my life. I am also proud that we are in a Parliament in which we can debate such issues. The first serious remark that I will make is that comparisons with what has been happening in Zimbabwe are wholly misplaced, utterly irrelevant and deeply unhelpful. I was therefore pleased to see that Mark Ford, who lost his father Terry under the orders of Robert Mugabe, the Zimbabwean president, has spoken out in defence of the process of this democracy.

"'In Zimbabwe, farmers aren't being compensated … farms are basically being stolen,' he said. 'I don't see that happening in Scotland. It's a democracy and things will be done fairly and monitored by independent people.'"

In addition,

"John Worswick, vice-chairman of Justice for Agriculture, an organisation set up to defend the rights of farmers in Zimbabwe, said the government was using Scotland's land bill to legitimise its own land reform programme.

'There is no comparison between the two countries,' Mr Worswick said.

'In Scotland, the scheme will involve independent valuation of land, compensation will be paid and the land will be allocated to the most deserving, like the crofters.'"

One confident prediction that I can make is that, at the end of the debate, we will all still be alive. That would not be the case in Zimbabwe. I hope that we remember that we are taking part in an important and historic debate that is taking place in a democracy. I hope that, when members make references to and comparisons with Zimbabwe, they will not get things out of proportion.

The secure heritable tenancy has considerable historic origin. It was the preferred vehicle in Scotland and gave tenants security of tenure. At one time farming, as well as being a way of life, was for life, and it was expected that tenants who farmed the land in Scotland would not be subject to notices to quit within relatively short periods.

I come to my first argument as to why an absolute right to buy is necessary. Over the years, the law and practice that have developed—usually through landlords' agents discounting landlords' obligations, using post-lease and writing-down agreements and minimising the tenant's strength in the contractual relationship—have produced a result that, I contend, has seen economic stagnation in many parts of Scotland.

In particular, under section 5 of the 1991 act, the secure heritable tenancy imposes obligations on the landlord to provide fixed equipment, including the farm steading, the farm buildings and the farm house, in which the tenant lives, and to pay the insurance premium. Landlords have largely set aside those obligations by various devices, not all of which, by any means, will be addressed by the amendments that we have agreed to thus far.

I know that the minister has assured us that he will lodge an amendment that will seek to deal with post-lease agreements, but we have not yet seen that amendment. I have here a post-lease agreement. Under section 5 of the 1991 act and the equivalent measure that existed previously, landlords are obliged to provide fixed equipment, including the house. However, post-lease agreements say that the tenant accepts all the

fixed equipment on the farm in its existing condition at the commencement of the lease and agrees to maintain it in as good a state of repair throughout the duration of the lease. That is just one example of a routine way in which landlords avoid their legal obligations. Such situations have not yet been addressed and, unless they are addressed, many existing tenants will be left lacking compensation and will not receive the deal that they are looking for.

In a secure tenancy, neither the landlord nor the tenant has a financial incentive to invest. If the landlord invests, he cannot get the property back, because the essence of a secure tenancy is that one cannot recover vacant possession. So what happens? Often the landlord refuses to invest. If the tenant believes that he has a case, he can go to court. However, he must go to two courts: the Land Court and then the sheriff court, under section 1 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1940, about which we heard last week. He must get a decree of specific implement. Many tenants are loth to do that because, by definition, taking a landlord to court means that the relationship is over. Legally, it is not over, however, because the tenant who goes to court to try to have those obligations enforced still has a landlord.

Landlords have a right of irritancy. If a tenant breaches his obligations through bad husbandry or non-payment of rent, the lease is irritated. However, tenants have no right of irritancy. If a landlord fails to perform his obligations, what recourse does the tenant have, other than to go through a hugely complex and sometimes expensive legal procedure involving at least two court actions? It is little wonder that many tenants throughout Scotland choose not to do that.

Of course, some landlords may promise to supply the capital for investment in a new shed, a new byre, or some of the fixed equipment that is required today for particular sectors of agriculture. However, if the costs are as high as £100,000, for example, the landlord might reason that he will not make that investment unless the rent is increased, effectively capitalising the investment—usually at 10 or 12 per cent, I am told. Understandably, many tenants are loth to meet such a large, extra burden, particularly since, if they were the owners, they could borrow the money at a significantly reduced rate.

The upshot is a recipe for the economic stagnation that we have had for decades. That is why as we drive around the Scottish countryside, we see so many derelict and unrepaired farmhouses; under the existing legal framework, neither the landlord nor the tenant has an incentive to invest. I accept that some work has been done to address the defects of the current system but, in my view, it is by no means enough.

My second argument is that the benefits of property ownership should be spread among the many, not the few. The study of farming makes it patently obvious that the owner-occupied sector is far more successful than the leased sector. Existing provision has contracted between 1982 and 2001: the number of farms under tenancy has fallen from one third to almost half of that. Many tenant farmers have voted with their feet, because the existing format of secure tenancy is not attractive or successful.

I find it somewhat ironic that Conservatives who extol the benefits of property ownership want to keep the benefits of property ownership to the few—indeed, the very few—landed estates. The Conservatives do not seem to realise the huge potential that could be unleashed by the creation of more property owners.

I look forward to hearing what my Conservative friends on the committee have to say about why they do not want many more family farms under ownership in Scotland. Do they not accept that the vehicle of ownership will unleash a spirit of entrepreneurialism that could help to achieve some of the objectives that the Executive propounds in its forward strategy for agriculture?

17:30

The SNP supports the absolute right to buy for secure heritable tenants. We recognise secure heritable tenants as a distinct group of people in Scotland. We do not advocate that those who have short leases should have the right to buy. We have never done so and will never do so, because, in most cases, secure heritable tenants have farmed the land for the whole of their lives, and their fathers and grandfathers, mothers and grandmothers did so before them.

Secure heritable tenants, who are, as I said, a distinct group, have had a raw deal for the past five decades. The SNP wants them to have the right to diversify and to use their energy and ingenuity to find new ways of succeeding in the creation of new business and development, which in turn will bring new energy, wealth and life into the countryside.

Some people, including my friend, Jamie McGrigor, whom I quote, say that the plan that my cohorts and I are pursuing is redolent of a socialist Valhalla. I am pleased to know that I have cohorts, whoever they are, but I have to say to Jamie that this is the first time in my life that I have been accused of being anything remotely approaching a revolutionary socialist. If the great day comes when, in an independent Scottish republic, commissar Sheridan strides out on to the balcony to an audience of newly liberated tenant farmers, I doubt very much that he will call upon comrade Ewing to deliver the warm-up act.

I turn to the question of public interest, which is a serious question because of the need to demonstrate that a public interest is involved in support of the absolute right to buy. It is absolutely clear that a public interest exists. There is a public interest in crofters having an absolute right to buy, which the minister accepts. There is a public interest in crofting communities having the right to buy, which the minister and most of the members of the committee recognise—indeed, we debated the matter just a couple of weeks ago. If a public interest exists in a right to buy for those two groups, how can it be that it does not for secure tenant farmers?

I will briefly run through some of the key arguments. Secure tenant farmers and their families are the backbone of many communities in Scotland and have been so for generations. The Executive accepts explicitly that the goal of diversity of ownership is one of the aims of the bill. If the pre-emptive right to buy would not make a great deal of difference, the minister has to try to explain why it is right for tenant farmers to have a pre-emptive right to buy, but not an absolute right to buy.

At stage 1, the minister admitted that of the 28,000 to 30,000 farms in Scotland, only around one per cent will come on to the market each year. If approximately one third of farms are secure heritable tenancies, that means that only one third of one per cent of farms with secure heritable tenants will come on to the market each year. What difference will one third of one per cent make? If the absolute right to buy is right for some, why should it not be right for all? Surely it is arbitrary and quite patently discriminatory to restrict the right to some and not to give it to all.

It is abundantly clear that it will be easy to avoid the pre-emptive right to buy by various means. It has been demonstrated quite clearly that by using trusts, companies and the shifting of beneficial ownership it is quite possible to subvert and circumvent the pre-emptive right to buy. The minister must explain why the pre-emptive, but not the absolute, right to buy is a matter for public interest. I hope that he will also forecast how many pre-emptive purchases he expects in each of the next 10 years. I am afraid to tell him that there will be gey few. If we really want to promote rural development, surely we should not deny people the benefits of the absolute right to buy.

In many cases it is clear that landlords restrict farmers from diversifying, pursuing environmental stewardship, or switching from headage and intensive production. Surely that is not in the public interest. Surely it is not in the public interest for landlords who own vast tracts of land to operate as a sort of quasi-planning authority—I am thinking of a particular example from Sutherland that was mentioned. Surely it is not in the public interest in this day and age that landlords should be able to preserve their huge power and control over local communities. As members know from the submissions that we received from the Scottish Tenant Farmers Action Group, tenant farmers have argued against that power and control in some areas of Sutherland.

Is rural repopulation not in the public interest? If many more farms were purchased under the scheme that I advocate, surely that would give new hope to the children of existing farmers.

Let me read an extract of a submission from Alastair MacLennan, a farmer from Grantown-on-Spey near my constituency who has a 13-year-old son. He managed to negotiate the purchase of his farm and has since won environmental awards. He said:

> "We look at our entire farm in a different light; decisions are made with a holistic and long-term viewpoint.
>
> I am free to manage my land in the best possible way to secure the future of my family.
>
> For a 13-year-old son who may rightly consider agriculture a bad option as a career, the possibilities at home have suddenly broadened dramatically. Extra income generation and the fact that we can now operate any business we wish from the farm give extra impetus to my son to return to his home after school, university or whatever."

That is one case, but surely replicating it many times in Scotland would constitute a clear public interest.

Jamie McGrigor said earlier that Tory policies in 1954 to give the tenant a better deal are not applicable now because there was a food shortage at that time. Of course, during the second world war many agricultural workers were exempted from national service on the ground that they needed to produce food, such was the paramount importance of the continuity of food supply for Britain then. Who among us can entirely predict that events over the next few weeks might not disrupt and jeopardise the world's food supply? Who among us is confident enough to predict that that will not become a priority again? If children do not go into farming and there are no new opportunities for them, that public interest is at risk.

One farmer in my constituency told me my proposal could be the single greatest way to promote rural development in Scotland. He added that not a penny piece of public money would be required for my proposal.

It has been said that the mere existence of this debate has caused lack of confidence and investment—no doubt, we will hear more smears of a similar nature. That is the most ridiculous smear, and if it had any foundation we may as well

wrap up democracy because we could never have debates that upset people. If there were an absolute right to buy, owners would receive market-value compensation, which would build in marriage value in the case of any estate for which it was claimed that the value of the whole was reduced by the sale of a part.

The market value is the current value of the farm if the farm were sold. However, farms that are subject to a secure tenancy cannot be sold with vacant possession. We are proposing market-value compensation—not a land grab, not theft and not confiscation. If a landlord were to invest in a farm after a bill that contains an absolute right to buy becomes law, he would know that he would be able to benefit accordingly from his increased investment.

The second smear is that the supply of land available for lease would dry up. As I have said, the statistics show that, over the past 20 years, the number of farms under tenancy has massively reduced from about one third to 17 per cent—the supply of land for let has already massively reduced. There might be a number of reasons for that. Owner-occupation is obviously the desired legal format but if landowners decide that they do not want to let the land, what are they going to do? Why on earth would they forego rental income? From the outset, the SNP has said that it supports the new legal formats of LDTs and SLDTs. What on earth would prevent landlords from using those legal formats when only secure heritable tenants would have an absolute right to buy? Absolutely nothing whatsoever. There is not a scrap of evidence to justify the assertion that has been frequently made in a few newspapers that the amount of land available for lease would dry up, which is a totally unwarranted smear. Landlords would lose rental income—why on earth would they want to do that? That would be crazy.

Moreover, reform of the common agricultural policy will require continued use of smaller units. Also, under decoupling proposals, grants will still have to be paid to producers rather than to owners. Therefore, if landowners were suddenly to decide that they would not have farmers working on their land, they would not get those grants. That is the way things are going.

The final smear is one that we should all take seriously, particularly those of us who aspire to be in Government—and the SNP aspires to be in Government very soon. There could be a claim under the ECHR that would result in a bill of £100 million, as the Executive claimed in its consultation document. The price tag given by the Royal Institution of Chartered Surveyors was about three times that amount.

That argument must be taken seriously. I say without any equivocation that there is no way that an SNP Government would want to pay compensation to some of the landlords who have contributed to the debate. I will not name any of them, but we do not want them to benefit from Scotland's wealth. If I believed for one moment that there was validity in the argument, I would not be sitting here, doing what I am doing.

However, the argument is not valid for two main reasons. As I have argued, the provisions would not apply where a public interest case could be maintained. I have set out nine ways in which the public interest for an absolute right to buy could be demonstrated. A claim for compensation could be made under article 1 of protocol 1 of the convention. I have studied that article and cases reported under it as I litigated a case that was to do with it. I have studied the decision that stemmed from the Duke of Westminster's case, James v UK, which arose following Westminster's decision to give residential tenants the absolute right to purchase their leases. The landowners took the case to Europe but lost; they were trounced because it was found that there was a public interest.

What is the public interest in a tenant who is renting a flat having the right to buy? If an absolute right to buy can be in the public interest for tenants of flats in London, how on earth can a public interest not be demonstrated in an absolute right to buy for tenant farmers, for whom the property is their business and livelihood as well as their home? The tenants in London had only to show that they had occupied their flat for five years, which is a short period. Obviously, there were anti-avoidance provisions, but how could it be in the public interest for a tenant who has been living in a flat in London for six years to be entitled to purchase their flat—with the landowners having no claim under the ECHR—whereas secure tenant farmers in Scotland would not be entitled to purchase the land that they rent? What absolute nonsense. The case involving the Duke of Westminster failed partly because market value was being obtained, and I am proposing that market value should be obtained in my amendments.

17:45

I have spoken for longer than I usually do, and I want to hear what other members have to say. However, before I formally move amendment 134, I refer to words that the first First Minister, Donald Dewar, uttered in September 1998. He said:

"The words 'stifling' and 'stultifying' recur again and again in these case histories. These are not people looking for an easy life; quite the reverse. These are people keen to make the best of the opportunities which should be available to them, keen to build a better life for themselves and their families and communities, but held in check by the action or often inaction of external powers."

I am proud to be here to repeat those words today and prouder still to be able to speak to these amendments that call for an absolute right to buy for Scotland's secure heritable tenant farmers.

I move amendment 134. [*Interruption.*]

The Convener: Order. I am sorry. I understand the emotions that are involved in this issue, but it would help us to have a mature and reasoned debate if we could avoid interruptions from the gallery.

Mr Rumbles: The bill is designed to reinvigorate the tenant farming sector. It will give farmers a pre-emptive right to buy in cases where landlords do not want to let out their farms and want to sell. Clearly it is a fundamental right that a farm should never be sold over the head of a farmer whose family might have been farming that land for many generations. I, for one, was elected on that Liberal Democrat manifesto commitment and I am pleased that the provision is contained in the coalition Executive's bill.

However, I want to return to the evidence that the committee received on the bill and on what has become known as the absolute right to buy, which was not in the bill as introduced and has now been proposed in this series of amendments. I listened carefully to Fergus Ewing's opinions, which is mostly what they were. Members can give as much weight as they want to those opinions; I prefer to consider the evidence that the committee received.

I asked almost everyone who came before the committee to explain the public interest behind the principle of the law's insistence that land or property should be transferred from one private individual to another. As a committee member, I could not see the public interest argument in that respect. None of the witnesses gave me a satisfactory answer to that simple and direct question. In fact, whether Fergus Ewing likes it or not, his amendments would wreck the bill, because they run in direct opposition to the bill's aims.

On a practical point, I stopped on the way into the chamber to speak to some of the tenant farmers who were standing outside. Several who supported Fergus Ewing's position said that the ability to purchase the farms on which they had worked for many years would free up their resources for investment. Indeed, Fergus Ewing said that such a step would release an entrepreneurial spirit. However, I am afraid that all that the proposals would do is hand over a lot of money to landowners, instead of allowing farmers to invest the money that they had or could obtain from banks in any entrepreneurial undertaking on their farms. In other words, Fergus Ewing stood logic on its head. The measures that the Scottish Executive and the coalition ministers have introduced in the bill will keep entrepreneurial spirit and flair alive and well.

Fergus Ewing quite rightly referred to the Land Reform (Scotland) Bill, which the Parliament passed only a few weeks ago, and the community right to buy. There is a major and fundamental difference between a community right to buy and what Fergus Ewing wants to do, which is to create more landowners in Scotland.

On the community right to buy, many tests have to be passed for a community purchase of land to take place. Some of those tests relate to whether the purchase is in the public interest. Who is to measure that public interest? The case must be made to the minister, who will independently assess whether the purchase is in the public interest. Secondly, there must be a sustainable development plan. Money must be ploughed into a community purchase for the benefit of the community. Thirdly, the purchase must be supported by the community.

Those are real tests for the community right to buy under the Land Reform (Scotland) Bill, but none of that is contained in the amendments that we are considering on the so-called absolute right to buy. The amendments are a red herring and—if members will allow me to mix metaphors—they are asking us to drive down a cul-de-sac.

What are we trying to achieve with the bill? We want to free up the tenant farming sector. We want to give tenant farmers new rights of compensation for the money and investment that they plough into their farms. We want to give them new rights of business diversification to ensure that we get that entrepreneurial flair into Scotland's farms. That is what the bill is about.

As I said, the bill also provides for a pre-emptive right to buy when there is a willing seller and a willing buyer. In my view, Fergus Ewing's amendments risk all that. If his amendments were accepted today, what would be the Executive's—indeed the minister's—reaction? I believe that the amendments would destroy the bill and all the work that has been done and set back the whole of the Scottish farming industry by years.

The whole point of much of the work that has gone into the bill was to get things right for the industry. I am heartened by the fact that the Scottish Landowners Federation and tenant farmers are getting together with others, including the Executive, to arrive at a consensus on how to move forward on all issues. The bill is radical and will give rights and improvements to tenant farmers. I am heartened by the bill and delighted that we are pressing on with it, as it will be a radical move for Scotland and Scottish farmers. However, Fergus Ewing is asking us to risk

wrecking the bill and all the work that has gone into it. I, for one, will vote against his amendments.

Stewart Stevenson: I found Fergus Ewing's case well argued, deeply researched and clearly and firmly articulated. One word that has been used several times this afternoon is "balance". We hear from some people that it would not be in the public interest for tenants to acquire the land that they occupy. However, where does the public interest lie in the operations of many landlords? Is it in the public interest that landlords across Scotland are acting to terminate leases? Is it in the public interest that landlords across Scotland have inhibited reasonable developments or that they have exercised rights that mean, in effect, that they are acting as planning authorities?

Fergus Ewing gave nine well-reasoned arguments for there being a public interest in allowing tenants to buy their secure heritable tenancy. Foremost among those is the promotion of rural development. Quite reasonably, Mike Rumbles pointed to the adverse effects on the rural economy that might be caused by the diversion of money from the tenants' pockets into the landlords' pockets at the time of purchase. However, denying the tenant the opportunity to make an investment in an asset that can be developed leaves the tenant with few options, as they do not have an asset against which money can be borrowed. There are few businesses that start with a pot of money as a base from which they can grow. It has always seemed strange that the Tories, who seek to present themselves as a party of entrepreneurs, would deny a large part of our community the opportunity to exercise entrepreneurship.

I remind members of the triumphalism that we saw in the chamber a few weeks ago—"The day of the landlord is over," we heard. I invite certain members to consider what they said on that day. In many ways, the fact that parts of Scotland are defined as crofting areas and are therefore to be given the absolute right to buy and others are not is the result of an accident of history. It was little less than an accident that Aberdeenshire did not end up as a crofting county when the boundaries were originally drawn up. It is certainly true that there are crofts outwith the crofting counties. It has been said clearly that the absolute right to buy is not a matter of principle. Nonetheless, we have definitely granted that right.

Much of the debate is predicated on a total lack of confidence in landlords. If a tenant has a good landlord, they will be a good tenant and wish to work with them; if a tenant has a bad landlord, it would be perverse of us not to provide that tenant with the opportunity to get out from under that landlord and thereby increase their contribution to rural development in the area. I will therefore enthusiastically support the amendments in Fergus Ewing's name.

Mr McGrigor: I have already declared an interest in that I am lucky enough to own a farm, but I point out that I started my agricultural life at the bottom of the ladder. I lived in a bothy with three sheepdogs and very happy we were, too. Sometimes they shared my dinner and sometimes I shared theirs. I mention that period of my life because many of the young people with whom I worked—the boys and the girls—aspired to be able to rent a farm one day. I think that the absolute right to buy will kill the letting of land. It might benefit the present tenant farmers, but it will deny young people the opportunity to get into agriculture. That is an important point.

Confidence in letting land has already been severely shaken by the prospect of an absolute right to buy. We do not accept that the compulsory purchase of an individual's property by another private individual is in the public interest. In 1954, it was in the public interest to make the United Kingdom self-sufficient in food, but, in 2003, it is in the public interest to have a better tenanted sector so that agriculture can be strengthened and young farmers can be given the opportunity to get into the sector. The bill could ensure that that happens as long as it is not hijacked by those who propose an absolute right to buy.

We have noticed that the debate appears to focus on the larger estates, but less than 10 per cent of secure tenancies in Scotland are on large estates. An absolute right to buy would affect landowners who had one or two farms more than it would affect landowners who had big estates. I will quote from a letter that Fergus Ewing will recognise, because it was written to him. The letter is from Mr and Mrs Cox in Inverness and says:

"In 1980 we purchased - using our own personal savings - a tenanted farm of some 280 acres. Since that time we have acquired other adjacent land amounting to a further 414 acres with the intention of eventually amalgamating the properties with a view to increasing the viability of the unit as a whole. You"—

that is, Fergus Ewing—

"are now advocating we should be forced to sell the 280 acres, against our will, to our tenant thereby ripping the heart out of the proposed amalgamated unit. As the tenanted ground contains the only arable areas, this action will negate our work over the past twenty odd years and leave the remaining adjacent 414 acres virtually worthless … Why should we be made to sell land, purchased as a result of our own hard work, and which is legally ours, when we have no desire to do so?"

That is relevant to the debate.

The absolute right to buy goes back to the 1991 act, which, as I have said, is undesirable. Limited partnerships that have been entered into in good

faith by willing partners do not seem to have worked, so it is important that the bill provides for what I call the short wheelbase and the long wheelbase tenancies, to breathe new life into the agricultural sector. I hope that we will have such a bill and that it will not be hijacked by those who propose the absolute right to buy.

18:00

Richard Lochhead: My colleague Fergus Ewing eloquently and comprehensively laid out many of the reasons why we should support his amendments. I remind Mike Rumbles and other committee members that, when Ross Finnie discussed the bill with the committee, one of the first things that he said was:

"The bill is one major element of our land reform programme."—[*Official Report*, *Rural Development Committee*, 19 November 2002; c 3823.]

He placed much emphasis on the phrase "land reform". The bill is not simply about tenancies, although they are a major element of it; it deals with broader land reform.

We must remember that Scotland has one of the most concentrated patterns of land ownership in Europe. That is one reason why the Land Reform (Scotland) Bill was introduced. Part of that debate reminded us that a quarter of all land in Scotland has not been put up for sale for 400 years. The Agricultural Holdings (Scotland) Bill attempts to diversify land ownership, but only under the pre-emptive right to buy, which applies when a farm comes up for sale. Surely it would make sense to extend that right, which would in turn extend land ownership in rural Scotland.

The committee should be concerned about how to promote rural development. Fergus Ewing's amendments would help to regenerate, rejuvenate and energise our rural communities. In Aberdeenshire, there are roads where the land on one side was sold down the years, so that that side of the road has many businesses, farms and farmhouses that are still occupied by families, whereas, on the other side of the road, where the land still belongs to the local estates, there are only two or three large farms. Perhaps that shows that diversifying land ownership in our rural communities would boost the rural economy.

We should take it into account that land is not the product of someone's labour; it is part of nature. If there is to be ownership of land and we are to support the land, surely it makes sense for people who live and work on the land to own that land. We have secure tenancies—generations of the same family might have lived on the same land yet not have had the opportunity to enjoy the full benefits of their investment in that land. It is clear that, if people own land, they are more likely to invest in it, because they know that they will enjoy the full benefits through ownership.

Fergus Ewing gave many reasons why the absolute right to buy is in the public interest, but Mike Rumbles failed to give one reason why it is in the public interest to allow tenanted farms under a secure tenancy to continue in the ownership of landlords who might never have visited the tenanted farms on their estates. I have met many tenanted farmers who told me that, although their landlord had visited the estate—some landlords might not have visited their estates at all—they had never actually visited the tenanted farms on the estate. Why on earth is it in the public interest to allow a pension company, for example, to continue to own an estate when it will take no interest in that estate, unlike the families who have lived and worked on the same tenanted farms for generations?

Successive Governments have implemented legislation on the absolute right to buy. As Stewart Stevenson rightly said, due to an obscure vote on crofting legislation in 1885, Aberdeenshire, for example, was not designated a crofting county. Tenanted farms in Aberdeenshire today would have been designated as crofts—and tenants would therefore have had the absolute right to buy under the Land Reform (Scotland) Bill—if 37 members of Parliament, say, had voted differently in 1885. We have an opportunity to extend the rights that are enjoyed by crofters in the crofting counties to tenanted farms elsewhere in the country.

On 12 November 2002, in an answer to a parliamentary question that I lodged, Ross Finnie defended the existence of the absolute right to buy for crofting counties and his opposition to the absolute right to buy for tenanted farms by saying that the crofting community right to buy

"is conditional on a range of criteria being met and can be exercised by a crofting community body only when Ministers consider that the acquisition of the property would be in the public interest."

Why do ministers think that it is not in the public interest to give tenanted farmers the same rights? A more interesting point arises later in the answer, where the minister says:

"The crofting community right to buy is being introduced against a background where … the rights of a crofting landlord to use, manage and peacefully own croft land are already subject to strict statutory controls to protect the crofting status of the land."—[*Official Report*, *Written Answers*, 12 November 2002; p 2195.]

The minister is saying that the fact that there are already so many controls on the crofting landlord is a reason to give the absolute right to buy. In other words, the existence of so many controls means that giving the absolute right to buy is just a small step further. The Agricultural Holdings

(Scotland) Bill will empower tenant farmers. However, it might not empower them enough if we do not adopt the absolute right to buy. The bill will put controls on the landlords. The position is exactly the same—it would be only a small step further to give the absolute right to buy.

Fergus Ewing's arguments have illustrated why we should take that small step. We should do so because it would remove the culture of fear and intimidation that many people in our rural communities face. We should also extend the absolute right to buy to tenant farmers because the Parliament was elected to change Scotland—including its rural communities—for the better and to adopt radical policies. When the people of Scotland elected the Parliament, they expected such radical measures that would change the face of rural Scotland to be adopted. I urge the committee to support Fergus Ewing's amendments.

The Convener: Before asking Margaret Ewing to speak, I would like to comment on Fergus Ewing's opening speech—it was too long to be called a statement. As members have mentioned, it was very eloquent and I listened to it with great interest.

Fergus Ewing focused on the issues that were brought to the committee's attention during the evidence-gathering sessions at stage 1. We all accepted that those drivers of his desire to introduce an absolute right to buy were in great need of improvement. The Scottish Conservatives did not argue that there was not considerable room for improvement in the relationships that currently exist.

The issues at stake were: the fact that tenants find it difficult to diversify; write-down agreements; compensation at waygo; and the length and expense of the court procedures. None of us disagreed that something needed to be done. However, we are in danger of losing the focus of what we have brought about. As a committee, we asked all the stakeholders, including the Scottish Tenant Farmers Action Group, to put their heads together to address the problems. They did that with a vengeance. As the minister has constantly reminded us, they worked long and hard. As a result of all that hard work, some of the amendments came in very late, but we accepted that because of the desire to reach consensus.

I think that if, at the start of stage 1, we had seen the changes that were to be made to the bill, we would have been absolutely astonished. Enormous changes have been made, with the agreement of all the stakeholders, but Fergus Ewing is still proposing an absolute right to buy. I am fairly astonished, particularly because, as Stewart Stevenson reminded us during the stage 1 debate, the sentence in our report that referred to the absolute right to buy was really just a warning shot across the bows for landowners to get their act together. I would argue strongly that they have done so.

Fergus Ewing asked what the Scottish Conservative position was on the release of entrepreneurship, given that we are the party of the entrepreneur—I thank him for reminding us all of that. Other members have also mentioned the rural development aspect of the issue. I entirely agree that we want the release of entrepreneurship in the tenanted sector, but I believe that the entrepreneurship to which we all aspire is to be found within a vibrant tenanted sector and not by abolishing it, which is what Fergus Ewing's proposals would effectively do.

I now call Margaret Ewing.

Mrs Ewing: I am assuming that, as you have now called me to speak, no other full-time member of the committee is planning to speak.

The Convener: It has just been brought to my attention that another member is planning to speak.

Mrs Ewing: I had hoped to hear from a Labour back bencher and not just from the minister.

The Convener: You will.

Mrs Ewing: Okay.

I am here to support Fergus's amendments, not because it is compulsory for a wife always to agree with her husband, but because land is something about which I feel strongly. Land reform has been a major issue in my life. Indeed, the Land Register of Scotland that now exists arose from pressure that I exercised back in the 1970s. Lord James Douglas-Hamilton, who is a member of this Parliament, instigated that register under the Conservative Government. It is not perfect, but at least we were beginning to make tracks to find out who owned the land of Scotland. I can recommend various books that people should read on the background to the matter.

I have a personal interest in land reform because I come from a rural background. My ancestors were all shepherds and my father became a ploughman. I remember my dad saying to my elder brother, who wanted to follow him into farm work, "Don't—there's no future in it, unless you own the land."

We must ensure that we retain the skills. I remember registering at the University of Glasgow and putting down "agricultural labourer" as my father's employment, which immediately put me into class E. I would have been among the 5 or 10 per cent of students in that sociological category, yet I regarded my father as one of the most skilled people whom I knew. Anyone who knows anything

about farming knows that it is not unskilled labour. It is very skilled labour—battling with the elements, ensuring that the crops are grown and the beasts are looked after. I am deeply concerned that we are not doing enough to retain people on the land. We are in danger of losing skills that have been built up over generations in the countryside. I urge the minister to think carefully about what the amendments propose. As Fergus pointed out, we are talking about a small number of farms, but the proposals could make a huge difference to the rural community.

There has been much talk about land grabs in the context of the absolute right to buy. When I was a child, all the glens between Broughton in Peeblesshire and Coulter in the upper ward of Lanarkshire were bought by a Dutch conglomerate and all the tenanted farms were sold under the feet of the tenants. We were sold out for Sitka spruce, because the tax dodgers wanted the land to ensure that they could avoid capital gains tax. I remember that only too well.

We are talking about only a very small number of people and I hope that we will have a positive response—if not today, then certainly at stage 3. I want tenanted farmers to be encouraged to stay on their land. I have seen enough of estates where the landowner comes along and gives consent for tenanted farmers to paint their houses, but at their own expense and only in the colours that they are told. I have seen such cases in my area, but I am going to save the blushes of some of the landowners concerned—I could name them. It is very unfair to the tenanted farmers that some of the poorer landlords have such an attitude. Good landlords have nothing to fear from the amendments.

I urge members to consider the morality of what we are doing. The First Minister tells us that many people might not turn out to vote in the Scottish parliamentary elections in May. That was his warning of doom and gloom. If people do not, that is perhaps because we have not had the courage or the guts to take some tough decisions in the Parliament. This is a tough decision, but a good decision, and we should observe it.

18:15

The Convener: Finally, I call Rhoda Grant.

Rhoda Grant: I had indicated earlier that I wanted to speak, but you obviously did not see me. I have been waiting my turn patiently.

The Convener: My sincere apologies.

Rhoda Grant: This has been quite an emotional debate, and rightly so, because it is a very emotional subject. Many people have spoken about their emotions and, emotionally, I am very much for an absolute right to buy for tenants.

I wish to ask Fergus Ewing some questions about the effect that the amendments would have. First—on the vehicle by which he proposes to amend the bill—rather than adding a new section, he seeks to amend the pre-emptive right to buy. What effect would that have? Would it mean that we would no longer have a pre-emptive right to buy, and that we would just register an interest and go on to an absolute right to buy?

I am concerned about checks and balances in the context of the right to buy. Committee members will remember that I lodged an amendment about the assignation of secure tenancies. I wonder whether Fergus Ewing foresees a minimum term of tenancy for the right to buy. If that amendment of mine were taken into account, someone could have a lease assigned to them one day and register for an absolute right to buy the following day, which would mean that they would be in tenancy for a very short time, but would be able to buy the farm.

There are further issues to do with land and community ownership, the public interest, and land bequeathed to trusts. Where would they stand if Fergus Ewing's amendments were agreed to?

To make a comparison with the crofting right to buy, if the landowner is against a crofter's exercising their right to buy, that needs to be taken up with the Land Court, which will then consider the case, taking into account factors such as hardship and the sound management of estates. I do not see such a process in the amendments that are before us, so I ask Fergus Ewing to address those concerns.

I am concerned about cases in which tenants are in breach of their tenancy—for bad husbandry, for example. Could such tenants register their interest in a right to buy and exercise it before they were put off the farm in question because of that breach of their tenancy?

That covers most of the issues that I have with the amendments. If the amendments are agreed to today, will Fergus Ewing deal with some of those issues at stage 3 if they are not already covered?

Finally, I will make a wee comment in answer to what Alex Fergusson said about landowners having got their act together. Unfortunately, one of the signals that has been sent to the committee about landowners getting their act together was their running around last night issuing notices to quit and putting aside partnerships. That sends a strong, and very disappointing, signal to the committee.

The Convener: I now give the minister the opportunity to respond on this sub-group.

Allan Wilson: I will encourage Fergus Ewing very briefly. When he talked about "the key amendments", I thought that he meant amendment 162. I will surprise him by saying that we actually support that amendment.

That said, I do not think that we share some of Fergus Ewing's colleagues' more glowing references to his proposition. Indeed, I consider the proposition to be ideologically inept, fundamentally flawed, badly researched, and economically illiterate.

Mr Rumbles: But apart from that?

Allan Wilson: Apart from that, it was okay.

Fergus Ewing is asking us to accept a quaint, homespun theory of economics. The suggestion that there is an obvious parallel with London flats is particularly interesting. I can compare that only with the attempt of the member's former boss, Alex Salmond, to discount our national deficit on the back of an envelope with his now-infamous bookie's pen. Alex Salmond was trying to discount billions of pounds of public money—Fergus Ewing is dealing only with hundreds of millions of pounds.

The case for an absolute right to buy is based on two main arguments. First, it is claimed that tenants could use land more effectively if they had the opportunity to buy it and that, ipso facto, we would move towards higher levels of owner occupation. I dispute the accuracy of that statement and I would be interested to hear any evidence that Fergus Ewing has to substantiate it in the short, medium or long term.

We, along with others, have argued that a strong tenanted sector is a consistent feature of successful agricultural economies in Europe. The tenanted sector is vital for a number of reasons. It provides a way in for new entrants and allows funds to be directed into farm businesses, rather than into buying land. Others have made that point effectively. Tenanting allows farm businesses to operate flexibly and to rent additional land when they need it. Land that is held under tenancy can benefit from investment by both tenant and landlord. I was pleased that the committee recognised those and other arguments and concluded in paragraph 9 of its stage 1 report

"that a vibrant market in let land is vital to the health of Scottish agriculture."

I agree.

The committee gave closer consideration to the second argument that is used in support of an absolute right to buy—that it would help to bring balance to the relationship between landlord and tenant. The majority view of the committee, as expressed in paragraph 77 of its report, was that it would withhold judgment on whether the bill should provide for an absolute right to buy, pending amendments to the bill to be lodged at stage 2 that would address issues of contention concerning protection for tenants.

As members are aware—and as the convener mentioned—we have worked hard with the industry on those issues. We have lodged amendments, to which the committee has agreed, that address the four outstanding issues relating to the protection of tenants from unreasonable behaviour by landlords. Both the NFUS and the Scottish Tenant Farmers Action Group supported those amendments, which will deliver what we said we could deliver in the bill: the protection that tenants need and deserve. They do so far more effectively than could an absolute right to buy.

Like Mike Rumbles and others, I admit to being disappointed that Fergus Ewing has nonetheless considered it necessary to argue again for an absolute right to buy. I hope sincerely that if his amendment is defeated—as it should be—it will not be resurrected at stage 3, because it would have a destabilising effect on the objective of the bill, which is to stimulate and broaden the tenanted sector. Fergus Ewing is shaking his head, but that is what the amendment would do.

The purpose of the amendments cannot be to stimulate the rural economy. An absolute right to buy would undermine the aim, which the Executive and the committee share, of revitalising the tenanted sector. The two issues are inextricably linked. If we disrupt the tenanted sector, we will not stimulate the rural economy, which Fergus Ewing says that he proposes to do. His amendments would be counterproductive.

The purpose of the amendments cannot be to increase social justice. The bill as amended will be far more effective at giving tenants what they need in their relationship with their landlords. I reiterate that the protections that we have introduced have the support of the NFUS and the Scottish Tenant Farmers Action Group, and address their concerns. What use is an absolute right to buy to a tenant who cannot afford to buy the farm that they rent?

Fergus Ewing says that his amendments would benefit a small number of tenant farmers. His wife repeats that assertion. In fact, they would benefit a small number of asset-rich farmers or farmers with access to capital in a way that is not incompatible with the republican right's argument about the extension of property-owning democracy. I will come on to that issue.

I do not believe that tenants support the SNP's proposal. Fergus Ewing mentioned the poll that was conducted by the NFUS last year. Since I got involved in this issue, I and my officials have been struck, in reading the Scottish Tenant Farmers

Action Group's proposition and in speaking to tenants who wanted an absolute right to buy, by the fact that, first and foremost, most of them do not want to buy the farm that they rent. What they want is some balance in their relationship with their landlord. The bill now gives them just the strong protections that they are seeking. It is my view that, with those protections in place, most tenants would now argue against the introduction of an absolute right to buy. They recognise that it is far more important for them to be able to work constructively with their landlords and to avoid the unnecessary schisms in that relationship that an absolute right to buy would create, introducing a dysfunction in the tenanted sector.

Only a matter of weeks ago, I met two tenant farmers who had been victims of the dissolution process that we discussed earlier—two people who, one might argue, might be most inclined to argue for an absolute right to buy, having been the victims of the process to which Rhoda Grant referred. However, both those farmers told me that they do not support the introduction of an absolute right to buy because that would disrupt the tenanted sector and extinguish what they wanted to do, which was to enter the agricultural market at its lowest rung, as tenant farmers. They can see that, even if Fergus Ewing cannot.

Fergus Ewing has not only failed to explain why an absolute right to buy is needed; he has failed to address the fact that introducing such a right would destabilise the tenanted sector and blight land values. We believe that an absolute right to buy could blight agricultural land values, as the price that a potential purchaser would pay for land would be lower if their freedom to own, use and manage that land were inhibited by the existence of such a right. We believe that those losses could run to scores or even hundreds of millions of pounds. The potential loss arising from each reduction by 1 per cent in the managed value of holdings across Scotland, with traditional tenants under a 1991 act tenancy, could be in the region of £20 million. Tenants could not reasonably be expected to provide compensation that might become payable at a time when they did not intend to exercise the absolute right to buy—for instance, when the landlord chose to sell the farm. That is why we have warned that, if the Executive were required to pay compensation in respect of such losses and expenses, the cost to the public purse could be massive.

The SNP aspires to government. Has it budgeted for such costs? We could not do that without impacting on important Executive work elsewhere. Furthermore, to whom would those hundreds of millions of pounds in compensation be payable? They would be payable to the landlords. The landlords' day would indeed have returned: it would have returned at the instigation of the SNP and it would be the landlords' pay-day. The Royal Institution of Chartered Surveyors in Scotland has highlighted that very risk, and I am not aware that any professional advice or evidence to the contrary has been received either by us or by the committee. There is also a risk that such payments would not, in any case, be acceptable for state aid purposes and would fail to meet EC requirements.

Fergus Ewing is laughing, but his homespun philosophy on European law asks us to believe that only the SNP should be believed in relation to the potential compensation costs. He asked the rhetorical question—I assume that it was rhetorical—why the Tories do not support the SNP's proposal. I suspect that it is because they are more far-sighted than he is. What the SNP proposes would act against the long-term interests—perhaps even the medium-term interests—of the thrust of our land reform legislation and would lead to even greater concentration of land ownership in fewer, not more, hands. The landowners would be already asset-rich, well-capitalised individuals or institutions. They may be indigenous, but they could be foreign—reference has been made to a Dutch landlord. The SNP's proposal would, therefore, be counterproductive to the aims and aspirations of our wider agenda for land reform, based on opening up ownership, which was endorsed by the Parliament.

I conclude by responding on some of the references that surprised me, although perhaps they should not have done, such as the parallels that were drawn between crofters and tenant farmers. The simple point is that crofters are not tenant farmers and tenant farmers are not crofters. Stewart Stevenson talked about an accident of history. I do not believe that what happened was an accident in history. It was far from an accident. I would be interested in looking at and revisiting the legislation that defines the boundaries of the crofting counties, not least because of my constituency interest in Arran.

18:30

The two cases are not compatible. They are not the same, and members know that they are not the same. The crofting community right to buy and the individual crofting right to buy are not absolute rights to buy. Both are subject to considerable qualification, unlike the rights that Fergus Ewing proposes in his republican right agenda.

Perhaps the Tories should be more far-reaching and listen to what their tartan Tory counterparts have to say on the matter rather than be guided by the predictable influences of the Scottish Landowners Federation.

Fergus Ewing: I will try to be brief, although I wish to address the remarks that members made during that debate, particularly Rhoda Grant's constructive remarks.

I will respond to the minister's remarks first. My great hope for the Parliament was that, when we had a debate, it would be based on reasoned argument, not assertion. The minister has failed that fundamental test by repeatedly making assertions without justification. For example, he says that an absolute right to buy would be disruptive, but completely ignores the point that no one is advocating a right to buy for anyone other than tenants who have security of tenure—not for those who have LDTs or SLDTs. How many times do we have to say that? Those new formats will be used. They will not include the right to buy, therefore there can be no disruption. None of the points that I made on that matter was addressed.

The minister did not say how many tenants would have a pre-emptive right to buy, although I specifically asked him to do so. He did not say how many there would be in a year, or what difference it would make. Perhaps he takes the view that that is not important. I disagree.

The minister referred to the fact that representative bodies have worked together. I commended the work that has gone on—perhaps he did not take that in. That work has led to improvements, but if the minister thinks that those improvements are sufficient to make many tenant farmers throughout Scotland wish not to proceed with the right to buy, I can say only that my information, from speaking to tenant farmers, is that he is wrong.

I do not pretend that every tenant farmer—not even every secure tenant farmer—wants that right to buy. However, in the only consultation exercise to be done on the views of a great number of tenant farmers, when the NFUS secure tenant farmers were specifically asked to express whether they wished the right to buy, 57 per cent said that they did. The minister points out, rightly, that they have not been consulted again. Perhaps they should be. Perhaps they will be. We have not received a briefing from the NFUS today, but perhaps it will reconsult its members to find out whether their views are different now that some progress has been made. My point is that, for the reasons that I argued at the outset, I as an elected representative do not believe that the changes, although they are welcome, have gone far enough.

It is not correct for the minister to ignore the fact that some participants in the discussions among the representative groups were not satisfied with the outcome. The Scottish Tenant Farmers Action Group wanted the amendments that Rhoda Grant moved and the committee supported, such as the provision that, in exchange for quitting a secure heritable tenancy, secure heritable tenants would have a share in the premium value released. That was not agreed in the working group, but the committee has taken a different view. Neither was the assignation provision, which Rhoda Grant also rightly moved and the committee supported, agreed in the working group.

In any event, we all have independent judgment. We submit ourselves to the ballot box. If no fatwa is put out against me by landowners who do not like me very much, and if I survive until polling day on 1 May, people can vote against me and get somebody else if they think that I am the new Genghis Khan of the countryside. Our judgment does not supplant the judgment of people who rightly play their part in their interest groups and contribute to the debate. Such people have made a great contribution.

I should say something about the ECHR. The minister did not address my argument, which is that, because of the public interest case and because full market compensation is being proposed, there is no ECHR case.

Is it not a bit contradictory that the Executive's estimate for the cost of the bill is £100 million and the estimate from RICS is £320 million? They cannot both be right, can they? I did not hear the minister opine on that little discrepancy of £220 million.

Because the minister did not reply to the meat of the argument but sought instead to ridicule it, there is nothing more to be said on it. However, I will respond to Rhoda Grant's points, as I agree that we need to answer some of them.

First, what is the relationship between an absolute right to buy and a pre-emptive right to buy? If there is an absolute right to buy, there is no need for a pre-emptive right to buy. The pre-emptive right to buy would fall. An absolute right to buy would replace it.

The second point concerns the triggers and time period. I mentioned at the very beginning that the second important amendment was amendment 145. I acknowledge that, if a secure tenant farmer expresses a desire to buy and registers a notice, there must be a minimum period of notice for the landlord before the sale transaction can take effect. Amendment 145, however, confers the power on ministers to prescribe the notice period. It could be three, six or nine months—it could be a year or longer. There should be consultation about the length of the notice period, but I think that amendment 145 provides a certain comfort.

Rhoda Grant asked whether there should be a minimum term of tenancy. So far as secure tenancies go, with very few exceptions—possibly only in the case of owners that are charities—no

new secure tenancies have been granted, except of course under limited partnerships in which security of tenure can be removed by the provisions of the partnership agreement.

Rhoda Grant raised the question of assignation. She asked whether, if an assignee were to become a new tenant, they should have the benefit of a secure tenancy. I am willing to consider stage 3 amendments that would address the concerns that Rhoda Grant expressed on the subject. We need to debate the question and I am pleased that she raised that important point.

The relationship between the absolute right to buy and the community right to buy was raised. If there were to be a secure tenanted heritable farm in an area that had been purchased by the community, the secure heritable tenant would have the right to buy. That would be for the benefit of all.

Bad husbandry, which was also mentioned, can be one of the very few means by which secure heritable tenancies can be terminated. We may need to consider the issue further and to deal with it at stage 3. It is not an entirely technical point and I hope that we can take the benefit of the advice of the bodies that I mentioned.

I have tried to address all the points that members raised. My main response to Rhoda Grant is that the points that she raised are serious and I am glad that she made them. The committee, and no doubt the Executive, will seek to address those points at stage 3, if we get the opportunity to do so. I thank members for their contributions to the debate and hope for a positive result.

The Convener: I ask the minister to speak to amendment 173 and all the amendments in the sub-group on the extinguishing and renewing of the right to buy.

Allan Wilson: Under the right-to-buy provisions in the bill, landlords will not be able to sell land that is subject to a right to buy on the open market without giving the tenant a reasonable opportunity to purchase it. Sections 28 and 29 provide for that. Our aim is to allow the landlord to sell the land in instances in which the tenant has had sufficient opportunity to exercise the right to buy but has prevaricated. Sections 28(7) and 29(9) state:

"The extinguishing of a right to buy … does not prevent the tenant acquiring a right to buy the same land in the future."

The amendments clarify what will happen when a tenant does not take the necessary steps towards acquiring the land once the right to buy has been activated.

Amendments 173, 174 and 179 seek to delete sections 28(6)(c), 28(7) and 29(9). In their place, amendment 175 will insert a new section 28A, the effect of which is not to extinguish the right to buy, but to suspend it either for a period of 12 months or until the landlord has sold the land to a third party, whichever might be sooner.

The Convener: The question is, that amendment 134 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
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)
McGrigor, Mr Jamie (Highlands and Islands) (Con)
Morrison, Mr Alasdair (Western Isles) (Lab)
Oldfather, Irene (Cunninghame South) (Lab)
Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
Smith, Elaine (Coatbridge and Chryston) (Lab)

The Convener: The result of the division is: For 4, Against 7, Abstentions 0.

Amendment 134 disagreed to.

Section 25, as amended, agreed to.

Section 26—Transfers not requiring notice

The Convener: Amendment 170 is grouped with amendments 135, 171, 172 and 136.

Fergus Ewing: The purpose of amendment 170 and its consequential amendments is to probe the minister in relation to the efficacy of the anti-avoidance provisions in the section on transfers not requiring notice. The two principal amendments, amendments 170 and 171, are lodged simply to obtain a response, because once again we have reached a grouping where there may be some measure of consensus.

The advice that I have had from a member of the Scottish Tenant Farmers Action Group is that the right of pre-emption may be easily circumvented by a number of legal means. I want to raise some of those means and ask the minister whether he considers that those ruses, or mechanisms, have been taken into account. If not, I hope that the minister will seek to ensure that they are taken into account at stage 3.

Primarily, those mechanisms involve the use of trusts and companies to thwart the right to buy. Is the minister satisfied that if land is held in the ownership of a company, the bill as drafted or with the benefit of the Executive amendments could not be circumvented by the transfer of shares in that company? Would it not be a simple mechanism for

ownership of a secure heritable tenanted farm to be passed into the vehicle of a limited company and then for the shares to be disposed of elsewhere? Is that covered by the bill?

Secondly, so far as trusts go, I understand that amendment 135 would make some modest progress, in that it would reduce the number of transfers not requiring notice, by the removal of section 26(1)(b), which refers to transfers

"from a person to a member of the person's family".

However, what about the example of trusts that have a wide class of beneficiaries? Many trusts are able to appoint additional beneficiaries if that is desired. For example, a trust might appoint a new class of beneficiaries—ultimately, the new owners—and remove the existing beneficiaries. In return for the change of trustees, the new beneficiaries would have paid the trustees in advance, and the trustees would have ring-fenced the funds for the old beneficiaries, or transferred the funds at the same time as changing the beneficiaries.

Also, a sole beneficiary could sell his interest to a third party. Sole beneficiary A would then hold that interest on trust for that third party. Would that vehicle represent a successful avoidance provision?

I understand that the form of anti-avoidance provision that is inserted into section 26(2) mimics that in section 137(1) of the Taxation of Chargeable Gains Act 1992 and section 703(1) of the Income and Corporation Taxes Act 1988. It has been put to me that a tax lawyer—which I am not—would point out to a landlord that all that is required at present is to transfer the land into a company as that might well pay a lower rate of tax on profits at present, and to effect such a transfer now. As a result, when the land comes to be sold sometime in the next 100 years, it will already be in the right vehicle to effect a transfer without any pre-emption applying. The anti-avoidance provision will thus be avoided.

Furthermore, what about offshore companies? The question was raised at an earlier stage of the proceedings, and it did not seem that there was any answer as to how the use of such a vehicle can be prevented.

Those are all serious questions. No doubt the ingenuity of lawyers will devise many other weird and wonderful schemes that are intended to avoid the right of pre-emption. With the probing amendments 170, 171 and 172, I invite the minister to respond to the serious issues that I have raised, which would militate against the effect of even the pre-emptive right to buy in the bill.

I move amendment 170.

18:45

Allan Wilson: I am a little surprised that Fergus Ewing has seen fit to reopen the debate on the type of transaction that would trigger the tenant right to buy, even though he qualified his position by saying that amendments 170, 171 and 172 are of a probing nature.

The Executive's proposals already reflect what the Parliament has agreed should trigger the community right to buy under section 37 of the Land Reform (Scotland) Bill. The community right to buy is exercisable only when ministers are satisfied that it is in the public interest that the community should acquire the land in question. As a result, it is perhaps doubly surprising that Fergus Ewing believes that there should be an even wider range of triggers for the tenant right to buy, which is an individual right to buy and is therefore not subject to a public interest test.

We cannot accept amendment 170, which would allow gifts between family members to trigger the right to buy. For example, if that amendment were agreed to, even transfers on inheritance would trigger that right. That goes beyond the willing seller concept, which is the basis of the pre-emptive tenant right to buy.

I would also be interested to know whether Fergus Ewing has considered the impact that amendment 170 would have on land values if family members were no longer assured that they could pass land on to relatives. Such a provision would raise a credible risk of legal challenge on ECHR grounds if landlords were not adequately compensated. Furthermore, has he considered how inheritance tax rules would interact with this amendment? I suspect not.

The issue involved in amendment 171 has already been the subject of an amendment in relation to part 2 of the Land Reform (Scotland) Bill, and there is no justification for any difference in position between the two rights to buy. I would strongly resist the proposal to remove the exemption of transfers of land between companies in the same group such as might occur through company restructuring. It is clear that such a transfer does not constitute a change of ownership as the two companies that exchange land remain within the ownership of the same parent company. That approach follows the Inland Revenue's capital gains tax rules of no gain, no loss for group company transfers, and therefore adopts section 171 of the Taxation of Chargeable Gains Act 1992. The provision is already well understood by companies that are registered in the UK, and doing otherwise would mean that the bill would encroach on company law.

As we discussed a couple of weeks ago, that is a complex area and gives rise to additional

difficulties relating to company share transfers and defining what is meant by effective control. I have already gone into some detail on that matter. It is far too simplistic to assume that control is determined simply by company ownership. Moreover, there are obvious difficulties with tracing share transfers for all companies and monitoring trading on the stockmarket, as the information is not held centrally at Companies House. As a result, tenants would not be able to ascertain when and whether a transfer that might have triggered the right to buy had arisen, making the right unenforceable were it to be introduced. Of course, as Fergus Ewing himself pointed out, the right could apply if evidence were provided to the Land Court that land owned by a company was being transferred outwith that group.

Amendments 135 and 136 relate to the triggers for the right to buy and give effect to parallel amendments that were made to part 2 of the Land Reform (Scotland) Bill at stage 2. Amendment 135 seeks to remove transfers for value between family members as a type of transfer that is exempt under the bill from triggering the right to buy. As a consequence, there is no longer a need for section 26(3), which amendment 136 seeks to remove.

I now understand that amendments 170, 171 and 172 are probing amendments. However, with my explanation, I urge Mr Ewing not to reopen policy matters that were settled by the chamber during consideration of the Land Reform (Scotland) Bill and to withdraw amendment 170.

Mr McGrigor: I am certainly against amendment 171, because it interferes with perfectly legitimate business between companies.

Amendment 135 would remove the exemption from the requirement to give notice of a proposed transfer of land where the proposed transfer is within the same family. At the moment, such an exemption facilitates arrangements for families when they make retirement plans. Is Fergus suggesting that farmers should soldier on forever, or that it is a bad thing for farmers to hand over their farms to their children or other members of their family? I am against the amendment.

Amendment 170, by agreement, withdrawn.

Amendment 135 moved—[Allan Wilson].

The Convener: The question is, that amendment 135 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Lochhead, Richard (North-East Scotland) (SNP)
Morrison, Mr Alasdair (Western Isles) (Lab)
Oldfather, Irene (Cunninghame South) (Lab)
Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST

Fergusson, Alex (South of Scotland) (Con)
McGrigor, Mr Jamie (Highlands and Islands) (Con)

The Convener: The result of the division is: For 8, Against 2, Abstentions 0.

Amendment 135 agreed to.

Amendment 171 not moved.

Amendment 116 moved—[Allan Wilson]—and agreed to.

Amendment 172 not moved.

Amendment 136 moved—[Allan Wilson].

The Convener: The question is, that amendment 136 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

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

AGAINST

Fergusson, Alex (South of Scotland) (Con)
McGrigor, Mr Jamie (Highlands and Islands) (Con)

The Convener: The result of the division is: For 9, Against 2, Abstentions 0.

Amendment 136 agreed to.

The Convener: Amendment 137 has already been debated with amendment 134.

Fergus Ewing: Given the votes on the amendments so far, I shall not move any of the amendments that were grouped with amendment 134, with the exception of amendment 162, which the minister said he will agree to.

Amendment 137 not moved.

Section 26, as amended, agreed to.

Section 27—Right to buy

Amendment 117 moved—[Allan Wilson]—and agreed to.

Amendment 138 not moved.

Amendments 118 to 120 moved—[Allan Wilson]—and agreed to.

Amendment 139 not moved.

Amendment 121 moved—[Allan Wilson]—and agreed to.

The Convener: Amendment 122 is grouped with amendments 123 and 124. I remind members that agreeing to amendment 124 would pre-empt amendment 142, which has already been debated.

Allan Wilson: Section 27(3) provides that, where a tenant who has a registered interest in acquiring land is not given the required opportunity to purchase their landlord's interest before the land is sold, the tenant is to have the right to buy the land from the new owner of the land. Amendments 122 and 123 ensure that the tenant retains that right, even where the land is subsequently sold on from the third party purchaser. The tenant's right to buy transmits against the new owner of the land.

Under section 28(3), before the tenant exercises their right to buy in that situation, they must serve notice to the current owner, and such notice must be served within a reasonable time of the transfer. Amendment 124 clarifies that a reasonable time in that context is to be within three years. That should be more than a tenant would reasonably need to know of the existence of the new landowner. That amendment also adds a requirement that the tenancy must still be in effect.

I move amendment 122.

Amendment 122 agreed to.

Amendment 140 not moved.

Section 27, as amended, agreed to.

Section 28—Exercise of right to buy

Amendment 141 not moved.

Amendment 123 moved—[Allan Wilson]—and agreed to.

The Convener: If amendment 124 is agreed to, I will not call amendment 142.

Amendment 124 moved—[Allan Wilson]—and agreed to.

Amendment 143 not moved.

Amendments 173 and 174 moved—[Allan Wilson]—and agreed to.

Section 28, as amended, agreed to.

After section 28

Amendments 144 and 175 moved—[Allan Wilson]—and agreed to.

Section 29—Procedure for buying

Amendment 145 not moved.

The Convener: Amendment 176 is grouped with amendments 177, 178, 126, 181, 183 and 185.

Allan Wilson: These amendments are straightforward drafting changes, along the lines of corresponding changes that were made to the Land Reform (Scotland) Bill. They are all desirable drafting amendments that improve the overall presentation and operation of the bill.

I move amendment 176.

Amendment 176 agreed to.

Amendments 177, 178 and 126 moved—[Allan Wilson]—and agreed to.

19:00

Amendments 146 and 147 not moved.

Amendment 179 moved—[Allan Wilson]—and agreed to.

Section 29, as amended, agreed to.

Section 30—Appointment of valuer

Amendments 148 to 150 not moved.

Section 30 agreed to.

Section 31—Valuation of the land and price

The Convener: Amendment 180 is grouped with amendments 153, 155, 127, 128 and 157. I ask the minister to move amendment 180 and to speak to all the amendments in the group.

Allan Wilson: I am sorry to blight our speedy progress, but I will have to say something about sheep stocks.

The Convener: Feel free—that is a subject close to my heart.

Allan Wilson: I suspect that the same is true for a few other members. However, we will not go into that.

Section 31(2) states that, in setting a transaction price, the valuer should take account of any loss to the seller of future rights to sheep stocks. We do not expect that situation to occur in practice. At waygo, it is customary for the landlord or incoming tenant to purchase sheep stock from the tenant. Those sheep will have a greater value to the incoming tenant than sheep bought in the ring, because they are familiar with the area—reducing shepherding and fencing costs—and more resistant to local infections. However, the provision is unnecessary in this context, where—unlike at waygo—the tenant will remain on the land. Amendment 127 removes the provision and

amendment 180 is consequential to that amendment.

Section 31(5) states:

"The Scottish Ministers may issue guidance (either generally or in a particular case) for the purposes of valuation under this section."

The Subordinate Legislation Committee was content with that provision in general terms, but was concerned that the words "in a particular case" might be interpreted as enabling ministers to intervene in a particular valuation case. That is not the intention of the provision. Amendment 128 clarifies that the guidance-making power would apply either generally or to "a particular class of" case.

Section 55 of the Land Reform (Scotland) Bill allows the valuer to take account of any moveable property that a landowner and community body agree should form part of the sale. Amendment 153 makes similar provision in the Agricultural Holdings (Scotland) Bill.

Amendment 157 ensures that such factors can be taken into account when a valuation is appealed against. Amendment 155 clarifies that, in setting the purchase price for the tenant, the valuer should disregard fixed equipment that the tenant already owns.

I move amendment 180.

Amendment 180 agreed to.

Amendment 151 not moved.

The Convener: The next amendment for debate is amendment 152, in the name of the minister, which is grouped with amendments 154 and 158. I ask the minister to move amendment 152 and to speak to the other amendments in the group.

Allan Wilson: Have we not missed out amendment 129?

The Convener: I am assured that we should be debating amendment 152 and the other amendments on sporting interests.

Allan Wilson: I think that we got it wrong and the clerks got it right. I apologise.

The Convener: That is a unique admission, minister.

Allan Wilson: It is fair enough. We were wrong.

I have been conscious of the committee's interest in the subject of how sporting rights that are attached to land under tenancy should be treated when the right to buy is exercised. Our view—which appears to be the same as that of Fergus Ewing—is that there is no justification for separating ownership of agricultural rights from ownership of sporting rights over an area of land. The quality of the one is inextricably linked to the way in which the other is managed. For instance, the burning of moor or the grazing of sheep on moorland can impact on the environment for game birds, and safety issues obviously arise if wildlife are hunted when farm stock are close by.

When agricultural and sporting interests are owned by the same person, the owner can put in place a management regime that balances the respective interests in order to optimise the values of both. As a consequence, the purchase price of land for a tenant would be higher with sporting interests than without; however, at least the price would reflect the value of both assets. If either asset were bought alone, the purchase price would probably exceed the asset's value. Fergus Ewing appears to have appreciated that point in his amendments 154 and 158.

Our response to the committee's recommendation that we give further thought to the matter is Executive amendment 152. The amendment ensures that a valuer takes account of any lease-back arrangement under which the seller would pay a nominal rent to lease the interest and the purchase price of the land would be reduced by an amount that reflected what the purchasing tenant would otherwise have received in rent.

Fergus Ewing has adopted a slightly different approach in amendments 154 and 158. Amendment 158 is modelled closely on section 70 of the Land Reform (Scotland) Bill, in relation to the crofting community right to buy. However, there is an important difference between the way in which that provision operates and the way in which the tenant right to buy applies. The crofting community right to buy can be exercised with ministerial consent whether or not the landowner intends to sell the land. The landowner will often remain on the land and, in such situations, will want to keep any sporting interests on the estate intact. I do not think that that scenario works as well for the pre-emptive tenant right to buy. In that case, the right to buy is triggered principally by the landlord deciding to sell the land under tenancy. Since the landlord has voluntarily decided to sell all non-separable rights to the land to the tenant, the tenant has a greater claim to the sporting rights.

Amendment 152 attempts to make more options available to the tenant, so that they can maximise the value of their sporting interest. If the tenant would rather lease the sporting rights to a third party, or manage them directly or as part of a consortium, they should be allowed to do so. In that context, amendment 152 takes a more effective approach. I ask Mr Ewing not to move the amendments in his name in this group.

I move amendment 152

Fergus Ewing: The two amendments in my name have been lodged because of fairly important evidence that we received at stage 1 from Alex Hogg and representatives of the Scottish Gamekeepers Association. They pointed out that the sporting sector makes an enormous financial contribution to the rural economy and that, traditionally, farmers and gamekeepers have worked on the same ground, lived in the same communities and shared life's ups and downs with their lives interlinked. They expressed considerable concern that is not necessarily addressed by amendment 152.

I accept that amendment 152 would have been of far greater necessity had the absolute right to buy been agreed to, as it would then have been necessary to protect sporting rights in a clear way. However, the absolute right to buy has been rejected on a majority vote. The minister says that the pre-emptive right is triggered only when the land goes on the market. One might, therefore, assume that a landowner who was concerned about the continuation of sporting rights would not have put the land on the market unless he had made arrangements in advance—a side agreement, or something like that.

Of course, the landowner may not be the person who exercises the shooting rights; those rights could be leased or there could be another more informal arrangement. We are considering not merely the landowners, but the gamekeepers. I would like to see a provision that will protect them.

The minister said that the style of amendment 158 follows closely that of a comparable section of the Land Reform (Scotland) Bill—in fact, it follows section 80 of that bill, not section 70. The object of amendment 158 is to allow measures to be taken so that sporting interests can continue to be guaranteed when there is a pre-emptive purchase of one unit in a landed estate.

Amendment 158 deals with the consequences of such a purchase. Similarly to the Land Reform (Scotland) Bill, it says that the annual rent is to be nominal and that the lease will last for not less than 20 years. Subsection (5) of the proposed new section states that there should be provision in any agreement to regulate various practical matters that arise, such as rights of access, stocking density, maintenance of roads, tracks and bridges, pest control activities and forestry operations. The SGA said that those were practical matters that must be addressed. That is why it is preferable that they are included in the bill.

Consequential amendment 154 says simply that the valuer should take into account the matters that are raised in amendment 158. That is similar to amendment 152. Therefore I hope that the committee will support those amendments, which are designed to protect the interests of gamekeepers in Scotland.

Mr Rumbles: A wry smile came across my face when I heard Fergus Ewing talk about protecting gamekeepers' interests. The evidence of Alex Hogg and others in the Scottish Gamekeepers Association suggested that they were implacably opposed to Fergus Ewing's amendments on the so-called absolute right to buy, and I am sure that they will be delighted that the committee has not agreed to them.

It is rather ironic that Fergus Ewing's amendments aim to protect gamekeepers' interests. I have no doubt that the Executive amendments recognise the points that the committee made when it took evidence. Fergus's amendments would have been important had the absolute right to buy been agreed to against the wishes of the Scottish Gamekeepers Association, but there is no need to support his amendments. The committee should support amendment 152, which recognises the importance of the gamekeepers' interest.

Allan Wilson: It is supremely ironic that the presumption that underlies Fergus Ewing's amendment is that a landowner should retain any interest in the sporting rights, having previously and willingly entered into an arrangement to sell that land to the tenant. Our amendment gives the tenant more options to maximise the value of their sporting interest. If the tenant would rather lease the sporting rights to a third party or manage them themselves, they should be allowed to do so, as part of the new property-owning democracy to which they would belong.

Amendment 152 agreed to.

Amendment 153 moved—[Allan Wilson]—and agreed to.

The Convener: Does Fergus Ewing wish to move amendment 154?

Fergus Ewing: In the light of the remarks that have been made about more flexibility for the tenant, I think that, at this point, I would like to consider the amendment further. I might return to the issue at stage 3.

Amendment 154 not moved.

Amendments 155, 127, 128 and 181 moved—[Allan Wilson]—and agreed to.

Section 31, as amended, agreed to.

After section 31

Amendment 182 moved—[Allan Wilson]

19:15

The Convener: The question is, that amendment 182 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

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

AGAINST

Fergusson, Alex (South of Scotland) (Con)
McGrigor, Mr Jamie (Highlands and Islands) (Con)

The Convener: The result of the division is: For 9, Against 2, Abstentions 0.

Amendment 182 agreed to.

Section 32—Valuation etc: further provision

Amendment 156 not moved.

Section 32 agreed to.

Section 33—Appeal to Land Court against decisions of valuer

Amendments 88 and 89 moved—[Fergus Ewing]—and agreed to.

Amendments 157 and 183 moved—[Allan Wilson]—and agreed to.

The Convener: Amendment 129 is grouped with amendment 130.

Allan Wilson: Amendment 129 is a tidying-up amendment. The purpose of section 33(4) is to ensure that the valuer can be called as a witness in any appeal against a decision that the valuer has made. It is possible that the term "may be heard" could be interpreted as being designed to allow the valuer to become a party to the proceedings. Clearly, that is not the intention. The amendment therefore substitutes "a witness" for "heard", in similar terms to the Land Reform (Scotland) Bill proposals, and allows that certain other parties with an interest in the appeal may be heard as a party.

Amendment 130 lists the persons who may be heard in an appeal.

I move amendment 129.

The Convener: Would it not have been preferable for decisions on who should be heard to be left with the Scottish Land Court?

Allan Wilson: Provision is made for that in section 33(5), which says:

"Where the land forms part of an estate, any person who has an interest in the estate may be so heard."

The Convener: I thank the minister for that.

Amendment 129 agreed to.

Amendment 130 moved—[Allan Wilson]—and agreed to.

The Convener: Amendment 90 is grouped with amendments 131 and 184. If amendment 90 is agreed to, amendments 91 and 131 will be pre-empted. If amendment 184 is agreed to, amendment 92 will be pre-empted.

Fergus Ewing: Amendment 90 was lodged because of a recommendation from Lord McGhie. If, as we all wish, the Scottish Land Court discharges the new business that falls to it, he does not think that it would be helpful to require a written statement to be issued within two weeks. He explained that by reference to the Land Court's work load. I understand that the minister wants to achieve, with amendments 131 and 184, what I do. I will ask later to withdraw amendment 90, because the minister's amendments would achieve my aim in a way that I support.

I move amendment 90.

Allan Wilson: I agree with Fergus Ewing. The only difference between amendments 90 and 131 is that amendment 131 will retain the requirement for the Land Court to give reasons for its decisions on an appeal and to issue a written statement of those reasons. It is important to retain that requirement and I suggest that, although amendment 131 achieves the same objective as amendment 90, it is better and has added value.

Amendment 90, by agreement, withdrawn.

Amendment 91 moved—[Fergus Ewing]—and agreed to.

Amendments 131, 184 and 185 moved—[Allan Wilson]—and agreed to.

The Convener: Amendment 186 is grouped with amendment 187.

Allan Wilson: Amendment 186 is similar to Fergus Ewing's amendment 94, which we discussed last week, except that amendment 186 affects part 2. It will transfer the responsibility for valuation appeals under section 33 from the Land Court to the Lands Tribunal for Scotland. Lord McGhie has said that he is content with the split in responsibilities between the Land Court and the Lands Tribunal.

Amendment 187 will introduce a new section after section 33, which will give the Lands Tribunal the right to transfer a matter to the Land Court, if it considers that appropriate.

I move amendment 186.

Amendment 186 agreed to.

Section 33, as amended, agreed to.

After section 33

Amendment 187 moved—[Allan Wilson]—and agreed to.

Amendment 158 not moved.

The Convener: Amendment 159 is in a group on its own.

Fergus Ewing: Amendment 159 is another amendment that all members will agree is important. Although the committee has not supported the absolute right to buy for all secure tenant farmers, I hope that some Labour committee members will support the amendment, which has always been intended as a fallback provision.

Let me explain what amendment 159 seeks to do. In recognition of the fact that there were arguments against an absolute right to buy for all secure tenant farmers—those arguments were put and I disagreed with them, but there were nonetheless arguments against—I felt it sensible to offer the committee another option. That option is to deal with a landlord who is in breach of his obligations, and amendment 159 would provide a way of dealing with what the press commonly calls bad landlords.

Surely landlords who are persistently in breach of their obligations should not be able to continue to hold the responsibility of a landlord under a secure heritable tenancy. I should emphasise the fact that the amendment would have no effect except for secure heritable tenancies. One might argue that it should be extended, but the amendment refers only to those tenants who have security. The new section that amendment 159 would introduce gives the tenant the power to seek from the Land Court a legal declarator that the landlord has been in breach of his obligations.

What might those obligations be? They might be obligations under section 5 of the 1991 act to provide fixed equipment, including farm buildings. They might be an obligation to pay the insurance premium for fire insurance, which is an obligation under section 5 of the 1991 act but, I am advised, one that is routinely breached, with impunity, by landlords. The tenant would be able to go to the Land Court, which would consider evidence. If it found that there had been a breach of the 1991 act, or of any rule of law, the Land Court would make a declarator to that effect. Even then, the bad landlord would be given an opportunity to put matters right. The bad landlord would be entitled, within such period as the Land Court saw fit and reasonable, to remedy the defect and rectify the breach.

That proposal might be criticised on the ground of lack of boldness, because it gives landlords lots of chances, which perhaps they may not entirely deserve. However, there would be a legal process involving going to the Land Court, getting a declarator and the Land Court giving the landlord an opportunity to put matters right. Only then, if matters were not put right, could the order for sale be made. I hope that that proposal will receive members' support.

If a landlord is in breach, is a secure tenant expected to thole that breach forever? I see the minister shaking his head and, legally, he may be correct. However, the legal mechanisms that are available to secure tenants to secure a decree ad factum praestandum of obligations on the landlord to do certain things involve a process that requires not only an application to the Land Court, but an action under section 1 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1940. That section contains subsections allowing for the imprisonment of the landlord, which I believe has not occurred, for conversion of the decree ad factum praestandum to a decree for payment.

Last week, I asked the minister whether there had been any usage of the remedies, and he did not answer. It is my understanding that the provisions have rarely, if ever, been used, and that that is largely because secure tenants are extremely chary of raising a court action against their landowner. If they did, the relationship between the two would be over for ever. Tenants are in an extremely weak position. If they want to take their landowner to court, they must go to the Land Court, then to the sheriff court, and that costs a fortune. Therefore, although the legal mechanism exists, I suggest to the minister that it is far from perfect, extremely costly, little used and neither satisfactory nor sufficient.

In closing, I should like to draw attention to helpful remarks that were made during stage 1. A member stated that an

"absolute right to buy might be in the public interest in situations that involve bad landlords, and the worst excesses of the landlord-tenant relationship. One could argue that giving the tenant farmer an absolute right to buy would help to improve the farm in such situations."—[*Official Report*, *Rural Development Committee*, 5 November 2002; c 3736.]

I am happy to end with those remarks and I trust that the author of them, Mike Rumbles, will support my amendment.

I move amendment 159.

19:30

Stewart Stevenson: We have heard much during discussions on the bill about the irritancy of the lease. In respect of amendment 159, we are talking about the irritancy of the tenant by the landlord.

Fergus Ewing's amendment identifies only where the landlord is in breach of rules of law. It is

not simply that that landlord is behaving in a way that the tenant feels is unreasonable; the amendment is more specific.

Subsection (4) of the proposed new section that amendment 159 seeks to insert after section 33 states:

"Where the landlord has failed without reasonable cause to execute such work as will remedy the breach".

One area in which there have been some difficulties is insurance. Fergus referred to landlords not taking out the insurance that they are required to. There have also been some difficulties in obtaining insurance. If a landlord can show that it is impossible to obtain insurance, that is probably a reasonable cause on the part of a landlord. If that were to come to the court and become visible, remedying it would be a matter for public policy.

Subsection (7) of the proposed new section refers to what the Land Court may include in an order under subsection (4). "Sporting interests" are referred to, which we have covered before, as well as

"such other terms and conditions as the Court may specify."

That gives the court useful flexibility in the way in which it applies its rulings on landlords who are in persistent breach of their obligations. Members should find it straightforward to support amendment 159. The proposed new provision should not, if we are to believe any of the things that we have been told, be called into play often, and it should not be a burden on the good landlord. If we incorporate it in the bill, it may never be brought into play because of its very existence. The amendment is easy to support; there is no cost associated with it, and there is huge benefit for the reasonable tenant at the expense of the unreasonable landlord. I am happy to support the amendment.

Mr McGrigor: I am against amendment 159.

Stewart Stevenson: What a surprise.

Mr McGrigor: I am not against the amendment because Stewart Stevenson spoke in favour of it, but because the appropriate remedies for breaches of a tenancy already exist and are well known. Remedies include court orders, requiring parties to do particular things and the award of damages. Those already provide effective remedies for tenants whose landlords are in breach of conditions of lease. Furthermore, the bill streamlines the dispute procedure.

Richard Lochhead: I support amendment 159. It would help to empower tenants, and empower the court to protect and defend tenants' rights.

In relation to the crofters' right to buy, ministers have the power to act as a third party. If certain criteria are met, ministers can allow the right to buy to be implemented. Amendment 159 would create a similar situation for tenant farmers. The Land Court would act as a third party and, if certain criteria were met, the right to buy could be granted. That is a sensible way forward.

If an absentee landlord were completely negligent of a farm, that would be the ideal scenario for the implementation of the right to buy, because there is a good test in place. Even if the landlord could be held to account through other mechanisms, if the landlord was an absentee landlord who never made an appearance on the estate, that would be an ideal scenario that amendment 159 could address.

Mr Rumbles: One thing that I have learnt during the many months of serving on the Rural Development Committee with Fergus Ewing is always to check the quotations that he uses. He is a master of the selective quotation. To ensure that there is no misunderstanding, I want to put on record what I said on the occasion that Fergus Ewing cited, when a protagonist in the argument, Andy Wightman, was a witness. I was interrogating him on the issue. I said:

"I want to ask the witnesses about something that I have difficulty with. I can understand that the absolute right to buy might be in the public interest in situations that involve bad landlords and the worst excesses of the landlord-tenant relationship. One could argue"—

in other words, Andy Wightman was arguing—

"that giving the tenant farmer an absolute right to buy would help to improve the farm in such situations. Human nature is such that there are bound to be bad landlords and good landlords. I fail to see how the public interest can be used to justify a measure that will give a private individual the right to purchase the property of another private individual."—[*Official Report*, *Rural Development Committee*, 5 November 2002; c 3736-3737.]

I rest my case.

Rhoda Grant: I have a comment that the minister might be better able to answer than Fergus Ewing. It could be argued that the Land Court already has powers to sequestrate land. I would like to know whether the Land Court has the power to sell that land on to the tenant or whether it has to sell it to the highest bidder to get the maximum profit from the sequestrated land. If it has to sell to the highest bidder, amendment 159 is very good.

Allan Wilson: Amendment 159 certainly represents a step up from the proposal on withholding rent that Richard Lochhead advocated. However, although it is claimed that amendment 159 could empower tenants, it could emasculate them. We must ask two questions. What additional protections do tenants need beyond those that the bill will introduce? What value would an absolute right to buy add to the

protections that are already available to tenants and the courts?

On three separate occasions, we have explained that, if a landlord fails to perform an obligation under the lease, the tenant will be able to go directly to the Land Court for a remedy. Those provisions are new. Until now, unless the landlord has agreed to submit the matter to the court, the tenant has had to obtain from an arbiter a ruling on whether the landlord is in breach before being able to apply to the sheriff court for a decree of specific implement. Therefore, we have raised the stakes.

The Land Court will be able to issue a decree of specific implement that requires the landlord to take the necessary action. If the landlord fails to comply for whatever reason, he or she will be in contempt of court. That sets up a further option for the Land Court and the tenant. The landlord can be imprisoned. Fergus Ewing asked rhetorically why that has never happened. It might be precisely because such a provision exists. The provision might act as a deterrent. Fergus Ewing shakes his head, but the landlord would presumably see prison as a deterrent. That is why the option of prison is there.

The landlord could also be sued for losses that arise from their failure to comply. The court decree can be converted to a decree for payment of a sum of money and the landlord can be subjected to diligence, which means that heritable assets can be inhibited and funds, including rental income, can be arrested. That is a particularly useful remedy in cases in which the landlord is a company registered overseas—to use Rhoda Grant's example. The range of new remedies that are available to the Land Court as a result of the provisions that we have made is strong and varied. Where is the gap in the Land Court's powers that a tenant might seek to fill?

Once the tenant had made the move to secure the landlord's land, there would be no going back in his or her relationship with the landlord. All sorts of questions would be raised if the tenant failed to substantiate the argument. It seems to me that the threat of the remedies of imprisonment, damages and diligence will concentrate the mind of even the most recalcitrant landlord.

If that does not convince members, we could consider the matter another way. Both the committee and I are concerned about the plight of vulnerable farm tenants throughout Scotland, in particular those who have no savings and who cannot afford to retire. Such people seek to receive a share of the increase in the value of the tenancy—it would be divided between the tenant and the landlord and would provide a golden handshake. Have we asked tenants who are in that position how useful a right to buy at full market value would be? The prospective remedy for them is to find a couple of hundred thousand pounds to buy out the landlord, but that does not seem to me to be a viable or anything other than a high-risk strategy.

It is easy for us to talk about the issues because we are not vulnerable tenants. With respect, I point out to Richard Lochhead that it is easy to say that amendment 159 would empower such tenants, but I do not think that it would do so. Richard Lochhead urges an extremely high-risk course of action for people in such circumstances. How would such tenants react to amendment 159 and would they be able to use the power? How would a landlord react to the threat of a right to buy if he knew that it was outwith the tenant's financial reach? Indeed, what if the process of a Land Court judgment on the issue militated against the other available remedies?

I realise that all, or at least most, members are committed to social justice for vulnerable tenants, but amendment 159 is an irrelevance. The amendment would not help the tenants who most need help. All tenants—whatever their means—need to be able to exercise in their interests the powers that are already at their disposal through the Land Court. We have made a new provision in the bill to that effect.

Finally, we have not had an approach from the NFUS, the Tenant Farmers Action Group or anyone else calling for the measure. In that context, it would not be appropriate to proceed with amendment 159.

I ask Fergus Ewing to take all those factors into account and to withdraw amendment 159. He might wish to return to the issue at stage 3, in which case we might work in some of his points.

Stewart Stevenson: Will the minister explain how an arrestment is an effective way forward, given that an arrestment, when served on a bank's head office in Scotland, applies only for the day on which the arrestment is delivered? In many instances, people move their assets around to ensure that, on the day on which the arrestment is served, the assets against which the arrestment is made are not present in the bank. Alternatively, if the assets are held south of the border, the English process, which is called a garnishee order, requires the account in which the assets are held to be known, which might be difficult. Will the minister also address the circumstance in which assets are within neither the English nor the Scottish system?

Finally, does the minister accept that, although imprisonment is a punishment for the landlord, it offers no remedy for the tenant?

Allan Wilson: I have a sense of déjà vu about this in some respects. We have gone into a range

of remedies, and Stewart Stevenson picks on a particular one and seeks to minimise its impact. I believe that the range of remedies that I have described at some length over some three or four weeks now provides a sufficient safeguard to the vulnerable tenant farmer in any of the circumstances that Fergus Ewing has outlined. An additional absolute right to buy, particularly for tenant farmers who have no capital assets against which to borrow or purchase, serves no additional purpose.

19:45

Stewart Stevenson: Does the minister accept that, although we have a range of punishments against the landlord, there is a lack of effective remedies for the tenant?

Allan Wilson: No, I do not accept that. If I accepted that now, I would have accepted it three or four weeks ago.

Fergus Ewing: In winding up, I will try to restrict myself to the minister's remarks. Amendment 159 is purely to deal with situations involving bad landlords. It would affect only bad landlords who persistently failed to remedy breaches as declared by a court of law. If we want to rid Scotland of bad landlords of secure heritable tenant farms, this is the way to do it. The existing law does not allow for that: at the end of the legal process, the tenant is still stuck with the bad landlord. I fail to see how that is in the public interest.

The minister spent quite a lot of time developing the argument that a tenant who has no capital assets against which to borrow or who has little financial strength would be unlikely to wish to avail himself of the remedy that the amendment would provide. I fail to see why the minister should assume that we are talking about tenant farmers who are impecunious—that is not suggested in the amendment. I would not go so far as to say that that is patronising, but there is nothing whatever in the amendment to say that it would affect only tenant farmers with no money.

Perhaps the minister uses that argument because he somehow thinks that that type of tenant farmer would not go to court. I can tell him that a great many people will not want to go to court, not because they have no money, but because they do not want to lose what money they have left. They might be reasonably provided for in terms of their retirement and their personal assets, but everybody knows that court actions involve great risks. If someone loses, they normally have to pay expenses, which can be an extremely onerous undertaking. One of the witnesses who gave evidence at stage 1, a farmer from the Black Isle, talked about court costs of more than £100,000. That is a real deterrent.

As Stewart Stevenson argued, the mere existence of the provision that amendment 159 would introduce would be an effective compulsitor to good behaviour. If we are left with bad landlords, surely we must provide a remedy by which to bring unacceptable and disastrous relationships to an end.

The Convener: The question is, that amendment 159 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
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)
McGrigor, Mr Jamie (Highlands and Islands) (Con)
Morrison, Mr Alasdair (Western Isles) (Lab)
Oldfather, Irene (Cunninghame South) (Lab)
Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
Smith, Elaine (Coatbridge and Chryston) (Lab)

The Convener: The result of the division is: For 5, Against 6, Abstentions 0.

Amendment 159 disagreed to.

Section 75—Orders and regulations

Amendment 188 moved—[Allan Wilson].

The Convener: The question is, that amendment 188 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

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

AGAINST

Fergusson, Alex (South of Scotland) (Con)
McGrigor, Mr Jamie (Highlands and Islands) (Con)

The Convener: The result of the division is: For 9, Against 2, Abstentions 0.

Amendment 188 agreed to.

Amendments 160 and 161 not moved.

Section 75, as amended, agreed to.

Section 76 agreed to.

Section 77—Meaning of "family"

Amendment 162 moved—[Fergus Ewing].

The Convener: The question is, that amendment 162 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

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

AGAINST

Fergusson, Alex (South of Scotland) (Con)
McGrigor, Mr Jamie (Highlands and Islands) (Con)

The Convener: The result of the division is: For 9, Against 2, Abstentions 0.

Amendment 162 agreed to.

Amendment 163 moved—[Allan Wilson]—and agreed to.

Section 77, as amended, agreed to.

Amendment 164 moved—[Allan Wilson]—and agreed to.

Sections 78 to 80 agreed to.

Schedule

AMENDMENTS TO ENACTMENTS

Amendment 65 moved—[Allan Wilson]—and agreed to.

Schedule, as amended, agreed to.

Long title agreed to.

The Convener: I thank all members for the way in which we have conducted the business this afternoon. I particularly want to thank the hard core in the gallery, if I may call them that, who have showed commendable constraint during what has been an emotive afternoon. Thank you for your attendance.

Elaine Smith (Coatbridge and Chryston) (Lab): Before you close, convener, I have some comments to make.

The Convener: I will give you the opportunity to do so. First, let me say that that ends stage 2 consideration of the bill. I am sure I speak for the whole committee when I commend the clerks on the work that they have done. They have been under great pressure on many occasions, and have dealt with that commendably.

The bill will be reprinted as amended at stage 2, and will be available tomorrow. It will then be open to members to lodge amendments for stage 3. No date has yet been set for stage 3. Details will be announced in the business bulletin in due course.

Elaine Smith: I hope that the committee has not set a precedent in saying that we would continue today until we were finished. That would be dangerous for staff and members in a family-friendly Parliament. Those with child-minding or other caring commitments might have problems with the arrangements, and this was not intended to be the nature of the Parliament, which was set up in a family-friendly manner. Some members also have to travel, although for those members who stay in Edinburgh, the arrangements might not matter too much.

Also, we do not know what kind of dietary problems members might have, and to sit from 2 o'clock until nearly 8 o'clock with absolutely no food is not acceptable. The heating has also gone off—it is freezing in this chamber. In fact, we would probably be calling in the union if we had any kind of collective bargaining agreement for members.

Those points should also be made on behalf of parliamentary staff, the minister and Executive staff. I hope that a precedent has not been set in the Parliament.

The Convener: Elaine Smith is quite entitled to put those points on the record, although it has always been made clear that these are exceptional circumstances.

Mr Rumbles: I agree entirely with Elaine Smith that this is supposed to be a family-friendly Parliament. However, we must remember that some of us travel a great distance to be here, and it is better to do the work in one session, rather than come back on another day, when families are affected even more.

The Convener: If it is any consolation to the people in the gallery and to Elaine Smith, we now have what can justifiably be called the world record for the longest sitting of any parliamentary committee. That may not be worthy of huge congratulations, but it is worthy of note. On that happy note, I close the meeting.

Meeting closed at 19:53.

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