MEETING OF THE PARLIAMENT

Wednesday 3 May 2000
(*Afternoon*)

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Scottish Parliament

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[THE DEPUTY PRESIDING OFFICER *opened the meeting at 14:30*]

Time for Reflection

The Deputy Presiding Officer (Mr George Reid): The first item of business is time for reflection, which will be led by Reverend Rachel Dobie, minister of the parishes of Upper Tweeddale.

Reverend Rachel J W Dobie (Minister of the Parishes of Upper Tweeddale): Once upon a time, so the story goes, when humankind was very new, the custom arose of putting spectacles on all newborn babies. No one knows why it was done, but the effect was to distort colours so that black appeared white and red appeared green. They also distorted shapes, so that fat appeared thin, near became far, and so on. Most alarming was that slight variations were applied to the lenses according to social and cultural origin, so that groups of people began to see one another as horrible or superior, and so quarrelling began, even in public places. However, the custom of wearing the spectacles became universal, and in time, people hardly realised that they were wearing them at all. Sadly, no control was ever introduced regarding the variations that could be made to the lenses, and so in time, the world was filled with the sound of quarrelling, hatred and even warfare.

But then there was born a baby who would not wear the spectacles. He saw people as they really were, and they appeared to him so alike. They had the same needs, fears and desire to be loved, and although they addressed God by different names, they were in one sense all his children. So what he saw as he grew up shocked and distressed him. He tried to teach people, and many listened, moved by what he had to say:

"Love your enemies, do good to those who hate you, bless those who curse you and pray for those who ill-treat you. Do not judge others and God will not judge you; do not condemn others and God will not condemn you. Forgive others and God will forgive you."

Most of those who heard him found that what he said made sense, and they tried to follow him and put into practice what he taught, but others were infuriated. It challenged their way of life, and they insisted that they were not all the same, and how could everyone be equally loved and equally valued in the eyes of God? So they hated him. Suddenly they were united in one single aim to be rid of him and all he stood for, and they crucified him.

Although evil was overcome, sadly the spectacles that are described in this Indian parable are still worn in some measure by all of us. As we look back over two millennia, we can see how intolerance on the grounds of race and gender has been outlawed and attitudes have changed, but we still tend to view matters from the point of view of our own interests and prejudices. Political and religious leaders have recently acknowledged past wrongs, and endeavoured to set new standards nationally and internationally, but still situations are allowed to develop that permit injustice to gain the upper hand. We still have a long way to travel.

My prayer for those who are in a position to exercise leadership, to formulate legislation, is this. That we may always be ready to stand beside the oppressed and the victims of injustice. That we may have the courage to speak out against what seems to fly in the face of truth. That we may learn to act with foresight, rather than react with hindsight. Much has changed since the calls to crucify, but much still calls out for change.

May God's blessing rest on your work this week and always. Amen.

Abolition of Feudal Tenure etc (Scotland) Bill: Stage 3

The Deputy Presiding Officer (Mr George Reid): The next item of business is consideration of business motion S1M-798, in the name of Mr Tom McCabe on behalf of the Parliamentary Bureau, on the timetabling of stage 3 of the Abolition of Feudal Tenure etc (Scotland) Bill. I ask any member who wishes to speak against the motion to press their request-to-speak button now.

Motion moved,

That the Parliament agrees that the time for consideration of Stage 3 of the Abolition of Feudal Tenure etc. (Scotland) Bill be allotted as follows, so that debate on each part of the proceedings, if not previously brought to a conclusion, shall be brought to a conclusion on the expiry of the specified period (calculated from the time when Stage 3 begins)—

Section 1 to section 15 – up to 1 hour

Remainder of the Bill – up to 2 hours

Motion to pass the Bill – no later than 2 hours 30 minutes.—[*Mr McCabe*.]

The Deputy Presiding Officer: No member has asked to speak against the motion.

The question is, that motion S1M-798, in the name of Mr Tom McCabe, be agreed to.

Motion agreed to.

The Deputy Presiding Officer: Before we begin stage 3 proceedings on the Abolition of Feudal Tenure etc (Scotland) Bill, I want to say a few words about the procedures that will be followed. Members will be becoming familiar with them. We will first deal with amendments to the bill and then move to a debate on the question that the bill be passed. For the first part, members should have to hand SP bill 4A, as amended at stage 2; the marshalled list, which contains all amendments that have been selected for debate; and the groupings that I have agreed.

Amendments have been marshalled in the order in which they relate to the bill; that is, all the sections in order followed by all the schedules in order. I will call each amendment in turn, in the order in which they appear on the marshalled list. Amendments will be debated in groups where appropriate. Each amendment will be disposed of in turn. An amendment that has been moved may be withdrawn with the agreement of members present.

The electronic voting system will be used for all divisions; I have decided to allow an extended voting period of two minutes for the first division in each group of amendments. I propose to allow amendments that are consecutive on the marshalled list and which have already been debated to be moved as a block. If members are content, I will put a single question on amendments moved in that way. We will move to the marshalled list.

Christine Grahame (South of Scotland) (SNP): The best laid plans of mice and men, Deputy Presiding Officer—on a point of order. I wrote to Sir David Steel on this matter, which relates to amendments that are submitted but rejected as inadmissible. I accept the position under the standing orders, but seek your guidance on the procedures for changing the standing orders so that amendments that are put forward and rejected are published, with the reasons for the rejection, and on whether the Procedures Committee might consider a method whereby, if the member wants to press on with the amendment, it can be put to the chamber. I accept the ruling under the standing orders, but there is room for change.

The Deputy Presiding Officer: All I can say is that you have accepted that the Presiding Officer ruled in terms of the standing orders, so I cannot accept that as a point of order. The rules are clear that it is for the Presiding Officer to determine issues of admissibility at stage 3, and only if that is done in advance can members prepare for the debate with a clear understanding of the options available. You are free to raise the matter independently with the Procedures Committee if you so wish.

Section 2—Consequences of abolition

The Deputy Presiding Officer: We move now to the marshalled list of amendments. I call amendment 1, which is grouped with amendments 37 and 13.

14:38

Roseanna Cunningham (Perth) (SNP): Amendment 1 is a paving amendment for the substantive amendment in this group, amendment 37. I will begin by reading the effective parts of amendment 37 because it is important that we establish that what is being suggested is that

"on the appointed day the rights of the Crown and the Prince and Steward of Scotland to create a new feudal estate, to charge a feu duty and to enforce a feudal burden are abolished; but nothing in this Act shall be taken to supersede or impair any other property rights or interests held by virtue of the ultimate superiority of the Crown or the superiority of the Prince and Steward of Scotland for and on behalf of the public interest."

A subsection follows.

It is important to stress that the amendment arises directly out of the long-running debate about where the public interest lies once we move

to a system of absolute ownership. This is the first and certainly the last time when members will see me on my feet arguing for the retention of anything to do with the Crown. I emphasise that this debate is really about the question of the public interest. We discovered that it would be difficult to have admitted any amendments directed toward the public interest that did not mention the Crown. Therefore, the amendment has to be argued in those terms.

The amendment attempts to ensure that the public's interest in land is provided for explicitly. That aim is supported by many organisations in Scotland, including Land Reform Scotland and the Scottish Land Reform Convention, which is sponsored by, among others, the Convention of Scottish Local Authorities, the Scottish Trades Union Congress, the voluntary sector and the Churches. For example, during a visit to Westminster, the Church of Scotland church and nation committee wished to discuss land reform and its concerns about the introduction of absolute ownership.

Those concerns have not gone away. The Scottish National party favours the inclusion of a provision whereby the public's interest will be explicitly protected. We have argued for a number of years for the reform of Scottish land laws, to give all communities a real say in their future, and we have long wanted an end to feudal tenure. However, we also firmly believe in the sovereignty of the people. The danger is that without such an explicit statement in this or some other bill, creating a system of absolute ownership might cause us difficulties in the future.

In evidence to the Justice and Home Affairs Committee on 29 March, at stage 2, the Executive argued that retention of a Crown right to act in the public interest would mean retaining the feudal system. Nothing could be further from the truth. That is explicitly not the intention of the amendment—a reading of the amendment would reveal that fact.

I heard the Minister for Justice on "Good Morning Scotland" today referring to the iniquities that occur under the present system—he will get no argument from me about that. However, the Executive has argued separately that sections 56 and 58 are sufficiently drafted—presumably, the Executive will continue to argue that, even if its amendment is agreed to today—for the purpose of public interest. On 15 March, the Deputy Minister for Justice told the committee:

"The purpose of the bill . . . is to introduce a system of outright ownership of land."—[*Official Report, Justice and Home Affairs Committee,* 15 March 2000; c 921.]

It would be foolish to propose that that could not lead to danger, especially as the public interest is not explicitly stated anywhere in the bill. If it were, we would not need to make these arguments today. In the context of the bill, the arguments can be made only in terms of potentially remaining Crown rights. I accept that much of the debate in this area is about potential.

During the stage 1 debate, I referred to the opinion of counsel, which I had just received, that

"the Crown owns all land for the benefit of the community of the realm."

I think that

"for the benefit of the community of the realm"

is just another way of saying "in the interest of the public". It was also his opinion that section 56 did not save any rights of the Crown in or over the land held for the benefit of the community. Neither was he of the view that the law is clear as to which rights over land derive from the royal prerogative and which from the paramount superiority. Specifically, counsel was not clear about the category that the regalia majora and the regalia minora fall into—I do not want members to fall asleep, as this is important.

The Scottish Law Commission discussion paper, which was published in July 1991, noted:

"The origins of the Crown's rights to the regalia both minora and majora are uncertain and the extent of these rights has never been clearly defined. Accordingly, we cannot be sure that an unqualified abolition of the paramount superiority would not affect the crown's right in the regalia."

The Law Commission is to be congratulated on recognising the vagueness that lies at the heart of the present system. The amendments seek to recognise the truth of the extent of that vagueness. The express view of many is that public interest had indeed been part of the Crown's remit. If we accept, as I think that we must, that the present rights of the Crown are vague, we must accept that it is possible that they include the public interest. This may become more important in future. When the Crown legislates through Parliament to control use of the land, what is the basis of that control if a system of absolute ownership has been introduced?

14:45

At the risk of getting Phil Gallie overexcited, that question might not remain entirely academic if there is ever a related challenge under the European convention on human rights. There are problems with the system of absolute ownership in the United States of America. There, owners may demand the right to be compensated by the state Governments for any and all restrictions placed on land use.

Why do we imagine that we will not, sooner or later, find that point being canvassed in a court in

Scotland on some planning matter or other? If that day comes, what will our answer be? It is because of such questions that so many people feel that there should be a general saving provision in the legislation—that is what amendments 1 and 37 attempt.

The Executive has sought to deal with the concerns through amendment 13. That is confined to the specifics of the regalia majora, which the Law Commission has already indicated are very vague, but it is not a general saving amendment, and it is still our view that that is what is required.

I stress again that feudal tenure is to be abolished, and rightly so—that is explicit in amendment 37. Frankly, I would not have minded an abolition of the monarchy bill but, until that comes along, we have to argue in the context of the potential vagueness of the Crown interest in land. That is a vagueness which the Law Commission report of 1991 recognised. I commend that view and amendments 1 and 37 to the chamber.

I move amendment 1.

The Deputy First Minister and Minister for Justice (Mr Jim Wallace): I thank Roseanna Cunningham for lodging her amendments, which give the Parliament an opportunity to discuss one of the more contentious aspects of the legislation. Although this is already much on record, I welcome again her general support for the overall thrust of this bill to abolish the feudal system and all the archaic iniquities that go with it.

The question of Crown rights and the public interest in land has taken up time in the Justice and Home Affairs Committee, and the Executive has received many representations from interested parties. My officials have conducted considerable research and investigation into many of the points raised, including those raised by Roseanna Cunningham in her comments.

The Executive does not accept that the feudal system of land tenure embodies a legal principle whereby the Crown represents public interest in land. Among those who gave evidence to the Justice and Home Affairs Committee was Professor Robert Rennie, professor of conveyancing at the University of Glasgow. He stated unequivocally:

"Currently, as feudal superior, the Crown does not represent the public interest . . . The Crown, as paramount superior, does not own the land for the people; the Crown owns it for the Crown."—[*Official Report*, *Justice and Home Affairs Committee*, 9 November 1999; c 366-67.]

It has been asserted that the public interest in land is inherent in the feudal system, and that it should be retained. I think, however, that it is incumbent on those who make that case to give a few concrete examples of how the concept of public interest in land has manifested itself, not just over recent years but over recent centuries. In spite of the many arguments put forward, there has not been any specific or concrete example of how that has worked out in practice.

This is an important point because the public interest is important, but I suggest that there are a number of ways in which the public interest in land and what is done to it can be vindicated without having somehow to import the concept of the ultimate superiority of the Crown.

Here we are in a Scottish Parliament that is about to celebrate its first anniversary—a demonstration of democracy in a modern Scotland. As a Parliament, we can take action and pass legislation to vindicate or assert the public interest in relation to land. It is well known that the Executive will introduce legislation to provide a right of responsible access to land, and to provide a community right to buy in respect of land. The Executive has measures in place for the protection of our natural heritage. Sites of special scientific interest are designated, and legislation is on its way for the designation of national parks. Our local authorities are also democratically elected institutions that can exercise a protection of the public interest in relation to land. They frequently do so through the mechanism of the planning system.

There are a number of ways in which elected bodies such as this Parliament can protect and assert the public interest in land, without our having to plead in some way or another to our misty history and some notion of the Crown that, in practice, has never been shown to exist.

Roseanna Cunningham: I do not for a minute disagree with the examples that the minister gives of elected bodies protecting the public interest. However, does he accept that his argument could equally be made about the Governments of the states in the United States of America? The argument does not stop them being challenged, and does not stop compensation being demanded from them in a way that I think we would be laying ourselves open to here.

At the moment, the Parliament in the United Kingdom works as the Crown through Parliament. I wish to remove that and replace it with something else entirely, but we have not done so yet. However, if we remove the protection in respect of land ownership, where will protection lie if there is a challenge? If we are not careful, any planning or conservation legislation could be challenged under the European convention on human rights.

Mr Wallace: Roseanna Cunningham properly refers to the ECHR. Any legislation, any act, that this Parliament passes, and any action of the Executive or—from 2 October—of any public body

in Scotland, in relation to land or anything else, will be subject to the requirements of the ECHR. Even if we retained the feudal system, it would not be open to Parliament to expropriate or even—

Roseanna Cunningham: I must ask the minister not to misrepresent what I said. I have explicitly stated on at least three occasions this afternoon alone that these amendments are not about retaining the feudal system.

Mr Wallace: The first thing that I did was to acknowledge that; I was simply considering an extreme example. Even if we were to retain the feudal system, or even if we were to retain the ultimate superiority of the Crown—and I repeat the point that no one has yet come up with any specific examples of where this so-called protection of public interest has been put into practice—it would not be open to this Parliament to expropriate property without compensation, other than in exceptional circumstances.

Ms Cunningham made the point about outright interest and direct ownership, which she felt would open us up to all sorts of possible challenges. When she thinks about it, she will recall that land in Orkney and Shetland has been held udally since Orkney and Shetland became part of Scotland in 1469. As far as I am aware—and I might be giving my constituents ideas—although there was no direct feudal relationship with the Crown, no challenges were made during those 530-odd years. Although I acknowledge the sincerity with which the point has been argued by Ms Cunningham and others, it does not appear to have any real substance.

Amendment 13, in my name, is intended to address the point that Roseanna Cunningham picked up from the Scottish Law Commission's report regarding the regalia majora and the regalia minora. For the avoidance of doubt, the purpose of the amendment is to address the concerns that were expressed by the Scottish Law Commission.

The regalia majora cannot be sold or alienated by the Crown. They include rights to the sea bed in respect of public rights of navigation and fishing; rights on the foreshore in respect of public navigation, mooring boats and fishing; and rights in the water and bed of navigable rivers, again in respect of navigation. The amendment puts it beyond any doubt that all of those are preserved as part of the Crown prerogative.

The regalia minora are property rights that the Crown may exercise as it pleases and that it can alienate. They include ownership rights on the foreshore and on the sea bed; rights to treasure and lost property; rights in gold and silver mines; and rights in wrecks, among other rights.

When we have considered the matter, the main difficulty has been that there has been uncertainty. In relation to regalia minora, or property rights that are capable of alienation by the Crown, we believe that if they have not been alienated by the Crown, they have never entered the feudal system, and so would be unaffected by abolition. If they have been sold prior to the appointed day of abolition, section 2 will convert the present vassal's interest into simple ownership.

On the other hand, the regalia majora include the Crown's rights in the sea and on the sea bed, and all the other rights that I mentioned. They could not be abolished by the bill because they were not capable of alienation. If they were constituted as burdens on land, they will survive to the extent that they are maritime burdens, which are covered in section 58. There is some authority that the regalia majora are derived from prerogative—if that is the case, they would fall within the existing saving section 56 regarding powers exercisable by virtue of the prerogative.

Amendment 13 tries to clarify the situation, in view of the uncertainty that has been expressed. In accordance with rule 9.11 of the standing orders, I wish to advise Parliament that Her Majesty, having been informed of the purport of amendment 13, has consented to place her prerogative and interests, so far as they are affected by the bill, at the disposal of Parliament for the purposes of the bill.

I must emphasise that the Executive does not believe that there is any real substance to amendment 37 because we do not believe that there are any other property rights or interests that are held by virtue of the ultimate superiority of the Crown, beyond those that the bill seeks to abolish at the same time as the rights of feudal superiors. It is the Executive's intention to abolish the Crown's ultimate superiority, along with all other superiorities and vestiges of the feudal system. To do anything else could frustrate the introduction of the system of simple ownership of land that will result from the abolition of feudal tenure.

If Parliament passes the amendment in the name of Ms Cunningham, that might create uncertainty and might also lead to litigation in future. That could bring about consequences that were not intended by those who support the amendment in good faith.

The amendment in Ms Cunningham's name also appears to suggest that the superiority of the Prince and Steward may include property rights and interests that are held for or on behalf of the public interest. That is an extension of the argument that ultimate superiority of the Crown embodies the public interest in land. The Executive believes that the Prince has no special legal status in that regard.

A further difficulty is that the amendment that

has been lodged by Ms Cunningham suggests that all Crown rights to enforce a burden should be abolished on the appointed day. The policy of the bill is to treat the Crown as it treats other superiors. The Crown—in common with all superiors—will be able to retain burdens in certain categories, for example, neighbourhood burdens.

Maritime burdens can be enforced by the Crown only. If Parliament accepted Roseanna Cunningham's amendment, there might be some doubt whether the Crown would be able to enforce such burdens. As the thrust of the amendment seems to be to preserve any right that is held in the public interest, it seems to be illogical to put at risk the necessary burdens that safeguard piers and harbours in the public interest.

What is being argued for in Ms Cunningham's amendment has no substance. The bill—combined with amendment 13, to which I have referred—will preserve any Crown interests that we want to preserve. There is public interest, which is vindicated by established bodies such as this democratically elected Parliament, local authorities and Westminster. Harking back to the Crown by means that have never been properly established does not form a part of our seeking a property law for Scotland for the 21st century.

The Deputy Presiding Officer: Six members wish to speak. As we have a tight time scale, members should keep their remarks brief and to the point.

Pauline McNeill (Glasgow Kelvin) (Lab): This is one of the interesting parts of today's debate. It is important that Parliament has an opportunity to air the issues that have been raised, and I thank Roseanna Cunningham for providing that opportunity.

In committee, I did not want to let this point go because the general populace's perception is that public interest in land is important. The problem is how to retain public interest in land and, having investigated the matter, I am clear that that cannot be done through the bill as it stands.

There is much confusion about the technical nature of some of that which relates to the rights of the Crown, which has a number of rights relating to land. Those rights are not only as the feudal superior, but are similar to the rights of Government in regard to the Succession (Scotland) Act 1964, which gives the right to the Crown to claim land when there is no heir to an estate. That can be done without the Crown being the paramount feudal superior.

The debate about the regalia minora and regalia majora is important. If one asks lawyers to agree about the matter, they cannot. They cannot agree whether the Crown has all its powers as a result of its prerogative, or as a result of its being the paramount feudal superior.

15:00

It is important, for the avoidance of any doubt as to where the powers of the Crown lie, that there is a section in the bill that is an avoidance of doubt measure. I am not over the moon with the wording of amendment 13, but I accept that it is an avoidance of doubt measure.

Public interest in land is an important issue for Parliament. I hope that the minister will at least concede that we must have further debate about how we can enshrine the public interest in land, whether it is through planning law, environmental protection law or any other aspect of law.

The idea that anyone has absolute ownership of land is nonsense; aviation rights and other rights will interfere with ownership of the land. All that we will do with the bill is sweep away feudal rights. Many acts of Parliament will still interfere with anyone's absolute ownership of land.

I will make a final comment about the Black Cuillin—I am sure that it will not be the last word on that matter today—to illustrate the point about the public interest in land. There is some doubt over the title to the Black Cuillin. It is for groups who are involved to make the case. Should it be that MacLeod 29th clan chief of MacLeod does not have title to the Black Cuillin, the point is that it will revert back to the Crown, not as feudal superior, but because it owned it in the first place. It is important to have the debate and I am tempted to go down that road, but it is a red herring to say that we can retain public interest in land by supporting amendment 1.

I urge Parliament to support amendment 13. Let us have more debate about public interest in land, because it is important.

Phil Gallie (South of Scotland) (Con): It is sad that this is the last time that Roseanna Cunningham will defend the interests of the Crown. I wonder if it is also the first time that she has promoted the interests of the Crown.

I am marginally surprised that Roseanna Cunningham has pursued this argument, given our discussions in the Justice and Home Affairs Committee. Robin Callander expressed the view that there is a tendency towards his belief that all land should be, in effect, in public ownership. That seems to cut across this whole aspect of the bill. We support that aspect, as we will show in offering our support for the bill at the end of the debate.

Robin Callander's argument was countered by the Scottish Law Commission, which was set the task of reforming feudal law by a Tory Government in 1991, and by Professor Rennie, as Jim Wallace mentioned.

After paying considerable attention to the comments that were made, the committee decided that retaining the Crown as paramount superior was the preferred way forward.

On public interest in land, Roseanna Cunningham talked about absolute ownership. We must examine the input of the Parliament and local authorities in the way that land is used. There is still an overriding authority from a public interest viewpoint, but ownership goes undisputed.

Roseanna Cunningham: Will Mr Gallie point me to where precisely that will be enshrined in law, once the present system is abolished?

Phil Gallie: The Conservatives may well not support the land reform bill, but public interest will be very much enshrined in that bill; I am sure that the minister would endorse that. There is no doubt that planning law is established to look after public interest; that would be another means of enshrining it.

The Justice and Home Affairs Committee's report on stage 1 of the bill commented that in January 1991, the SLC expressed doubts, but by February

"the Commission no longer considered that 'as a matter of technique, it is necessary or desirable to preserve the Crown's paramount superiority in order to achieve the objectives set out'".

The Law Commission seems confident that the interests of the public, as well as the interests of individuals, have been looked after. Members of the Conservative party are persuaded that amendment 13, in the name of the minister, should receive our support, at the expense of amendments 1 and 37.

Christine Grahame: I will try to be brief, because I see members keeling over and eyes glazing as we get into the minutiae of this issue. After the Justice and Home Affairs Committee debated the bill in April, I received a helpful letter from Angus MacKay, in which he advised that the Executive's amendment was for the "avoidance of doubt". That is the problem—there is still doubt. It is buried in the second paragraph of his letter, in which he states:

"The general approach of the Bill is to treat the Crown like any other feudal superior."

There is the rub: the Crown is not like any other feudal superior, but is the ultimate superior. That means that we are dealing with a one-off, unique position.

There has been talk of the opinion that was given by Professor Rennie, but—I do not know whether it is in the red corner or the blue corner—I have Professor Gretton. I get quite excited about this stuff, but professors of conveyancing can knock even me into a glazed state. In the "Stair Memorial Encyclopedia", Professor Gretton states

"in feudalism, landownership and sovereignty coincided, so that the Crown sovereignty over Scotland and its ultimate tenurial superiority were the same thing, identical concept."

It is not correct to say that we are dealing with two clearly separate things—sovereign rights or regalia, and superior rights. We need to deal with the role of the Crown as ultimate superior.

I do not see why the Executive has difficulty with our amendment. The Executive's amendment states the obvious rights of the Crown. I confess that I cannot come up with a concrete example, but I know that there is a public interest for the Crown, as represented not by the monarch but by the Parliament and, ultimately, by the Executive. Amendment 37 makes it plain that those superior rights that are feudal—to charge feuduty, to create a new feudal estate and to enforce a feudal burden—are abolished for the ultimate superior. However, it continues

"nothing in this Act shall be taken to supersede or impair any other property rights or interests held by virtue of the ultimate superiority of the Crown".

The key word is ultimate. The Crown was once like God over land, with all its rights rolled up into one power. When we abolish feudal superiority, we must ensure that we do not abolish the Crown's ability to intervene on behalf of the public interest. I cannot understand why the Executive finds it difficult to accept the amendments, which reserve to the Parliament a right to represent and enforce the public interest.

Gordon Jackson (Glasgow Govan) (Lab): The difficulty is that the amendments are legal nonsense, and have no substance whatever. The bill is meant to abolish the feudal system, but in my view, the amendments in the name of Roseanna Cunningham have nothing to do with the feudal system. They are intended to make a political point about the absolute ownership of land. That is a legitimate argument for the Parliament, but the amendments cannot sensibly form part of a bill that is intended to abolish the feudal system. Roseanna Cunningham may say that she does not want to do anything other than abolish the feudal system. In that context, what meaning does reserving the ultimate superiority for the public interest have?

My recollection of our discussion in committee is the same as Phil Gallie's. Professor Rennie said—in much nicer terms than I will—that what was being proposed was legal gobbledegook. I do not remember Roseanna Cunningham or anyone else arguing with him. He said that the idea of the Crown losing its feudal superiorities, but retaining a right in the public interest, had no meaning.

The public interest needs to be protected. It is protected by the democratic institutions—by

planning authorities, conservation orders and everything that exists to ensure that the democratic will is enforced.

I repeat what Jim Wallace said to Roseanna Cunningham: give us an example of what the proposal means. Christine Grahame said that she could not think of one. None of us can think of one. Roseanna Cunningham told us that there are cases in the United States of America. I have no knowledge of the American legal system, but I cannot think of an argument that could be put up in this country to the effect that, as we cannot stop something bad happening, we will use the Crown's superiority in the public interest.

If we are to support the amendment, Roseanna Cunningham must answer Jim Wallace's question and supply an example—even a hypothetical one—in which the proposal would apply. If she cannot do that, it is an amendment with no substance in reality, as the minister said. I do not want that sort of thing to be included in any bill.

Roseanna Cunningham: I refer Gordon Jackson to my comments about potential challenges under ECHR. Article 1 of ECHR talks about people's right to enjoy their property without interference and ensures compensation if that right is interfered with.

My concern is that we are laying ourselves wide open to challenges. Nowhere else will the basis on which the Parliament makes laws about the restrictions be stated explicitly. A challenge under ECHR would be upheld and—let us face it—the Executive's line on ECHR has been that it cannot predict where the challenges will come from.

Gordon Jackson: I do not want to get involved in a boring legal argument, but my problem is that I cannot see how a challenge under ECHR would be answered by invoking the Crown's right to act in the public interest. The two things do not match.

I cannot for the life of me see the meaning of the amendment. I said that in committee; Professor Rennie also said it, and I see that Phil Gallie, too, is nodding, which is worrying. The amendment seems to have no substance in reality. The Executive amendment tidies up what needs to be tidied up, while the political amendments have no place in the legislation.

Euan Robson (Roxburgh and Berwickshire) (LD): I wish to record that the Liberal Democrat party is not attracted to amendment 1 or 37 and will support neither. The public interest is not best protected by the proposals. We believe that the Crown works for the Crown, and it is not clear to us what supervisory or protective role it would play on behalf of the public interest.

In the politest of manners, Professor Rennie told the Justice and Home Affairs Committee that the amendment is an entirely bogus argument that has no legal foundation.

We believe that the public interest can best be served in the way that Jim Wallace has talked about: through legislation, local authorities and so on. We urge support for amendment 13, which clears up residual doubt.

Mr John McAllion (Dundee East) (Lab): I am not a lawyer, thankfully, and am therefore not qualified to comment on regalia minora or regalia majora. Nor do I have any interest in defending the feudal superiority of the Crown—quite the reverse, in fact. I am interested in the public interest and in the future public ownership of land. I note what Pauline McNeill said about the Crown's other rights, including the right to claim land if there is no heir to the ownership of that land.

I am also interested in the rights of the Parliament. If the Parliament decided to prohibit the sale of the Black Cuillin, or to use compulsory purchase to bring them into public ownership, could the private owner, free of the feudal restrictions of the Crown, appeal under ECHR on the grounds that the Parliament was acting beyond its powers in trying to stop them selling the Black Cuillin for £10 million? If so, there may be substance to amendment 37. However, if the Deputy Prime Minister—sorry, Deputy First Minister—can assure me that that is not the case, I am happy to support amendment 13.

15:15

Roseanna Cunningham: We have here clashing views, which will not be resolved in this debate. However, I ask all members to keep hold of the comments that I made earlier. Ultimately, the debate is about where the public interest lies, and my answer to John McAllion's question is that once we have done away with an explicit ability to act in the public interest, the legislation will be open to challenge.

Everyone refers to planning legislation and so on, but until now, all the legislation that we have dealt with derives from the power of a Parliament that is, in itself, sovereign. However, as the Parliament is not sovereign, which we recognised, we must state explicitly the basis on which the Parliament acts. We need an explicit statement of that position, whether that is given in the Abolition of Feudal Tenure etc (Scotland) Bill or in any of the other land reform bills that are coming up. I would be happy if the minister were to reassure me that such explicit protection of public interest will be in the land reform bill. However, thus far, I have not heard that—I have heard nothing. We may have heard the arguments of one professor versus those of another professor, but where does the concept of the public interest lie if we do away

with amendment 1? There is no answer to that.

The Deputy Presiding Officer: The question is, that amendment 1, in the name of Roseanna Cunningham, be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Adam, Brian (North-East Scotland) (SNP)
Campbell, Colin (West of Scotland) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Elder, Dorothy-Grace (Glasgow) (SNP)
Ewing, Dr Winnie (Highlands and Islands) (SNP)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Ewing, Mrs Margaret (Moray) (SNP)
Fabiani, Linda (Central Scotland) (SNP)
Grahame, Christine (South of Scotland) (SNP)
Hamilton, Mr Duncan (Highlands and Islands) (SNP)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
Lochhead, Richard (North-East Scotland) (SNP)
MacAskill, Mr Kenny (Lothians) (SNP)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
Matheson, Michael (Central Scotland) (SNP)
McGugan, Irene (North-East Scotland) (SNP)
McLeod, Fiona (West of Scotland) (SNP)
Neil, Alex (Central Scotland) (SNP)
Paterson, Mr Gil (Central Scotland) (SNP)
Quinan, Mr Lloyd (West of Scotland) (SNP)
Robison, Shona (North-East Scotland) (SNP)
Russell, Michael (South of Scotland) (SNP)
Sturgeon, Nicola (Glasgow) (SNP)
Swinney, Mr John (North Tayside) (SNP)
Ullrich, Kay (West of Scotland) (SNP)
White, Ms Sandra (Glasgow) (SNP)

AGAINST

Baillie, Jackie (Dumbarton) (Lab)
Barrie, Scott (Dunfermline West) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brown, Robert (Glasgow) (LD)
Canavan, Dennis (Falkirk West)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Davidson, Mr David (North-East Scotland) (Con)
Douglas-Hamilton, Lord James (Lothians) (Con)
Eadie, Helen (Dunfermline East) (Lab)
Fergusson, Alex (South of Scotland) (Con)
Finnie, Ross (West of Scotland) (LD)
Galbraith, Mr Sam (Strathkelvin and Bearsden) (Lab)
Gallie, Phil (South of Scotland) (Con)
Gillon, Karen (Clydesdale) (Lab)
Godman, Trish (West Renfrewshire) (Lab)
Goldie, Miss Annabel (West of Scotland) (Con)
Gorrie, Donald (Central Scotland) (LD)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (Edinburgh Pentlands) (Lab)
Home Robertson, Mr John (East Lothian) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Jackson, Gordon (Glasgow Govan) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)
Johnston, Nick (Mid Scotland and Fife) (Con)
Johnstone, Alex (North-East Scotland) (Con)
Kerr, Mr Andy (East Kilbride) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lyon, George (Argyll and Bute) (LD)
Macdonald, Lewis (Aberdeen Central) (Lab)
Macintosh, Mr Kenneth (Eastwood) (Lab)
MacLean, Kate (Dundee West) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
McAllion, Mr John (Dundee East) (Lab)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)
McConnell, Mr Jack (Motherwell and Wishaw) (Lab)
McGrigor, Mr Jamie (Highlands and Islands) (Con)
McIntosh, Mrs Lyndsay (Central Scotland) (Con)
McLeish, Henry (Central Fife) (Lab)
McLetchie, David (Lothians) (Con)
McMahon, Mr Michael (Hamilton North and Bellshill) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Murray, Dr Elaine (Dumfries) (Lab)
Oldfather, Irene (Cunninghame South) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Peattie, Cathy (Falkirk East) (Lab)
Radcliffe, Nora (Gordon) (LD)
Raffan, Mr Keith (Mid Scotland and Fife) (LD)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
Scott, John (Ayr) (Con)
Scott, Tavish (Shetland) (LD)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, Iain (North-East Fife) (LD)
Smith, Margaret (Edinburgh West) (LD)
Stephen, Nicol (Aberdeen South) (LD)
Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
Thomson, Elaine (Aberdeen North) (Lab)
Tosh, Mr Murray (South of Scotland) (Con)
Wallace, Ben (North-East Scotland) (Con)
Wallace, Mr Jim (Orkney) (LD)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Wilson, Allan (Cunninghame North) (Lab)
Young, John (West of Scotland) (Con)

The Deputy Presiding Officer: The result of the division is: For 27, Against 72, Abstentions 0.

Amendment 1 disagreed to.

Section 9—Calculation of amount of compensatory payment

Amendment 19 not moved.

Section 10—Making compensatory payment by instalments

The Deputy Presiding Officer: Amendment 20 is grouped with amendments 21, 22, 23, 41, 42, 43, 44, 45, 46, 47 and 48.

Mr Jim Wallace: These amendments deal with an issue that the Executive agreed to reconsider during stage 2. The Justice and Home Affairs Committee took the view that, if a former vassal chooses to pay his or her compensation for the loss of feuduty by instalments, he or she should nevertheless be obliged to pay off any outstanding balance if the house is sold. On that subject,

Christine Grahame referred to one of the amendments that she lodged. I hope that these amendments address the points of concern that were expressed in the committee by Christine Grahame and others.

The continuation of instalments after the vassal has ceased to have any connection with his former house seemed to be an unnecessary complication for all parties. The Executive saw the force of that argument and agreed to produce another suggestion at stage 3, which is what amendment 21 does. It is the substantive amendment in this group, and the remaining Executive amendments are consequential. Amendment 21 provides that, if a former vassal sells his or her property after receiving the documentation from the superior offering them the instalment option, he or she will no longer have the option of paying by instalments. This amendment addresses the point that was made by the Justice and Home Affairs Committee, and I ask the Parliament to accept these Executive amendments.

Amendments 43, 44, 45 and 46 are essentially technical and relate to the explanatory note that is appended to the form of notice that is set out in schedule 2, which requires compensatory payment in ordinary cases of the extinction of feuduty.

I am happy to recommend that members accept amendment 48. That amendment is to the notice that will be sent to former vassals, offering them the option of paying compensation by instalments. Although the bill provides for the payment of those instalments on a six-monthly basis, the amendment would point out to vassals that, if they approached their superior, it might be possible to come to a different arrangement. In particular, some former vassals may prefer not to pay six-monthly, as it might be easier for them to budget on a monthly or even weekly basis. Euan Robson's concern about that issue derives from his long experience in the gas industry, which we are eager to learn from. We are happy to recognise that concern, and I hope that the Parliament will agree to amendment 48 as a helpful change to the bill.

I move amendment 20.

Euan Robson: The minister has made the case for amendment 48, which is mine.

Phil Gallie: I welcome the minister's amendments, but express my regret that amendment 2, which was supported by Lyndsay McIntosh and Christine Grahame, was not accepted, principally on the basis that it seemed to cover all the points in the minister's amendments in simple language. I recognise the fact that, within the legal fraternity, there is a need to ensure that everything is kept fairly complicated. I understand why, on that basis, the minister's amendments were accepted.

These amendments fall precisely into line with Tory Government policy going back to 1974, when a Tory Government started off the process of getting rid of the feudal system and the sums due through feudal payments. We very much welcome the instalment option that has been included in this bill, and we recognise that these amendments consolidate the situation in which the feu is cleared at the point of the sale of a premise. We welcome the minister's statements. He has listened to the Justice and Home Affairs Committee and we offer him our support.

Roseanna Cunningham: We, too, welcome this group of amendments. It is important to emphasise that what they avoid is the possibility that people would sell their houses and then traipse off to other parts of the country while still paying instalments that were due under the previous arrangement. Without the amendments, a situation could arise in which folk all over the country might have long-running trails of due instalments behind them. That would be a bizarre situation to get ourselves into if what provoked that was the sale of a house that released the money to pay off the total. Despite Phil Gallie's comment about the amendment's complicated language, it is really a tidy-up provision for the whole system, and I commend the minister for introducing it.

Amendment 20 agreed to.

Amendments 21 to 23 moved—[Mr Jim Wallace]—and agreed to.

Section 11—Service under section 8(1)

Mr Jim Wallace: Very briefly, amendment 24 simply removes a phrase that should have been deleted when section 11 was being amended with section 35 at stage 2 and makes the wording of the first subsection in both sections consistent. Both subsections relate to the sending of documents claiming compensation by registered post or recorded delivery. As the amendment is merely technical, I hope that members will accept it.

I move amendment 24.

Amendment 24 agreed to.

Section 16—Extinction of superior's rights

Phil Gallie: Amendment 3 deletes section 16(2)(c), which creates a retrospective situation for court judgments. The Law Society of Scotland has raised concerns about that matter, and although I do not always agree with that organisation on such issues, I feel that there must be some consistency. The minister himself has always appeared to oppose retrospective law making.

As it stands, the bill removes the superior's rights to enforce a decree that has previously been granted in his favour. I seek the minister's guidance about why, in this case, he advocates retrospective annulment of a court decision and ask him to cite examples of previous similar actions. Does he now think that retrospective legislation is fair, and does this section set a precedent? I suspect that, given those thoughts, he might well decide to accept my amendment.

I move amendment 3.

Christine Grahame: I support Phil Gallie's amendment, because we all know the dangers of retrospective legislation. For example, someone who has reached the stage of receiving a judgment and an award of expenses and of having the account taxed will incur considerable expense if the decree is reduced. Will someone in such a situation receive any compensation? As the issue might have ECHR implications, I seek the minister's assurance that he has considered that possibility.

Mr Jim Wallace: Although I respect the amendments in the spirit in which they have been moved, I ask the Parliament to reject them. Amendment 3 would perpetuate court decrees in relation to feudal burdens beyond the appointed day of abolition, even though the burden itself had been abolished on that day. I should tell both Phil Gallie and Christine Grahame that decrees involving money will not be affected by section 16. Furthermore, the section will not prevent a superior who established his claim for damages on a debt recovering money from the former vassal.

Under the general law, an obligation, once extinguished, is extinguished for all purposes, which means that, when feudal burdens are abolished under the bill on the appointed day of abolition, it should therefore no longer be possible to sue in respect of past breaches. By the same token, even if a decree has been issued by the court before the appointed day on a burden that is extinguished on the appointed day, the feudal burden no longer exists and its effect should cease on that day. Mr Gallie asks whether the section sets a precedent; however, the matter is specifically related to our unusual, but very important, policy decision to abolish the feudal system from an appointed day. If the burden is extinguished on that day, its effect should cease on that day.

15:30

Christine Grahame: That does not pertain for damages, but what about expenses that would accompany an order of the court? Substantial expenses may be awarded. Has the Executive considered that and, if so, what view has been taken? Are there ECHR implications?

Mr Wallace: ECHR is given serious consideration at every point, given our responsibilities as a Parliament and as an Executive of ensuring ECHR compliance. I am sure that if I keep talking long enough in response to the amendment, I might well be able to give a more definitive answer on the specific question of expenses.

It would be intolerable if a superior were able to continue to enforce a burden after abolition by means of a court decree, even though that burden had already been extinguished. A decree for interdict preventing a vassal from breaching a feudal burden is meaningless if it relates to a legal obligation that no longer exists. For example, if prior to feudal abolition a superior could prevent his vassal from building on his land and before the appointed day obtains a court order to prevent him from building, there does not appear to be a good reason why the court order should not fall on the appointed day if the former superior cannot save the burden.

As those who have studied the bill know, it includes provisions on the procedures for saving burdens. It would be contrary to the policy of the bill if every superior in Scotland could go to court the day before the appointed day to try to get court orders to save burdens by the back door. There are procedures for saving burdens.

Phil Gallie: I appreciate what the minister is saying, but I am concerned that, somewhere along the line, someone might have abused a feudal requirement and their superior may have taken them to court and got a judgment—perhaps, as Christine Grahame suggested, with considerable outlay and an onward financial commitment. That does not appear to be covered in the bill and I would like the minister to address that point.

Mr Wallace: As I have already suggested, section 16 will not prevent a superior, with an established claim for damages or a debt, from recovering money. I am happy to confirm that an award of expenses will be a decree for the payment of money and therefore would continue to be enforceable even beyond the appointed day. It would run totally counter to the idea of abolishing the feudal system if an interdict that prohibited a vassal from carrying out a particular operation on his or her land continued when there was no subsisting legal obligation.

Christine Grahame: I do not think that that assists us with the decree of expenses. The section reads:

"any decree . . . pronounced in proceedings for such enforcement".

A decree for expenses would be in those

proceedings and deemed to be reduced. I do not think that we can detach the decree for expenses from the judgment itself.

Mr Wallace: As Christine Grahame well knows, a decree for expenses is a decree for the payment of money and that is preserved. We are discussing decrees of interdict or decrees ad factum praestandum. Our intention is that those should no longer subsist after the appointed day. However, decrees for the award of expenses, being payments of money, should continue to subsist.

As I have said, to allow a superior to continue to benefit from a burden that has ceased to be enforceable would be against the spirit and the policy intention that underlies the bill and to which all parties subscribe. I therefore ask the member to withdraw the amendment. Failing that, I ask Parliament to reject it.

The Deputy Presiding Officer (Patricia Ferguson): The question is, that amendment 3 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division. As this is the first division in this section, there will be two minutes for voting.

FOR

Adam, Brian (North-East Scotland) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Davidson, Mr David (North-East Scotland) (Con)
Douglas-Hamilton, Lord James (Lothians) (Con)
Elder, Dorothy-Grace (Glasgow) (SNP)
Ewing, Dr Winnie (Highlands and Islands) (SNP)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Ewing, Mrs Margaret (Moray) (SNP)
Fabiani, Linda (Central Scotland) (SNP)
Fergusson, Alex (South of Scotland) (Con)
Gallie, Phil (South of Scotland) (Con)
Goldie, Miss Annabel (West of Scotland) (Con)
Grahame, Christine (South of Scotland) (SNP)
Hamilton, Mr Duncan (Highlands and Islands) (SNP)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
Johnston, Nick (Mid Scotland and Fife) (Con)
Johnstone, Alex (North-East Scotland) (Con)
Lochhead, Richard (North-East Scotland) (SNP)
MacAskill, Mr Kenny (Lothians) (SNP)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
Matheson, Michael (Central Scotland) (SNP)
McGrigor, Mr Jamie (Highlands and Islands) (Con)
McGugan, Irene (North-East Scotland) (SNP)
McIntosh, Mrs Lyndsay (Central Scotland) (Con)
McLeod, Fiona (West of Scotland) (SNP)
McLetchie, David (Lothians) (Con)
Monteith, Mr Brian (Mid Scotland and Fife) (Con)
Neil, Alex (Central Scotland) (SNP)
Paterson, Mr Gil (Central Scotland) (SNP)
Quinan, Mr Lloyd (West of Scotland) (SNP)
Robison, Shona (North-East Scotland) (SNP)
Russell, Michael (South of Scotland) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Sturgeon, Nicola (Glasgow) (SNP)
Swinney, Mr John (North Tayside) (SNP)
Tosh, Mr Murray (South of Scotland) (Con)
Ullrich, Kay (West of Scotland) (SNP)
White, Ms Sandra (Glasgow) (SNP)
Young, John (West of Scotland) (Con)

AGAINST

Baillie, Jackie (Dumbarton) (Lab)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brown, Robert (Glasgow) (LD)
Canavan, Dennis (Falkirk West)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Eadie, Helen (Dunfermline East) (Lab)
Finnie, Ross (West of Scotland) (LD)
Galbraith, Mr Sam (Strathkelvin and Bearsden) (Lab)
Gillon, Karen (Clydesdale) (Lab)
Godman, Trish (West Renfrewshire) (Lab)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (Edinburgh Pentlands) (Lab)
Home Robertson, Mr John (East Lothian) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Jackson, Dr Sylvia (Stirling) (Lab)
Jackson, Gordon (Glasgow Govan) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)
Kerr, Mr Andy (East Kilbride) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lyon, George (Argyll and Bute) (LD)
Macdonald, Lewis (Aberdeen Central) (Lab)
Macintosh, Mr Kenneth (Eastwood) (Lab)
MacLean, Kate (Dundee West) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
McAllion, Mr John (Dundee East) (Lab)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)
McConnell, Mr Jack (Motherwell and Wishaw) (Lab)
McLeish, Henry (Central Fife) (Lab)
McMahon, Mr Michael (Hamilton North and Bellshill) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Murray, Dr Elaine (Dumfries) (Lab)
Oldfather, Irene (Cunninghame South) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Peattie, Cathy (Falkirk East) (Lab)
Radcliffe, Nora (Gordon) (LD)
Raffan, Mr Keith (Mid Scotland and Fife) (LD)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
Scott, Tavish (Shetland) (LD)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, Iain (North-East Fife) (LD)
Smith, Margaret (Edinburgh West) (LD)
Stephen, Nicol (Aberdeen South) (LD)
Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
Thomson, Elaine (Aberdeen North) (Lab)
Wallace, Mr Jim (Orkney) (LD)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Wilson, Allan (Cunninghame North) (Lab)

The Deputy Presiding Officer: The result of the division is: For 41, Against 58, Abstentions 0.

Amendment 3 disagreed to.

Section 17—Reallotment of real burden by nomination of new dominant tenement

The Deputy Presiding Officer: We come to amendment 25, which is grouped with amendments 26, 27, 28, 29, 30 and 31.

Mr Brian Monteith (Mid Scotland and Fife) (Con): I will not move 27, but will speak to amendments 25 and 28 and then to amendment 30, as they seek to achieve the same aim in two slightly different ways.

The purpose of my amendments, which have already been the subject of some discussion in committee, is to differentiate between urban and rural land. At committee, the Deputy Minister for Justice accepted that the 100 m rule was arbitrary and that, being so, its application to rural land might not be satisfactory. I would argue that some differentiation is required to satisfy the differences between rural, particularly agricultural, land and urban land.

Maintaining some burdens within 100 m of a designated tenement might work in urban areas, although the figure of 100 m is arbitrary for urban conditions as well, but 100 m is no great distance on agricultural farm land or estates. Amendments 25 and 28 seek to achieve differentiation by describing tenements as being within

"a city, town, village or other predominantly built up area"

and by allowing for the recording of a different distance. That may be a difficult manner in which to differentiate in legal terms, but it is important that we make some attempt to do so at this stage.

Amendment 30 is a similar argument dressed up in a different manner. I am grateful to Maureen Macmillan for raising this issue. She will recognise that my amendment contains two of the three paragraphs that she previously proposed at stage 2. The effect of amendment 30 would be to preserve burdens affecting areas of agricultural land—or what was once agricultural land—for the benefit of adjoining areas of agricultural land.

Within agricultural uses and rural land uses, burdens could take on an entirely different meaning. On urban land, one might find amenities, such as back gardens or buildings of a certain design that have conservation value, being preserved for the benefit of communities. In rural settings, the burdens that we may wish to preserve might affect people's livelihoods and how they go about their business, protecting livestock and ensuring forestry or other rights.

My amendments attempt to bring about some acceptance by the Executive that the 100 m rule—or the 110 yd rule, as some of us might call it—is arbitrary. The Executive should differentiate between, and so recognise, the different lifestyles and commercial activity on the two sectors of land, urban and rural.

I move amendment 25.

Maureen Macmillan (Highlands and Islands) (Lab): As Brian Monteith said, I have had concerns about how the bill will affect agricultural communities. It removes a protection from livestock farmers who, in the past, when they granted a feu for a house on the edge of their farm, would perhaps add a feudal burden to forbid the keeping of dogs so that they would not have the worry of livestock being harassed or killed.

As the minister admitted, this act attempts to protect buildings, but the land itself may sometimes need to be protected. If the land cannot be protected, farmers may be reluctant to release land in rural areas for badly needed rural housing. However, the minister has written to me about this matter, and I accept that it would be difficult to make special provisions at this point for agricultural burdens, as it would open the door to demands from all sorts of special interests.

I accept that to have differing distances between former superior and former vassals applying in urban and in rural areas could lead to the system collapsing in a confusion of definitions about what is an urban area and what is a rural one. I understand, too, that the Executive is committed to re-examining the matter in the context of the Scottish Law Commission's work on real burdens and the representations that it has received on these points.

I understand that part 4 of the bill will not commence until the title conditions bill has been enacted and that the whole issue will be considered again in relation to that bill. Again, I seek the minister's assurance on that point. If I get that assurance, I will not support these amendments.

Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP): I will not support the amendments lodged by Mr Monteith. SNP members sympathise with and advance some of the arguments that Maureen Macmillan has mentioned, and regard them as important. However, the purpose of section 17 is to set out those circumstances in which a superior can continue to enforce title conditions, although he will become a former superior. The legal phrase is that he will be the owner of a dominant tenement.

The effect of Mr Monteith's amendment would be to extend the 100 m rule to 1 km. A former superior would therefore be able to apply, using the notice procedure, to continue the condition in force if he had a habitation or place of resort within 1 km rather than within 100 m. That would extend the power of the former feudal superior, but the purpose of the bill is to try to remove and abolish the feudal system. For that reason, we oppose in

principle Mr Monteith's last-ditch attempt to preserve the vestigial rights of the phantom lairds throughout Scotland, something that the SNP does not support.

15:45

Phil Gallie: I congratulate Brian Monteith on introducing a definition of the difference between the urban scene and the rural one. Such a definition has been lacking in this debate. However, I am disappointed in Fergus Ewing's comments with respect to the kilometre in a rural setting. I would have thought that he, more than most, coming from a north-east rural constituency, would have recognised the differences between rural communities and cities, towns or even villages, where domestic residences tend to be clumped up against one another. In the rural scene, distances between buildings can be quite substantial. It surprises me that Fergus has gone down that line.

I am not sure about our position on Roseanna Cunningham's amendment 29, but it would seem to be an amendment that we should support, given that it introduces the agricultural aspect—an important issue. We urge support for Brian Monteith's amendments. Once again, we urge the minister to take benefit from a definition that Brian has advanced, when few others have been prepared to do the same.

Christine Grahame: I am a bit confused by all the amendments. I do not support Brian Monteith's amendments, partly on the basis of the former superior's rights in retention. However, I have sympathy with the arguments put forward at committee about agricultural land. I should take this opportunity to say that I will not move amendment 29. There is a specific reason for that: on rereading the section, I can see that, by the definition of land in that section, it would be referring to the land that is the dominant tenement. That would be increasing the former superior's rights. I was caught out myself by that.

I am content that a later amendment will deal with the problem of the arbitrary nature of the 100 m rule, which was addressed by Maureen Macmillan. We all tried—including, to be fair, the Executive—to think of a way round this. Fergus Ewing's solution is the one that probably gets closest, because it simply does away with an arbitrary distance and uses other tests. That is a more proper way to proceed.

Scott Barrie (Dunfermline West) (Lab): As Brian Monteith has said, this was discussed in committee at stage 2. He says that 100 m is an arbitrary figure—arbitrary it may be, but it needs to be set at some sort of figure.

My problem with the proposed amendment is that it is not clear what is meant by a city, a town or a village. I may know what those categories mean, and I may be able to decide which of them a community falls within; however, no one else may agree, but I am not sure whether a legal definition exists of what is meant by a village, as opposed to a hamlet, or to agricultural or rural land. Unless a clear distinction is made between what is meant by a built-up area and what is meant by rural land, the amendment is unworkable. That was the committee's conclusion at stage 2, and that remains the case today.

Mr Jim Wallace: This is an interesting group of amendments. They are all concerned with the general subject of neighbourhood burdens; indeed, they were matters that were considered by the committee. I hope that members will bear with me as I go through them carefully, because they raise important issues.

I remind members that the conditions for a neighbour burden, which are set out in the bill, are threefold. First, the dominant tenement, the land that was owned by the superior, must have a permanent building on it. Secondly, that building must be within 100 m of the servient tenement. Thirdly, the building in question must be in use for human habitation or for human resort.

The idea behind neighbour burdens is that amenity, and in particular the amenity of a house or other place of human resort, should be protected. It would have been possible to have called neighbour burdens amenity burdens, but there has been no attempt to define amenity. The thinking behind it is that distance and amenity are interrelated. The distance specified, of 100 m, will generally be sufficient of itself to cover amenity interests.

Amendment 31 seeks to insert a test of amenity. It is not enough that the building to be protected is 100 m away from the servient tenement—or contiguous with its boundary, as Fergus Ewing would have it; it is also necessary that the burden exists specifically to protect the amenity of the building, but the amendment is silent on what amenity means. What is the test, and who is to carry it out? I simply do not believe that it would be practical to apply this amendment.

Amendments 25 to 28 strike at the second criterion for a neighbourhood burden, which is the 100 m rule. Amendment 26 would remove the 100 m rule and substitute a requirement that two areas of land—the dominant and servient tenements—must be contiguous. I can see the attraction in that. As the bill stands, there is a bluntness about the 100 m rule and, as my colleague Angus MacKay accepted in committee, there is a degree of arbitrariness about it.

One can readily see that if there are intervening

properties the owner of the dominant tenement might not have the same interest in the burden as if his land and the servient tenement shared a common boundary, but the difficulty with amendment 26 is that it would be far more arbitrary than the current section 17. The amendment might severely limit the number of burdens that could be saved. For example, if the superior's land were separated from the servient tenement by a road, he would not be able to keep a burden that affected land perhaps only 10 m away.

On the other hand, amendment 26 might widen the effect of the provisions unexpectedly. Some houses are close to the boundaries of their own land, others are not. If the amendment were accepted, a superior living in a house with a large garden might be able to save all their burdens on the land that bounds it. If the garden were on an estate, the land in question could be huge. That would be a lairds charter. I cannot think that that is what Fergus Ewing intended, but I fear that that would be the effect of his amendment.

Amendments 25, 27 and 28 are proposed by Brian Monteith.

Mr Monteith: I will not move amendment 27.

Mr Wallace: Then I will consider amendments 25 and 28, which are also concerned with distance and are aimed at drawing out the distinction between the operation of the bill in an urban setting and in a rural context. They seek to increase the limit on neighbour burdens from 100 m to 500 m in urban areas, and from 100 m to 1 km in rural areas.

In relation to distance criteria, I have said before that any limit—wherever the line is drawn—is in some respects arbitrary. We gave this matter considerable thought and took the view that 100 m was the best figure in the circumstances. I take the view that the figures proposed in the amendments are too high. Stating on the face of the bill that the limit in urban areas should be 500 m would give the wrong impression. A burden could relate to properties that are several streets away and a superior might have no interest in enforcing it. Similar arguments could apply to a distance of 1 km in rural areas, where the burdened land could be a considerable distance away. The amendments are not credible.

A distinction between town and country is a concept with which I have some sympathy. We all instinctively agree that because distances between dwelling houses are much greater in the country than in the town, a householder in the country could have more interest in a burden that affects land that is a greater distance from his home. My difficulty, as Scott Barrie echoed, is that the amendments do not attempt to define terms. The phrase used is:

"a city, town, village or other predominantly built up area".

No one will dispute that where we are at the moment is a built-up area, but is Arthur's Seat a built-up area? What about the green belt on the edge of a city? Where would boundaries fall? Those are practical issues. I appreciate the sentiment that underlies these amendments, but I simply do not believe that they would work.

Phil Gallie: Maureen Macmillan spoke about a letter she received from Mr Wallace, in which he seemed to express concerns about those issues. It seems that the minister is now saying, "Yes, I do have concerns but, irrespective, I am still going to press ahead with this bill." What will the minister do to address the concerns that he has raised?

Mr Wallace: Mr Gallie neatly introduces me to the next section of my speech: amendments 29 and 30 are also concerned with the effect on rural areas.

Christine Grahame: I will not move amendment 29 because of the technical definition of land, which refers to the dominant tenement in this section.

Mr Wallace: Some sort of agricultural burden has been suggested. Maureen Macmillan raised this matter at stage 2 when she moved an amendment. Indeed she explained then, as she has done to Parliament today, that it would be possible for a farmer to feu off a piece of land and put it on a burden that would be aimed at protecting his business. We are dealing with the abolition of feudal burdens. It would still be possible when selling off land in an ordinary disposition—which is not a feudal disposition—to establish a real burden by means of disposition. So as far as the future is concerned, that particular concern does not arise.

Real burdens have been constituted by a simple disposition in some cases and by a feudal disposition in others. Very often it depended on the practice of the solicitor—on whether he or she established the burden by means of a feudal charter. That is why some burdens are being preserved.

Fergus Ewing: Is not the point of principle that gives rise to the difficulty here that section 17 allows feudal superiors, by a mechanism of a notice, to preserve in force conditions and the right to enforce those conditions in certain circumstances? As I heard the Minister for Justice discuss on the radio this morning, that leads to the problem that a homeowner, while selling his or her property, may suddenly find that he or she is being asked to pay for a minute of waiver. Sometimes they are asked for a few hundred pounds; sometimes they are asked for a lot more. That

person will be in a slightly stronger, but none the less very similar, position and therefore vulnerable to—admittedly only a few—rapacious superiors who demand £500,000 because that would be the cost of going to the Lands Tribunal for Scotland. Is the Minister suggesting that that problem will be revisited in further legislation?

Mr Wallace: That is the case. The kind of circumstance that many people have criticised is when a superior emerges from nowhere and people have not previously heard of them. By having the 100 m rule, the chances are strong that the owner of the servient tenement will know the owner of the dominant tenement. The fact that it is a neighbour burden suggests that a very clear and immediate interest is being protected. Outwith the 100 m it would be possible to apply to the Lands Tribunal, but I accept that doing so could be troublesome. We accept those points.

Also relevant are a number of points that have been raised in different circumstances by commercial developers. They have suggested that special circumstances should apply to new commercial developments. They first put their arguments to the Law Commission in the context of its discussion paper on real burdens and have argued that in future they should be allowed to place burdens or title conditions on land that they are developing and, as a corollary, that they should be able to preserve existing feudal burdens of a similar kind. What we call agricultural burdens in the countryside might be thought of as commercial burdens in urban areas.

Because the Law Commission saw that those arguments were substantial and needed to be properly assessed, we decided not to commence part 4 until we can consider its recommendations on title conditions. I emphasis that part 4 will not be commenced until Parliament has had a proper opportunity to consider the recommendations in the title conditions bill. This is important. The conditions by which land is held is significant; we want to think them through carefully and with due attention. The forthcoming consultation on title conditions will allow us to do that. Many points have arisen as a result of the Law Commission's consultation. The Executive will want to consult further once we have its report.

Mr Monteith: The minister says that the titles bill that will be introduced will take into consideration the possibility of agricultural as well as commercial burdens. Will it also address the possible difficulty of differentiating between urban and rural areas?

16:00

Mr Wallace: I do not yet have the Law Commission report. The matters to which I have referred have been raised as part of the consultation. I cannot predict whether differentiation between urban and rural areas will be covered expressly. The further period of consultation that the Executive will want to hold before introducing a bill will be an opportunity for these important issues to be raised in the context of the further work of the Law Commission.

As there will be further consultation on these important matters, I invite the members who have lodged the amendments in this group to consider not pressing them.

Mr Monteith: I seek permission to withdraw amendment 25.

Amendment 25, by agreement, withdrawn.

Amendment 26 moved—[Fergus Ewing].

The Deputy Presiding Officer: The question is, that amendment 26 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Adam, Brian (North-East Scotland) (SNP)
Campbell, Colin (West of Scotland) (SNP)
Canavan, Dennis (Falkirk West)
Cunningham, Roseanna (Perth) (SNP)
Elder, Dorothy-Grace (Glasgow) (SNP)
Ewing, Dr Winnie (Highlands and Islands) (SNP)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Ewing, Mrs Margaret (Moray) (SNP)
Fabiani, Linda (Central Scotland) (SNP)
Grahame, Christine (South of Scotland) (SNP)
Hamilton, Mr Duncan (Highlands and Islands) (SNP)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
Lochhead, Richard (North-East Scotland) (SNP)
MacAskill, Mr Kenny (Lothians) (SNP)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
Matheson, Michael (Central Scotland) (SNP)
McGugan, Irene (North-East Scotland) (SNP)
McLeod, Fiona (West of Scotland) (SNP)
Neil, Alex (Central Scotland) (SNP)
Paterson, Mr Gil (Central Scotland) (SNP)
Quinan, Mr Lloyd (West of Scotland) (SNP)
Robison, Shona (North-East Scotland) (SNP)
Russell, Michael (South of Scotland) (SNP)
Sheridan, Tommy (Glasgow) (SSP)
Sturgeon, Nicola (Glasgow) (SNP)
Swinney, Mr John (North Tayside) (SNP)
Ullrich, Kay (West of Scotland) (SNP)
White, Ms Sandra (Glasgow) (SNP)

AGAINST

Baillie, Jackie (Dumbarton) (Lab)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brown, Robert (Glasgow) (LD)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Finnie, Ross (West of Scotland) (LD)
Galbraith, Mr Sam (Strathkelvin and Bearsden) (Lab)
Gillon, Karen (Clydesdale) (Lab)
Godman, Trish (West Renfrewshire) (Lab)
Gorrie, Donald (Central Scotland) (LD)

Grant, Rhoda (Highlands and Islands) (Lab)
Home Robertson, Mr John (East Lothian) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Jackson, Dr Sylvia (Stirling) (Lab)
Jackson, Gordon (Glasgow Govan) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)
Kerr, Mr Andy (East Kilbride) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lyon, George (Argyll and Bute) (LD)
Macdonald, Lewis (Aberdeen Central) (Lab)
Macintosh, Mr Kenneth (Eastwood) (Lab)
MacLean, Kate (Dundee West) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)
McConnell, Mr Jack (Motherwell and Wishaw) (Lab)
McLeish, Henry (Central Fife) (Lab)
McMahon, Mr Michael (Hamilton North and Bellshill) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Murray, Dr Elaine (Dumfries) (Lab)
Oldfather, Irene (Cunninghame South) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Radcliffe, Nora (Gordon) (LD)
Raffan, Mr Keith (Mid Scotland and Fife) (LD)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
Scott, Tavish (Shetland) (LD)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, Iain (North-East Fife) (LD)
Smith, Margaret (Edinburgh West) (LD)
Stephen, Nicol (Aberdeen South) (LD)
Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
Thomson, Elaine (Aberdeen North) (Lab)
Wallace, Mr Jim (Orkney) (LD)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Wilson, Allan (Cunninghame North) (Lab)

ABSTENTIONS

Davidson, Mr David (North-East Scotland) (Con)
Douglas-Hamilton, Lord James (Lothians) (Con)
Fergusson, Alex (South of Scotland) (Con)
Gallie, Phil (South of Scotland) (Con)
Goldie, Miss Annabel (West of Scotland) (Con)
Johnston, Nick (Mid Scotland and Fife) (Con)
Johnstone, Alex (North-East Scotland) (Con)
McGrigor, Mr Jamie (Highlands and Islands) (Con)
McIntosh, Mrs Lyndsay (Central Scotland) (Con)
McLetchie, David (Lothians) (Con)
Monteith, Mr Brian (Mid Scotland and Fife) (Con)
Scanlon, Mary (Highlands and Islands) (Con)
Tosh, Mr Murray (South of Scotland) (Con)
Wallace, Ben (North-East Scotland) (Con)

The Deputy Presiding Officer: The result of the division is: For 29, Against 55, Abstentions 14.

Amendment 26 disagreed to.

Amendments 27, 28, 29 and 30 not moved.

Amendment 31 moved—[Fergus Ewing].

The Deputy Presiding Officer: The question is, that amendment 31 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Adam, Brian (North-East Scotland) (SNP)
Campbell, Colin (West of Scotland) (SNP)
Canavan, Dennis (Falkirk West)
Cunningham, Roseanna (Perth) (SNP)
Elder, Dorothy-Grace (Glasgow) (SNP)
Ewing, Dr Winnie (Highlands and Islands) (SNP)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Ewing, Mrs Margaret (Moray) (SNP)
Fabiani, Linda (Central Scotland) (SNP)
Gibson, Mr Kenneth (Glasgow) (SNP)
Grahame, Christine (South of Scotland) (SNP)
Hamilton, Mr Duncan (Highlands and Islands) (SNP)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
Lochhead, Richard (North-East Scotland) (SNP)
MacAskill, Mr Kenny (Lothians) (SNP)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
Matheson, Michael (Central Scotland) (SNP)
McGugan, Irene (North-East Scotland) (SNP)
McLeod, Fiona (West of Scotland) (SNP)
Neil, Alex (Central Scotland) (SNP)
Paterson, Mr Gil (Central Scotland) (SNP)
Quinan, Mr Lloyd (West of Scotland) (SNP)
Robison, Shona (North-East Scotland) (SNP)
Russell, Michael (South of Scotland) (SNP)
Sheridan, Tommy (Glasgow) (SSP)
Sturgeon, Nicola (Glasgow) (SNP)
Swinney, Mr John (North Tayside) (SNP)
Ullrich, Kay (West of Scotland) (SNP)
White, Ms Sandra (Glasgow) (SNP)

AGAINST

Baillie, Jackie (Dumbarton) (Lab)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brown, Robert (Glasgow) (LD)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Finnie, Ross (West of Scotland) (LD)
Galbraith, Mr Sam (Strathkelvin and Bearsden) (Lab)
Gillon, Karen (Clydesdale) (Lab)
Godman, Trish (West Renfrewshire) (Lab)
Gorrie, Donald (Central Scotland) (LD)
Grant, Rhoda (Highlands and Islands) (Lab)
Home Robertson, Mr John (East Lothian) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Jackson, Dr Sylvia (Stirling) (Lab)
Jackson, Gordon (Glasgow Govan) (Lab)
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Lamont, Johann (Glasgow Pollok) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lyon, George (Argyll and Bute) (LD)
Macdonald, Lewis (Aberdeen Central) (Lab)
Macintosh, Mr Kenneth (Eastwood) (Lab)
MacLean, Kate (Dundee West) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
McConnell, Mr Jack (Motherwell and Wishaw) (Lab)

McLeish, Henry (Central Fife) (Lab)
McMahon, Mr Michael (Hamilton North and Bellshill) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Murray, Dr Elaine (Dumfries) (Lab)
Oldfather, Irene (Cunninghame South) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Peattie, Cathy (Falkirk East) (Lab)
Radcliffe, Nora (Gordon) (LD)
Raffan, Mr Keith (Mid Scotland and Fife) (LD)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Scott, Tavish (Shetland) (LD)
Smith, Iain (North-East Fife) (LD)
Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
Thomson, Elaine (Aberdeen North) (Lab)
Wallace, Mr Jim (Orkney) (LD)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Wilson, Allan (Cunninghame North) (Lab)

ABSTENTIONS

Davidson, Mr David (North-East Scotland) (Con)
Douglas-Hamilton, Lord James (Lothians) (Con)
Fergusson, Alex (South of Scotland) (Con)
Gallie, Phil (South of Scotland) (Con)
Goldie, Miss Annabel (West of Scotland) (Con)
Johnston, Nick (Mid Scotland and Fife) (Con)
Johnstone, Alex (North-East Scotland) (Con)
McIntosh, Mrs Lyndsay (Central Scotland) (Con)
McLetchie, David (Lothians) (Con)
Monteith, Mr Brian (Mid Scotland and Fife) (Con)
Scanlon, Mary (Highlands and Islands) (Con)
Tosh, Mr Murray (South of Scotland) (Con)
Young, John (West of Scotland) (Con

The Deputy Presiding Officer: The result of the division is: For 30, Against 52, Abstentions 13.

Amendment 31 disagreed to.

Section 19—Reallotment of real burden by order of Lands Tribunal

The Deputy Presiding Officer: We now come to amendment 32.

Fergus Ewing: I should begin with a declaration of interest as a solicitor. However, if amendment 32 is agreed to, it will reduce the work for solicitors, as well as make their lives a bit simpler.

Amendment 32 seeks to clarify that, under section 19, it would not be possible for a superior who applies to the Lands Tribunal for Scotland to argue that there has been a substantial loss or disadvantage, or that that loss or disadvantage has been constituted by the loss of the capacity to receive a payment under the existing system. Payment is frequently made as a matter of custom by feuars, who are often advised by lawyers that it would cost a great deal of money—£500 or £1,000—to apply to the Lands Tribunal.

The person concerned is routinely advised not to go to the Lands Tribunal, but instead to make the payment to the superior to get a minute of waiver. That saves hassle and doubt and removes the problem of homeowners having to take on often wealthy superiors at the Lands Tribunal.

I can give one example that might make the position clear, although this is a technical debate. There are often conditions of title that prevent a homeowner from selling off a third or half an acre, perhaps to allow another house to be built. Farmers or even suburban homeowners may want to sell off part of their plot. They are often advised by their solicitor that there is a condition that prevents them from doing so without permission of the feudal superior. Not infrequently, the superior asks for payment of a substantial amount of money for that purpose. That is the sort of situation that I think we all wish to discourage.

David McLetchie (Lothians) (Con): Does Fergus Ewing acknowledge that some of these rapacious superiors are councils, including councils run by the SNP and the Labour party? As councils are under no obligation to extract payments for permissions for developments that they have already approved as a planning authority, they are extorting money from their citizens. Will he condemn that practice and ask councils to desist voluntarily before this bill becomes law?

Fergus Ewing: I am not sure that David McLetchie could find such examples relating to the one that I am talking about. I am bound to reflect, as I did earlier when Mr Gallie said that the Tories started the process of abolishing the feudal system in 1974, that, thereafter, the Tories seemed to be rather slow starters. In the ensuing years, nothing whatever happened. If Mr McLetchie is now arguing that the Tories accept that amendment 32 should be supported, I would of course welcome that support and that change of heart.

With this amendment, I am suggesting that the artificial rights of property that superiors have enjoyed should come to an end. It should be explicit in the bill that the custom that has developed of superiors' being able to extract payments—often substantial payments—should not be used before the Lands Tribunal as an argument that the test of substantial loss and disadvantage has been met.

I move amendment 32.

Phil Gallie: I have some sympathy with Fergus Ewing on this amendment and align myself with the comments of my colleague David McLetchie, who emphasised the activities of Perth and Kinross Council and City of Edinburgh Council, in whose areas things such as conservatories and house extensions are, in effect, charged for twice.

Roseanna Cunningham: Is Mr Gallie advising us that the Conservative party will instruct

Conservative councillors in the administration of Perth and Kinross Council to desist?

Phil Gallie: Phil Gallie leaves those decisions to councillors. Our party now accepts, and believes in, devolution. Councillors have their own responsibilities and must make up their own minds on such matters.

We have listened to Fergus Ewing. We are also well aware of the many abuses in the private sector, such as when a solicitor's letter arrives at a group of houses that are under one feudal title holder. The letter suggests that, for payments of £200 or £300, all previous moves away from feu conditions can be excluded from any consideration by the superior. We recognise that Fergus's amendment would cover such cases and ensure that no further abuses occur.

Fergus Ewing said that Tories were slow starters in bringing about the end of the feudal system. It is with pride that we note that—without any pain or major aggravation—almost 80 per cent of feudal burdens in Scotland have now disappeared. Some success has come of the moves made in 1974. We also remember that, in 1991, the Law Commission was tasked by the Conservative Government to bring about the ends that are aimed for in this bill. We will talk about that later, no doubt. For the moment, Mr Ewing has our sympathy with amendment 32.

Fergus Ewing: I think that it is feu duties that have been removed, not feudal burdens. That is the point.

Phil Gallie: Yes, indeed.

Fergus Ewing: I am very pleased, in the spirit of the new consensual politics, to receive support from Mr Gallie and his colleagues.

Mr Jim Wallace: Fergus Ewing will, I think, be pleased to know that I agree with the sentiments behind his amendment; indeed, there is widespread agreement on the amendment. The section that he seeks to amend deals with cases heard by the Lands Tribunal in which the superior seeks to save a burden that, under the bill, would otherwise be lost. The tribunal would be able to find in the superior's favour only if it were satisfied that the superior would suffer substantial loss of disadvantage as owner—not as superior—of the land if the burden were to disappear.

The test that Fergus Ewing mentions is one basis on which compensation can be awarded to a superior under the current law when a vassal seeks to have a burden discharged under section 1 of the Conveyancing and Feudal Reform (Scotland) Act 1970. I am sure that it is a test with which Mr Ewing is familiar—he will know that it is a test that the tribunal is used to applying. The tribunal has set its face firmly against awards of compensation for the loss of the right to seek payment for waiver of a burden. The loss or disadvantage that is envisaged by section 19 is loss to the superior or former superior as owner of the land, and not merely the loss of any personal income that has been derived from the charging for the grant of waivers.

I believe that the amendment is unnecessary, as the bill already provides for what Mr Ewing is seeking and what we support. A strict interpretation of the amendment could lead to difficulties that were not intended. It could have the unfortunate effect that if the superior admitted that, prior to the feudal abolition, he would have been able to charge for the waiver of the burden, he might then be barred from saving the burden under section 19, because the amendment suggests that he cannot, in those circumstances, meet the test of substantial loss or disadvantage that the section requires.

I am sure that that is not quite what Fergus Ewing intended. The legitimate and reasonable concern that he raised is met by the scheme. An arrangement has been made for taking such matters to the Lands Tribunal for Scotland, so I hope that he will seek agreement to withdraw the amendment.

16:15

Fergus Ewing: I have listened to what the minister said with great care, but I am not sure that he provided a full explanation of the possible interpretation of my amendment. I am not persuaded that the bill meets my concern and I suggest to the minister that former vassals will continue to be in a weak position. They will also continue to have to ask their former superior—as future owner of the dominant tenement—to waive conditions and they will have to deal with tests of substantial loss or disadvantage. I ask Parliament to make it clear that, when that test is being applied to superiors, they should not be able to argue that they were formerly in receipt of £500 or £1,000 but now have lost that advantage. We are trying to remove such advantage. That is what the amendment would do—let me say, with respect to the minister, that that is why I moved it.

The Deputy Presiding Officer (Mr George Reid): The question is, that amendment 32 be agreed to. Are we all agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Adam, Brian (North-East Scotland) (SNP)
Campbell, Colin (West of Scotland) (SNP)
Canavan, Dennis (Falkirk West)
Cunningham, Roseanna (Perth) (SNP)

Davidson, Mr David (North-East Scotland) (Con)
Douglas-Hamilton, Lord James (Lothians) (Con)
Elder, Dorothy-Grace (Glasgow) (SNP)
Ewing, Dr Winnie (Highlands and Islands) (SNP)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Ewing, Mrs Margaret (Moray) (SNP)
Fabiani, Linda (Central Scotland) (SNP)
Fergusson, Alex (South of Scotland) (Con)
Gallie, Phil (South of Scotland) (Con)
Gibson, Mr Kenneth (Glasgow) (SNP)
Goldie, Miss Annabel (West of Scotland) (Con)
Grahame, Christine (South of Scotland) (SNP)
Hamilton, Mr Duncan (Highlands and Islands) (SNP)
Harper, Robin (Lothians) (Green)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
Johnston, Nick (Mid Scotland and Fife) (Con)
Lochhead, Richard (North-East Scotland) (SNP)
MacAskill, Mr Kenny (Lothians) (SNP)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
Matheson, Michael (Central Scotland) (SNP)
McGugan, Irene (North-East Scotland) (SNP)
McIntosh, Mrs Lyndsay (Central Scotland) (Con)
McLeod, Fiona (West of Scotland) (SNP)
McLetchie, David (Lothians) (Con)
Monteith, Mr Brian (Mid Scotland and Fife) (Con)
Neil, Alex (Central Scotland) (SNP)
Paterson, Mr Gil (Central Scotland) (SNP)
Quinan, Mr Lloyd (West of Scotland) (SNP)
Robison, Shona (North-East Scotland) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Sheridan, Tommy (Glasgow) (SSP)
Sturgeon, Nicola (Glasgow) (SNP)
Swinney, Mr John (North Tayside) (SNP)
Tosh, Mr Murray (South of Scotland) (Con)
Ullrich, Kay (West of Scotland) (SNP)
Wallace, Ben (North-East Scotland) (Con)
White, Ms Sandra (Glasgow) (SNP)
Young, John (West of Scotland) (Con)

AGAINST

Baillie, Jackie (Dumbarton) (Lab)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brown, Robert (Glasgow) (LD)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Finnie, Ross (West of Scotland) (LD)
Galbraith, Mr Sam (Strathkelvin and Bearsden) (Lab)
Gillon, Karen (Clydesdale) (Lab)
Godman, Trish (West Renfrewshire) (Lab)
Gorrie, Donald (Central Scotland) (LD)
Grant, Rhoda (Highlands and Islands) (Lab)
Home Robertson, Mr John (East Lothian) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Jackson, Dr Sylvia (Stirling) (Lab)
Jackson, Gordon (Glasgow Govan) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)
Kerr, Mr Andy (East Kilbride) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lyon, George (Argyll and Bute) (LD)
Macdonald, Lewis (Aberdeen Central) (Lab)
Macintosh, Mr Kenneth (Eastwood) (Lab)
MacLean, Kate (Dundee West) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)
McConnell, Mr Jack (Motherwell and Wishaw) (Lab)
McLeish, Henry (Central Fife) (Lab)
McMahon, Mr Michael (Hamilton North and Bellshill) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Murray, Dr Elaine (Dumfries) (Lab)
Oldfather, Irene (Cunninghame South) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Peattie, Cathy (Falkirk East) (Lab)
Radcliffe, Nora (Gordon) (LD)
Raffan, Mr Keith (Mid Scotland and Fife) (LD)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
Scott, Tavish (Shetland) (LD)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, Iain (North-East Fife) (LD)
Smith, Margaret (Edinburgh West) (LD)
Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
Thomson, Elaine (Aberdeen North) (Lab)
Wallace, Mr Jim (Orkney) (LD)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Wilson, Allan (Cunninghame North) (Lab)

The Deputy Presiding Officer: The result of the division is: For 43, Against 56, Abstentions 0.

Amendment 32 disagreed to.

Section 24—Counter-obligations on reallotment

Mr Jim Wallace: Section 24 refers back to section 22. At present, section 24 does not mention all circumstances in which land may become a dominant tenement following feudal abolition. The purpose of the amendment is to make section 24 consistent with section 22 by including the words

"land to which services are provided"

in the list of interests that are capable of becoming a dominant tenement. It is a drafting amendment, which I hope Parliament will readily agree to.

I move amendment 5.

Amendment 5 agreed to

Section 27—Enforcement of conservation burden

The Deputy Presiding Officer: I call Mr Wallace to move amendment 33, which is grouped with amendments 34 and 35.

Mr Jim Wallace: Again, these are technical amendments. They make it clear that, if a conservation body has registered a notice preserving the right to enforce a conservation burden after the appointed day of abolition, but has conveyed the superiority to another conservation body or to Scottish ministers prior to the appointed day, the successor conservation

body or the Scottish ministers—as the case may be—will be able to enforce the conservation burden after the appointed day. Similarly, if Scottish ministers, as the case may be, have registered a notice that conveyed the superiority to a conservation body prior to the appointed day, that conservation body will be able to enforce the burden after the appointed day.

I move amendment 33.

Amendment 33 agreed to.

Amendments 34 and 35 moved—[Mr Jim Wallace]—and agreed to.

Section 33—Limited transmissibility of right to claim compensation

The Deputy Presiding Officer: We now come to amendment 6, which is grouped with amendments 7 to 11 and 15 to 18.

Mr Jim Wallace: Following further consideration of the views expressed by the Justice and Home Affairs Committee at stage 2, the Executive has accepted that a reserved claim to compensation is a form of property like any other, so it should be able to be bought and sold freely. Amendment 6 gives effect to that change.

The other amendments in this grouping are consequential on that change. Amendment 7 makes it clear that it will not only be the person who registered the notice who can claim compensation, but anyone who subsequently obtains a right to all or part of that claim.

Amendments 8 and 9 are consequential on amendment 10, which provides that an assignee will not be able to recover any more compensation than the person who assigned the reserved right to him could. Section 36(3) provides that any entitlement of the claimant to recover the development value should be taken into account when working out the amount of compensation that can be claimed. It is designed to avoid double counting; amendment 10 should ensure that that principle will not be avoided by the simple act of an assignation of the right to claim compensation.

Amendment 11 sets out the manner in which a reserved right to claim compensation can be assigned to the person entitled to it. In terms of the amendment, an assignation is effected by execution and registration of the assignation. The assignation will be effective on registration, because that amounts to intimation of the assignation. An appropriate form of assignation is provided for in schedule 9. The amendment also makes it clear that it should be possible to assign only part of the right to claim. An assignation of a part of a claim must be expressed as a proportion, or a percentage, of each individual claim that must be made under section 34.

Amendments 15, 16, 17 and 18 make appropriate amendments to schedule 9 to allow for assignation as well as discharge or restriction of reserved rights to claim compensation. Amendment 17 provides a form where only a percentage of each claim is being assigned. Amendment 18 stipulates that links of titles should be set out if the party assigning the right is not the party with the registered entitlement to the right to claim compensation.

As I indicated, the purpose of these amendments was to meet concerns that were raised at stage 2. I hope that they will commend themselves to the Parliament.

I move amendment 6.

Phil Gallie: The Conservatives recognise the importance of the amendments. We welcome the fact that the minister seems to have listened to comments made by the Justice and Home Affairs Committee and others, such as the Royal Institution of Chartered Surveyors.

We want to achieve the maximum use of land, and the amendments will encourage people to sell land knowing that, dependent on development, they could receive compensation in the longer term. Overall, we feel that there are benefits and we compliment the minister.

Roseanna Cunningham: As convener of the Justice and Home Affairs Committee, I welcome the amendments lodged by the Executive. Members will be glad to hear that I do not propose to excite them with any further detail on those amendments.

Mr Monteith: As the original mover of an amendment at stage 2 to achieve what the minister has now achieved at stage 3, I welcome the amendments. They move us to the right position, where we do not restrict trade when there is no obvious victim. I thank him for lodging the amendments.

Mr Wallace: I welcome the welcome.

Amendment 6 agreed to.

Section 34—Claiming compensation

Amendment 7 moved—[Mr Jim Wallace]—and agreed to.

Section 36—Amount of compensation

Amendments 8 to 10 moved—[Mr Jim Wallace]—and agreed to.

Section 38—Discharge, or restriction, of reserved right to claim compensation

Amendment 11 moved—[Mr Jim Wallace]—and agreed to.

Section 56—Crown application

Amendment 37 not moved.

Amendment 13 moved—[Mr Jim Wallace]—and agreed to.

Section 65—Prohibition on leases for periods of more than 175 years

The Deputy Presiding Officer: I call Phil Gallie to move amendment 39, which is grouped with amendments 14, 40 and 49.

Phil Gallie: In committee, we managed to raise the limit on the maximum length of leases from 125 years to 175 years. The arguments for doing that were well rehearsed at that time. Concerns remain about the maximum length of leases. People may be considering investing a considerable amount of money in an area of land, perhaps with major industry. We must take on board current environmental law about clean-up both before and after such investment. We are looking to maximise job opportunities and the use of land. I note that the Royal Institution of Chartered Surveyors has expressed anxiety about the effect that the time limit on leases could have on the use of brown-field sites. It does not seem too much to suggest that a further 50 years could make the difference when we are dealing with substantial levels of investment. I ask the minister to think again on this issue.

I move amendment 39.

Mr Monteith: I support the amendment in the name of Phil Gallie. I thought that it would be opportune to ask the minister whether during consultation on the proposed title conditions bill, which would review agricultural and commercial burdens, it might be possible to consider the time limit that is proposed in this amendment. The minister may want to stick with 175 years, but the title conditions bill may give us an opportunity to reconsider that. I would welcome hearing his views on that.

Mr Jim Wallace: As Mr Gallie acknowledged, Angus MacKay dealt with a number of these issues at stage 2, when he responded to amendments on the proposed length of non-residential leases. The Scottish Law Commission believes that when the feudal system is abolished there may be pressure on owners to lease. It has argued—and we accept the argument—that it will be necessary to place a limit on the length of leases, so that perpetual leasehold tenure does not become the norm in Scotland, as it has done in England.

The issue of long leases is relevant mainly to the commercial property sector, as there is already a restriction on long leases for residential property beyond 20 years. At the moment, there is no restriction on the length of commercial leases. The Scottish Law Commission recommended that the length of non-residential leases should be restricted to 125 years, believing that the limit should be set at the lowest level that is not commercially damaging. The Justice and Home Affairs Committee and the Executive received strong representations from commercial interests, which argued that 125 years was too short a period. A number of arguments were advanced. The main one was that 125 years would not reflect the likely lifespan of a commercial development and the number of times that it might be redeveloped during the period of a commercial lease. A consensus arose that a restriction in the region of 175 to 200 years would be acceptable.

16:30

As I said, at stage 2 the Executive lodged an amendment to increase the limit from 125 years to 175 years. Mr Gallie's amendment seeks to raise the limit by another 50 years. At stage 2, Mr Monteith attempted to amend the bill by increasing the limit to 999 years, which would be wholly unacceptable and would mean, in effect, that there was no limit on the length of leases—I suspect that that is what he really wants. We do not want to replace the feudal system with a system of leasehold tenure that would develop the same kinds of defects over the years.

Phil Gallie: The Justice and Home Affairs Committee accepted the arguments that the Law Commission and the minister put forward with respect to the undesirability of transferring the onus on to long leases. The minister must accept the assurance that that is not the objective behind the amendment. The amendment is based on our belief that it is important not to lose out on investment and business opportunity. That is the reason why we seek to raise the limit by 50 years.

Mr Wallace: To be fair, I was talking about an amendment that Mr Monteith lodged in committee. Mr Gallie is right to stress the importance of ensuring that legitimate commercial development is not stifled. In all these matters, judgments must be made. Having listened to representations from many sources, particularly in the commercial sector, we judge that 175 years strikes the right balance between ensuring the opportunity for commercial development and not allowing the feudal system to recreate itself or come in by the back door.

The objective behind Mr Gallie's case is shared by members throughout the Parliament but the question is one of balance. The Executive feels that the limit of 175 years is acceptable and would not place the commercial market at a competitive disadvantage. Mr Monteith asks whether we might return to this issue later, but I do not want to give

him unnecessary cause for optimism. There is a consensus—which does not quite embrace the Conservative party—that 175 years is about right. However, I have no doubt that Conservative members will use their ingenuity to raise the issue again if the opportunity arises—there will be plenty of land-related legislation.

Mr John Swinney (North Tayside) (SNP): On the subject of considering things again, will the minister put on the record some comments about the Blairgowrie leases? I have raised the matter with him before. I was pleased to read in the *Official Report* of the Justice and Home Affairs Committee of 29 March that the Deputy Minister for Justice said that the Law Commission would consider some of the outstanding issues relating to the Blairgowrie leases, which is an important issue for the community that I represent.

Mr Wallace: I recall that I corresponded with Mr Swinney on that matter. If I promised that the matter would be considered again, I would adhere to that. I will write to him again, as he has raised the matter in the context of this debate.

I ask Mr Gallie not to press his amendment, as I do not believe that there is justification for further extension of the limit for non-residential leases.

Amendment 14 is simply a drafting change that Christine Grahame asked the Executive to make at stage 2. Although we believe that the words "operative" and "subsisting" have the same meaning in the context of the provision, we are happy—in the spirit of co-operation—to make that change.

Phil Gallie: The minister makes the point that we can keep our eye on the issue well into the future. If the time scale that the Executive proposes causes problems, I am sure that Conservative members will raise the matter again, just as the Executive might. Given that we have plenty of time over the next 225 years, I will not press the amendment.

Amendment 39, by agreement, withdrawn.

Amendment 14 moved—[Mr Jim Wallace]—and agreed to.

Amendment 40 not moved.

Schedule 1

FORM OF NOTICE REQUIRING COMPENSATORY PAYMENT ETC: CUMULO FEUDUTY

Amendment 41 moved—[Mr Jim Wallace]—and agreed to.

Schedule 2

FORM OF NOTICE REQUIRING COMPENSATORY PAYMENT ETC: ORDINARY CASE

Amendments 42 to 46 moved—[Mr Jim Wallace]—and agreed to.

Schedule 3

FORM OF INSTALMENT DOCUMENT

Amendment 47 moved—[Mr Jim Wallace]—and agreed to.

Amendment 48 moved—[Euan Robson]—and agreed to.

Schedule 9

FORM OF DISCHARGE OR RESTRICTION OF RESERVED RIGHT TO CLAIM COMPENSATION

Amendments 15 to 18 moved—[Mr Jim Wallace]—and agreed to.

Long Title

Amendment 49 not moved.

The Deputy Presiding Officer: That concludes the consideration of amendments to the Abolition of Feudal Tenure etc (Scotland) Bill.

Abolition of Feudal Tenure etc (Scotland) Bill

The Deputy Presiding Officer (Mr George Reid): The next item of business is a debate on motion S1M-771, in the name of Mr Jim Wallace, seeking agreement that the Abolition of Feudal Tenure etc (Scotland) Bill be passed. Members who wish to speak in the debate should press their request-to-speak buttons now.

16:36

The Deputy First Minister and Minister for Justice (Mr Jim Wallace): As I indicated during the stage 1 debate last December, I believe that the Abolition of Feudal Tenure etc (Scotland) Bill is an historic piece of legislation, as it abolishes 800 years of feudal tenure in Scotland. The bill will ensure that the vast majority of householders in Scotland will enjoy simple, outright ownership of their property, without being subjected to the whims of a possibly remote superior, perhaps of whom they have never heard and whose only real interest in imposing conditions on property is financial. Feudal superiorities will disappear, along with all other outdated facets of the feudal system.

This reform of property law is long overdue, but it is the first step in a series of reforms that will modernise and greatly simplify Scottish land law. To address a point made by Pauline McNeill during our debate today on the first group of amendments, I agree that it is important to continue to debate these issues and to make a contribution to much-needed reform of Scotland's land law.

The Abolition of Feudal Tenure etc (Scotland) Bill will be followed by a bill on title conditions, which, I hope, will rationalise and modernise the law relating to non-feudal burdens and conditions on property. We also intend to reform the law of the tenement. The Scottish Law Commission is about to embark on work to consider aspects of residential leasehold tenure in Scotland and we hope that, in time, it will be possible to convert properties held under those types of tenure to the simple ownership envisaged in the Abolition of Feudal Tenure etc (Scotland) Bill. It is also important that I acknowledge the bill on leasehold casualties that Adam Ingram is to introduce. That bill enjoys the support of the Executive and, I am sure, wider support throughout the Parliament.

I will take a moment to address the concerns expressed in the media and by some land reform groups that absolute ownership of land is being given to large estate owners who will be able to ride roughshod over the wishes of local people. I believe that that belief is mistaken—we have debated fully today the role that the Crown currently performs. It is also important that I state that amendments to the Abolition of Feudal Tenure etc (Scotland) Bill have been agreed, including in our debate today, to protect areas of law where the Crown has a role to play in protecting the public interest in, for example, navigation, moorings, the foreshore and the sea bed. I believe that the suggestion that anything else is being lost is based on a misconceived notion.

This reform has been a long time coming. The first proposals were published in the 1960s, although I am sure that demands for the abolition of feudal tenure date from much earlier than that. I remember my parents telling me once that they were about to pay their feuduty, but I did not have a clue what that meant. When they explained, I simply could not understand why, when they thought that they owned their house, it was possible for someone to come along and to demand money from them.

It is unfortunate that the first reforms of the feudal system, which were included in the Conveyancing and Feudal Reform (Scotland) Act 1970 and the Land Tenure Reform (Scotland) Act 1974, were not followed up as the Governments of the day had intended, and that no progress was made for nearly 20 years.

We are particularly indebted to the Scottish Law Commission, which has tackled an enormous task with great thoroughness, ingenuity and dedication. I also wish to pay tribute to the Justice and Home Affairs Committee, which has worked hard in examining the detail of what Parliament recognises is a complex and technical piece of law reform. I am pleased that a number of the amendments lodged by members of that committee at stage 2 have been given effect by the Executive at stage 3, and I hope that members of the committee believe that the bill has been improved as a result.

Many other individuals and bodies have added their comments as part of the consultation exercise, and we are grateful for the contribution that they have made. I thank officials in the justice department for their very detailed examination and consideration of the bill, and for the assistance that they have given while the bill has been prepared and put before the Parliament.

We are approaching the first anniversary of this Parliament. Many of us claimed that it would do things that Westminster would never get around to doing, one of which was to abolish our system of feudal tenure. I feel genuinely proud that, in its first year, our Scottish Parliament has been able to deal with this issue and remove from Scottish property law a system that is outdated and archaic and which, at times, has been abused in an

oppressive way. That is a tribute to members from all parties who have made a constructive contribution to the process, and it shows that this Parliament can work and is working.

It is with honour that I move,

That the Parliament agrees that the Abolition of Feudal Tenure etc (Scotland) Bill be passed.

16:41

Roseanna Cunningham (Perth) (SNP): Now that it is clear to everyone what an exciting time the Justice and Home Affairs Committee has, there will no doubt be a queue of members wanting to join the committee for the delights that are in store for us—which have been ably outlined by the minister.

As the committee convener, I record my appreciation of the work of the members of the committee. Only a handful have a legal background, but those of us who have a legal background were not much better off when we came to deal with some of the issues that arose during our scrutiny of the bill. Needless to say, my thanks are also due to the clerks, who shared the burden with us. The clerks had to undertake a great deal of work behind the scenes to get the committee through stage 2, and were up against constant deadlines for the lodging of amendments. Those same clerks had to be involved in all the background work to prepare the amendments for stage 3, and our appreciation of that is unqualified. I am sure that all members will join me in thanking the clerks.

The committee expressed concern about the interaction between this bill and other bills that are planned by the Executive, and about the difficulties that that poses for us. This is not a stand-alone bill, although we were obliged to treat it as if it was, which continued to give us some difficulty throughout stage 2. For that reason, when it is enacted, the bill will not immediately come into force. No attempt was made to amend section 1, which is designed to leave open the commencement date. I mention that fact, as it shows that there is nothing novel about such a provision.

I now refer to the principles of the bill. The abolition of feudal tenure will be of great satisfaction to people in Scotland and to the Scottish National party. It was a key commitment of the SNP's land reform policy in the run-up to the elections last May, and it is testament to the widely expressed need for such a reform that the major parties were committed to a similar bill in the run-up to May. From Phil Gallie's earlier comments, I take it that we can now include the Conservatives in that commitment, as they have decided to join the majority in favour of abolition.

The bill is integral to any programme of land reform and would always have been required as the first piece of legislation in any package of reform, no matter how it was designed. However, I must reiterate the concerns that I raised this afternoon about the omission of any reference to the public interest in the bill. Effectively, the bill introduces a form of absolute ownership with which a great many people might have problems, and it runs counter to a widely held belief that the people of Scotland should have ultimate ownership of the land. According to that principle, we would be able to run public interest arguments as and when they were necessary.

During the stage 1 debate, I referred to Andy Wightman's concern that, without some overt recognition of the public interest, we might find ourselves bound more tightly in matters of what we can and cannot do, despite there being a demonstrable social or environmental need. Those concerns continue to be widely held, and I am unsure whether what is being passed today resolves that issue. Time will tell, no doubt, and the minister should not be surprised if we return to that issue in discussion of future land reform legislation.

I remain firmly of the belief that Scotland should not become a series of parcels of land that are in the absolute ownership of individuals, organisations, offshore trusts, charities or whatever. The public interest should be enshrined explicitly somewhere as a principle, so that, in future, recourse can be had to that principle in the courts if necessary.

Although that might sound like an academic argument, recent events have shown that there is nothing academic about land ownership in Scotland. There is a continuing row about the putative ownership of the Cuillin by the MacLeod, and it is a great pity that no one anywhere seems to want to do anything about that. I cannot help but wonder whether that is because it might open a can of worms. Perhaps some of the so-called landowners would turn out to be nothing of the sort—it is surely time that we found out.

I regret that we have not been able to include any requirement in the bill about registering land information. Attempts to do so have been ruled inadmissible, which is unfortunate. We are missing a vital opportunity to begin the process of finding out exactly who owns land in Scotland. It is difficult to see how any system of meaningful land reform can exclude the fundamental point that the first thing we must be able to ascertain is who owns Scotland. That can remain a live issue, as the debate over the ownership of the Cuillin has shown.

Although I do not want to step too far out of the confines of today's debate and trespass on the

debate secured by John Farquhar Munro, I suspect that I am not the only one to be disappointed by the blank refusal of the Executive—or any agency—to undertake the proper research to determine that particular ownership once and for all.

As I said, perhaps such an inquiry would simply open a can of worms. From my experience at Dumbarton District Council in the 1980s of trying to ascertain the ownership of land around Dumbarton rock—a file that I inherited from my predecessor and with which some poor junior solicitor is still struggling, for all I know—I am aware of how difficult this exercise can be in Scotland and of the real problems that it can cause.

Tying compensation payments to a provision of registering a land interest in Scotland would have provided additional information for public consumption. Regrettably, we were unable to lodge that amendment and have now lost that opportunity.

As I said at the outset, the bill is broadly similar to the one that the SNP would have wanted in its own land reform package. My belief that it could have been an even better bill does not diminish the SNP's welcome for it and I heartily endorse it today.

16:47

Phil Gallie (South of Scotland) (Con): The Conservatives also welcome the bill. Jim Wallace's reference to simple, outright ownership of property by individuals and their families states an all-important principle, and the bill is well worthy of support on that basis alone.

Roseanna Cunningham and Jim Wallace have thanked various people. I want to add Angus MacKay's name to that list of thanks; he took the bill through the committee stage in a very courteous manner. I also want to thank Lyndsay McIntosh and Brian Monteith, who spent some time on the Justice and Home Affairs Committee while I was in Ayr for some reason or other. I should say that we got a better result in Ayr than we did with some of our amendments to the bill.

Visiting the pubs of Ayrshire and the football grounds of Scotland, I have found that the issue of land reform has constantly been brought to my attention. People are always asking, "Are you involved in the Abolition of Feudal Tenure etc (Scotland) Bill?", to which I reply, "Yes—and it's great." [*Laughter.*] Seriously, however, people are probably not fully aware of the implications of the bill. When the bills start to drop through the door and people are asked to meet their feudal buy-outs at 20 times the rate set on the stock exchange, they might feel a bit aggrieved at having to fork out £400 or £500. That said, the instalment element covers that to a degree.

The issue of neighbour arguments also highlights a potential downside of the bill. In the past, people have used the conditions of feu to argue out neighbour problems. Although there might be some difficulties with that in future, the good that the bill brings will outweigh such problems.

As for Conservative views on the issue, I have mentioned Mr Heath's involvement in 1974—and I do not always talk with much enthusiasm about his involvement in most things. However, I am usually enthusiastic about Mrs Thatcher's activities. I am quite sure that her involvement in 1991, in setting the task of reform for the Scottish Law Commission, which has seen its fulfilment today, will cause her to raise a glass to the Scottish Parliament.

The contents of the bill are basically in line with our 1999 manifesto commitments. We look forward to the work of the Justice and Home Affairs Committee and to getting stuck into the bills on title conditions and law of the tenement.

16:50

Pauline McNeill (Glasgow Kelvin) (Lab): This is an historic moment for the Parliament—although it is the third bill that we have debated in the first session—because we have swept away 300 years of law. We have had a constructive debate, and although we have disagreed on one or two points, it is important that those views have been aired in Parliament. I am particularly pleased that we have had an opportunity to discuss the issue of public interest. I thank Jim Wallace for his reply on that and his comment that there are plans to consider other areas of Scots law where we can advance the public interest.

At times, this has been a confusing debate, and we have all learned one or two things about the role of the Crown that might prove useful when we come to play Trivial Pursuit or another question-and-answer game. The abolition of feudal tenure might not seem the most populist piece of legislation, but some aspects will affect the lives of ordinary people. In some constituencies, there have been situations close to blackmail, when feudal superiors have been able to request vast sums in return for permission to carry out reasonable development.

The bill is good legislation. Some conveyancing students may thank us, as they will no longer have to go through the tedious subject of feudal tenure. Some people may miss feudal tenure. However, in the long run, the people of Scotland will thank us for the legislation.

The Deputy Presiding Officer: We now move to the open part of the debate. Members should restrict speeches to three minutes.

16:52

Euan Robson (Roxburgh and Berwickshire) (LD): The Abolition of Feudal Tenure etc (Scotland) Bill is very welcome. It is the start of the land reform process in the Parliament. I add my thanks to those that have already been expressed: to the clerks of the Justice and Home Affairs Committee for their skill in guiding the committee through the bill; to the convener for keeping the committee on track; to the witnesses for their evidence; to the Minister for Justice for his comments today; and, echoing what Phil Gallie said, to the Deputy Minister for Justice for his work during stage 2. A memorable moment in the committee was the silent pause after Angus MacKay's description of regalia majora and regalia minora.

The first entire act that is repealed by the bill is the Feu-duty Act 1597. It is perhaps worth recording for the packed press gallery that the bill repeals 46 entire acts, and 246 sections of and 57 schedules to other acts. I can envisage yards of shelves in lawyers' offices being cleared in due course.

Liberal Democrats have long supported the abolition of feudal tenure as the first significant milestone in the partnership for government programme for modernising land ownership law. Partial reform started in 1970 and 1974, and the work of the Scottish Law Commission has been fundamental in securing completion of that reform. The Liberal Democrats look forward to the further bills mentioned by the minister—those of my colleagues who are not on the Justice and Home Affairs Committee might look forward to them more than I do.

I commend the bill to the Parliament.

16:54

Christine Grahame (South of Scotland) (SNP): I will be brief, as we have talked long enough. I just wondered where the gentle Angus MacKay was. Perhaps he has had enough of feudal tenure.

The bill is to be welcomed, but it is not radical enough for the Scottish National party. The issue of public interest will be revisited. Unfortunately, as Roseanna Cunningham said, the opportunity to introduce a comprehensive land register for Scotland has been missed. We must address that issue, so that, as Roseanna rightly said, we know who owns Scotland.

Finally, on agricultural communities, I hope that the minister will return to part 4 of the bill, which he says will be deferred. I took against the minister on a small point. There are problems with section 16; there is a conflict and the minister should take the opportunity to sort it out.

16:55

Robin Harper (Lothians) (Green): I add my congratulations to the Justice and Home Affairs Committee, the minister and the Executive. However, I want also to say that the Scottish Green party has serious concerns about the omission of public interest from the bill and to add my voice to those of Roseanna Cunningham and Christine Grahame. We will pursue the matter. I am glad that the minister has at least indicated that public interest may be pursued in other ways. I would like an amendment to be introduced in future. We also have serious concerns about the omission of a land register.

16:56

Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP): There seems to have been an outbreak of consensus this afternoon, which I suppose is to be welcomed, but I might shortly bring it to an end. I congratulate the minister, the committee and all the people who played a lead role in the passage of the bill. They have done a power of work.

The bill is good and makes progress, but there are problems, as the minister had the courtesy to recognise, especially in relation to part 4. Twenty-six years ago, most of Scotland thought that feuduty had been abolished. It was not. Today, people in Scotland will think that the feudal system has been abolished. It has not; it has been renamed. Feudal superiors are dead; long live the owners of the dominant tenement. As that reality percolates through, there will be feelings of disappointment, which will temper the progress that has been made.

However, I was gratified that the minister said that some of the problems that were raised today will be re-examined before part 4 comes into force. It would be churlish of me not to accept that assurance at face value. I am sure that the minister will redeem it in due course.

Finally, I look forward to further legislation to improve and protect the position of tenant farmers throughout Scotland, to tackle the problems of those whose long residential leases are coming to an end and who may face eviction and to end the obscenity that Scotland is the only country in Europe where there is a free market in land and where land is a commodity. I welcome the fact that, thanks to John Farquhar Munro, we will be debating that in Parliament shortly.

16:58

Mr Brian Monteith (Mid Scotland and Fife) (Con): Members may recall that when we first debated the bill, I mourned the passing of feudalism. I do not want to rain on the minister's parade, but in some senses I still mourn the passing of feudalism.

The Deputy Minister for Local Government (Mr Frank McAveety): Dinosaur.

Mr Monteith: I do play Nanosaur on my computer.

Much of the difficulty has been caused by the terminology. I echo Fergus Ewing's assertion that feudalism has been not so much abolished as amended. That is why I am particularly happy to support the bill, and it might give the lie to the reason why the Scottish National party is uncomfortable with Tory support for the bill. We might be removing words such as vassal and feudal, but feudal tenure has brought many benefits over the years. When members next enjoy looking up at the fireworks from Princes Street gardens, they should reflect on the fact that, were it not for feudalism, there would be no Princes Street gardens.

The Conservatives have done much to work with the grain on the bill. We have sought to amend it, and much of what we think is good in the feudal system has been preserved.

The minister touched on the fact that there is still the ability to maintain some burdens through disposition, and the bill itself maintains some burdens. We believe in free markets and in the ability to enter into contracts. That is much of what feudalism seeks to do. Having sought to amend the bill to remove the parts of feudalism that we all deplore and consider outdated and anachronistic and to preserve those that work, the Conservatives offer our sincere support, and congratulate the minister and his colleagues on successfully completing it.

17:00

Mr Jim Wallace: There has been a wide welcome for the bill. I can accept neither Brian Monteith's nostalgia nor Fergus Ewing's suggestion that the bill is some sort of repackaging of the feudal system. The burdens that have been retained are there for a purpose. For example, we have received many representations about sheltered housing complexes, where common amenities have to be maintained. We have also considered cases of neighbourhood burdens that exist for perfectly good reasons and that may, by dint of one solicitor's conveyancing practice, have been achieved by feudal charter rather than by disposition.

The right balances have been struck. The bill is one part of an overall programme of land reform. A land reform bill will be introduced later this year, which will give us further opportunities to deal with many important issues relating to land and land use in Scotland. It is important to remember what section 1 of the bill says:

"The feudal system of land tenure, that is to say the entire system whereby land is held by a vassal on perpetual tenure from a superior is, on the appointed day, abolished."

The Deputy Minister for Rural Affairs (Mr John Home Robertson): Will Mr Wallace give way?

Mr Wallace: To a feudal superior, yes. [*Laughter.*]

Mr Home Robertson: I offer the minister my heartfelt thanks for the fact that I will be the last ever feudal superior of the barony of Eyemouth. I am not sure whether there will be celebrations in the streets of Eyemouth tonight, but I shall certainly be celebrating.

Mr Wallace: I congratulate the member and, to add to the champagne popping that will go on in Eyemouth tonight, I should say that

"nothing in this Act affects the dignity of baron or any other dignity or office".

So Mr Home Robertson can even stand on his dignity while he rejoices in Eyemouth tonight.

Mr Monteith: Is the minister aware of whether his fellow minister will seek to claim compensation for his burdens?

Mr Wallace: I am sure that he would declare his interest properly if it was ever required.

Section 1 states that the feudal system will be abolished. Those are words that Scotland has waited centuries for. It is a great credit to this Parliament that, in our first year, we are doing just that. I urge the Parliament to support the motion.

The Presiding Officer (Sir David Steel): That concludes the debate. There are no Parliamentary Bureau motions today. Before decision time, I have an administrative announcement to make. Those who are attending the meeting with the President of Malawi at 6.25 pm should occupy the seats in the front rows in the middle of the chamber. The President's party will occupy the seats usually occupied by the Conservatives. We will have many other guests from the Churches, the universities and the Jubilee 2000 campaign. We will not be using the galleries, so it would be helpful if members could occupy the front rows. The meeting will last only half an hour and there will be a reception afterwards in the Rainy Hall at the end of the black and white corridor, to which everyone is invited.

Decision Time

17:04

The Presiding Officer (Sir David Steel): There is only one question to be put as a result of today's business. The question is, that motion S1M-771, in the name of Jim Wallace, seeking agreement that the Abolition of Feudal Tenure etc (Scotland) Bill be passed, be agreed to.

Motion agreed to.

That the Parliament agrees that the Abolition of Feudal Tenure etc. (Scotland) Bill be passed.

Govan Shipyard

The Presiding Officer (Sir David Steel): The final item of business is a debate on motion S1M-750, in the name of Gordon Jackson, on Govan shipyard. The debate will be concluded after 30 minutes without any question being put. Members who would like to speak in the debate should press their request-to-speak buttons as soon as possible.

Motion debated,

That the Parliament notes that the BAe Systems Govan shipyard is in the running for a major order to build roll-on roll-off ferries for the Ministry of Defence; recognises that this order will guarantee work for up to five years and allow the yard to take on apprentices for the first time in three years; praises the yard's strong reputation for Clyde built quality as the major employer at the heart of Govan; acknowledges that this order is vital to secure the yard's future for its skilled and dedicated workforce; understands the equal importance of the order for the sister yard at Scotstoun as outfitter, and expresses total support for the Govan shipyard in bidding for this order and future work.

17:05

Gordon Jackson (Glasgow Govan) (Lab): I am grateful for this debate. In such a situation, there are many things that we do not know. For my part, I do not know what is going on behind the scenes and what deals might be done. I have no idea what arrangements, in detail, might be worked out. I therefore have no intention of speculating on the detail of what might happen; my interest is in what I know to be true.

First, there is no doubt that Govan has the ability to build the ships. Any suggestion that might be made to the contrary—not by people here, but by anyone elsewhere—is absurd and untrue. Govan has both the capability and the quality; the work that has been produced there recently will bear that out. I invite members to consider the sophisticated vessels for a range of uses that have come from that yard in the past few years.

Secondly, the death of shipbuilding at Govan would be a disaster, not just for that area but for Glasgow and for Scotland as a whole. Govan is the largest builder of merchant ships in the United Kingdom. Scotstoun, across the water, is the largest shipbuilder in Scotland. At the moment, about 1,000 people work at Govan and about 2,000 at Scotstoun, while Govan supports nearly 5,000 other people through suppliers and subcontractors. I ask members to bear in mind that Govan cannot be considered in isolation. If it goes, inevitably Scotstoun will come under pressure and there will be serious consequences for the whole economy.

Thirdly, the financial cost of the closure of

Govan would make no sense whatever. When one tries to calculate the cost of benefits and other support for those who would be put out of work, it becomes clear—even on simple arithmetic—that it would be a foolish option. Is the financial support given to that yard by successive Governments over the years simply to be wasted?

What we are talking about is not short-term support for a dying industry. We should never let anyone tell us that there is no point in keeping this industry alive. The truth is that Govan is a modern, sophisticated facility with a newly installed management, which—I believe—is prepared to invest and to improve.

We have ample reason to believe that within the next few years, substantial work will be available, which will allow shipbuilding to grow and to thrive on the Clyde for the foreseeable future. To miss out on that, with all the costs that I have tried to mention, because work is somehow unavailable to get us to that point, would be a colossal economic mistake.

Fourthly, what of the human costs? In Glasgow—I am sure that this is true elsewhere—there are more than enough men and women already who are unable to use their considerable skills; people who feel deeply that their talent is wasted. Surely what we want is to reverse that process and to go further. I am arguing not for short-term employment but for a thriving industry, with new apprenticeships and a skill base—not just for now, but for the future. Are we to lose that?

Who can calculate the human cost of the great sense of disappointment that would be felt by the population at large if one of the most famous and respected shipyards in the world were to close? If people did what we have been doing for the past few weekends—asking passers-by to sign a petition—they would realise the strength of feeling for the shipyard not to disappear.

Last, but not least, there is the work force. I am glad that its representatives are in the public gallery behind me. For far too long, they have endured a roller coaster of uncertainty. When others might have given in, the work force fought the campaign the length and breadth of the country, and sustained an optimism and a positive attitude that can be described only as remarkable.

I am glad that so many members have waited behind today. At the very least, the work force is entitled to our full support, and the assurance that we are doing everything possible to secure its future. My message to the Executive, and to Henry McLeish in particular, is simple: make it happen. I know that a great deal is being done. I know that the Scotland Office and the Scottish Executive are working hard on this. I appreciate that the campaign is supported by members of all parties, who are here in large numbers, and by the members at Westminster. That support is welcome and valuable.

I know that there are problems. I know that there are rules, and I do not suggest that they can be ignored lightly. As I said, I do not pretend to know the details of what the people in positions of power are working out, but I will say one final thing: this is a time for a can-do mentality. A solution can, and must, be found. On behalf of the work force and the management of the shipyard at Govan, I ask that that be done.

The Deputy Presiding Officer (Mr George Reid): Gordon Jackson has left as much time as possible for other members to contribute. I ask for speeches of about three minutes, please.

17:12

Nicola Sturgeon (Glasgow) (SNP): I thank Gordon Jackson for securing today's debate, and I am delighted to support the motion that is before us.

I welcome the representatives of the Govan work force who are in the public gallery, and pay tribute to that work force. As Gordon Jackson said, the workers in Govan have been through the mill over the past two years, but throughout they have behaved with dignity and with determination to save not only their jobs, but the industry that they work for in Scotland. It is their commitment to the future of shipbuilding that has ensured that this issue is at the top of the political agenda, and politicians will not be allowed to forget the importance to Scotland of the yard and the industry. It is important that we, in the Scottish Parliament, send a strong message to UK ministers that we expect them to deliver for Govan and Scotstoun.

Shipbuilding in Scotland is a high-tech industry, which employs highly skilled workers. By no stretch of the imagination can it be described as mere metal bashing. It is an industry that deserves support. It should have a future, and that future should not be in doubt. As Gordon Jackson said, there is no doubt in the minds of most people in Scotland—especially those who work in the industry—that Govan has the capability to build the ferries; any suggestion that it does not is an insult to the people who work in the shipbuilding industry in Scotland.

We have to be clear about the implications of the Sealion consortium not securing the contract. Gordon Jackson outlined the effect that that would have not only on Glasgow and Govan, but on the whole of Scotland. For Govan, it would mean almost certain closure, with the loss of 1,200 jobs; that figure does not include the jobs that depend on the shipyard in Govan. For Scotstoun, across

the Clyde, it would mean massive redundancies, and for shipbuilding in Scotland it would be the beginning of the end. That is not a price that anybody in Scotland wants to pay for whatever it is alleged can be saved by sending the contract for the ferries elsewhere.

There has been much speculation in recent weeks that Govan may be awarded one or two ferries as a compromise to keep it open in the short term. Neither Gordon Jackson nor I are in any position to confirm whether that is true, but I do not think that that would be sufficient; the contract in its entirety must go to Govan.

I would like the Minister for Enterprise and Lifelong Learning to confirm that he will press for the whole contract to go to the Sealion consortium. That would ensure that Govan could get through the period until it is supposed to begin work with Scotstoun on the type 45 frigates. I repeat what Gordon Jackson said: ministers must "make it happen". It is right that the campaign is being fought on a cross-party basis, but this is also a key test for the Government—a test of its commitment to the shipbuilding industry and to manufacturing in Scotland.

The Deputy Presiding Officer is indicating that I should wind up. The Government must make it happen; it must deliver for Govan and Scotstoun, to secure the future of shipbuilding on the Clyde.

17:15

Mr Duncan McNeil (Greenock and Inverclyde) (Lab): I thank Gordon Jackson for giving us the opportunity to have this debate and I totally support the motion. I welcome to the Parliament the shop stewards who are continuing the battle to ensure that we have a shipbuilding industry in Scotland—and, indeed, in the UK.

I come from an era when not sticking in at school meant being threatened with a job in a shipyard. Scott Lithgow employed 200 new apprentices a year—that is almost inconceivable now. Throughout my working life, shipbuilding has been in decline. What is happening in Europe is rather different.

I wanted to speak in this debate because my constituency has a proud tradition of shipbuilding, although it no longer has a shipyard. In Greenock and Inverclyde, I represent highly skilled workers who do not enjoy the job security that other highly skilled workers have. Increasingly, their jobs depend on a small number of large contracts. They stumble from crisis to crisis, but when trouble hits Harland and Wolff in Belfast, Ferguson at Port Glasgow, Ailsa-Troon, Govan Shipbuilders, UiE Scotland in Clydebank and even BARMAC at Nigg and Ardersier, unemployment rises in Inverclyde. We need to recognise that there is an impact throughout the country.

Looking across at David Davidson, I am tempted to look back at his party's role in the decline of the industry. However, this is a member's debate and a time to look forward. We need to do all that we can in this Parliament to convince our colleagues in Westminster that the work must go to Govan. We need to ensure that we maintain the skills and manufacturing base that is vital for an island nation.

We can avoid a state of crisis after crisis. We need to ensure that the Ministry of Defence contracts are used to provide stability in the industry. The UK Government needs to work with and bring together the shipowners, the oil companies and the trade unions, so that we get to a stage where we can match the workers' commitment to the industry and its future. Together, with a strategic vision, we can save our shipbuilding industry for Scotland and for the UK.

17:19

Mr David Davidson (North-East Scotland) (Con): I congratulate Gordon Jackson on securing this debate and I, too, welcome the union representatives. The debate is about the future of shipbuilding on the Clyde and the retention of an important skills resource for manufacturing in Scotland at a time when other areas of traditional manufacturing are declining. In response to my friend Mr McNeil's comments, let me say that we are not looking back, we recognise what is going on in Scotland and we are looking to support where possible any move to prevent more drainage in the quality manufacturing base on the Clyde.

When I visited the Govan yard recently as a guest of the unions and management, I was overwhelmed by the feeling of team playing—by how the two sides are fully integrated in what they are about. The union officials and men there have behaved with dignity and honour during a difficult 18 months or so. They have been extremely flexible and constructive. One could not ask for any more from the work force. The new management is investing in the skills, competence and enthusiasm of a work force that is unique in Scotland today.

I came away from that visit thinking about what could be done. I do not want to look back, but I wonder why the MOD contract was not a full ministry contract, as we know that it is likely that the vessels will be used for Government work for more than 50 per cent of the time—particularly given the Government's decision to become more heavily involved in peacekeeping and humanitarian work.

The new management has invested massive

sums of money in new, more efficient plating systems, in higher lifts and in the capability to work indoors. That is investment for the future. The Cabinet must give a commitment to support the good things that are happening in Govan. I agree with other members that this matter is linked to what happens at Scotstoun. We must also recognise that the yard at Barrow-in-Furness is an integral part of the issue.

Gordon Jackson talked about a can-do society. I scribbled in my notes that I saw Govan as a can-do work force and management. We must call on the Government to give them every support for a sustainable future.

17:22

Patricia Ferguson (Glasgow Maryhill) (Lab): I, too, add my thanks to Gordon Jackson for securing this debate. I welcome the representatives of the workers at Govan who are here today. In particular, I welcome Jamie Webster, who, I am proud to say, is my constituent.

I will not echo the many important things that have been said, particularly by Gordon Jackson and Duncan McNeil, as many members wish to speak and it is important that they can do so. I remind David Davidson that it was the Conservative Government that decided that the contract should not be classified as an MOD one, even though it has become clear that about 71 per cent of the use of the vessels would be for military purposes. The classification that was made could be challenged, even at this late date.

The European rules on tendering do not stipulate that the cheapest price must be accepted. We are also obliged to consider value for money. I think that we can take lessons from no one around the world on value for money. I suspect that we certainly cannot take such lessons from the Koreans.

If we compare like with like, it is clear that a British yard employing British workers must represent the best value for money for a British Government—I make no apologies for using the word “British” in this context. I ask the minister to take up that point with his colleagues down south.

Ms Sandra White (Glasgow) (SNP): Does Patricia Ferguson agree that all that is being asked for to win the contract is fair play and a level playing field? I am sure that enough work has been done to guarantee that Govan should win the contract.

Patricia Ferguson: The workers and management in Govan have demonstrated the skills, technology, dedication and commitment to play on any playing field. However, the minimum that we should be offered is a level playing field.

Two weeks ago, when I was campaigning on the streets of Maryhill with Jamie Webster, I found that people were delighted to have the opportunity to express their feelings about what the order meant to them. I do no disservice to my constituents when I say that they did not always understand the technicalities of MOD orders or of European Commission tendering processes. However, as Glaswegians, they were instinctively sure that the order was necessary and important for workers at Govan and Scotstoun and that it was vital for the future of Glasgow and the Clyde.

17:25

Robert Brown (Glasgow) (LD): Gordon Jackson is to be applauded for securing this debate, in which some good points have been made. Many members have visited the Govan yard—I went round it most recently with Menzies Campbell, the Liberal Democrat defence spokesman. I was struck by the massive size of the yard. It requires a skilled, specialist work force, a design capacity, experience and capital equipment. The yard works as a team; once broken up and scattered to the four winds, it cannot readily be re-established.

The Clyde itself was once synonymous with the shipbuilding industry. The industry has changed, but the Clyde remains a byword for quality. It is economically imperative that the MOD award of the ferries goes to BAe Systems at Govan.

It is crucial to the maintenance of British shipbuilding capability and to shipbuilding on the Clyde that Govan wins the order. Winning the order would secure, in the long term, additional investment from BAe Systems in the yard, and would save the cost of community devastation in Govan and throughout Glasgow. It would bridge the gap until the warship order can be placed. It would also give Govan and the MOD the benefit of savings on the four successive ferries that are required, as any snags on the first order would be compensated by the easier run on the later ones, and effective specialisation between the Govan and Scotstoun yards would be allowed. Those are sustainable, solid, long-term issues for the shipbuilding industry.

The Government must honour its commitments. It must set a trend for private enterprise to invest and have faith in our heavy industries generally. Patricia Ferguson was right to talk about value for money against that background.

All members have been impressed with the shop stewards at Govan and with the dedication and realism of the work force. Those shop stewards and the work force now need our support. This motion is a small step in that direction, and I am

glad to support it.

17:27

Mr Kenneth Gibson (Glasgow) (SNP): I thank Gordon Jackson for securing this debate and, in particular, for the positive tone and content of his speech. Gordon was talking about a make-it-happen, can-do mentality. This is not a funeral for the shipbuilding industry; this is a means for us to direct our collective efforts to help to ensure that the MOD order comes to Govan.

I lived in Govan for 23 years, from the age of one week. My grandfather worked at Fairfield Construction and I have a cousin who works in that yard to this day. Therefore, from a personal perspective, this matter is very important to me.

It is important to the history of the burgh, of Glasgow, of Scotland, and—yes—of the wider British shipbuilding industry that the ferries contract is secured. If the order can be secured, Govan has a secure future. We know that the type 45 destroyer orders are not too far off, and that Govan and Yarrow Shipbuilders will work together to ensure that that work is carried out to the excellent standard that the yard can achieve and has demonstrated in previous years.

In case some people think that the Govan yard is on its last legs, I should point out that, as has been said, it is a high-tech yard. In its short tenure, BAe Systems has injected £3 million into the yard. It believes, as does the work force, that the yard has a long-term future. BAe Systems is willing to inject up to £23 million more into the yard. The owners of the yard believe that it has a future; the work force, which has sacrificed a tremendous amount over the years to prove that the yard has a future, also believes in that future.

We cannot allow commercial shipbuilding to die in this country. I do not think that that will happen; I think that the Government will wake up and realise that the order must go to Scotland. The Prime Minister said that he would not sleep until the jobs at the Rover plant were saved; let us hope that his insomnia extends to Govan.

17:29

Tommy Sheridan (Glasgow) (SSP): Gordon Jackson made a positive contribution and spoke of optimism. I agree that we have to be optimistic. However, I hope that Gordon does not mind if I say that we must not be blind in that optimism. I hope that, across all parties, as much pressure as possible is exerted on the Executive to exert as much pressure on the UK Government.

This is not just about the Govan or the Scotstoun yard, or just about the 3,000 jobs; it is about the terrain that we are leaving in Glasgow and Scotland for the manufacturing industry and manufacturing jobs. If this order goes the way of Volvo or of DAKS-Simpson, or the way of the wider UK problems that we have heard about with Rover, we will be leaving behind a manufacturing wasteland, not just in Scotland but across the UK.

I am heartened by the points that Patricia Ferguson made. Rules are generally there to be obeyed, but they should be examined exhaustively and bent as much as is necessary. If some of the stories about hidden subsidies and the use of cheap labour in other countries are true, I hope that the Government is prepared to recall the contract if it is not awarded to Govan. This is not just about jobs at the yard; it is about wasting Glasgow as a whole. Call centres alone cannot sustain Glasgow or Scotland. The message to the minister today has to be very clear: everything must be done. We are demanding that Govan gets this contract.

17:31

Trish Godman (West Renfrewshire) (Lab): I was born in Govan and my grandfather worked in the yards, so I have more than a passing interest in the shipbuilding industry. It is, of course, a much smaller industry now, but its viability is vital to local communities. As elected representatives, we must ensure that our yards play a full part in the revitalisation of the shipbuilding industry. Our yards must prosper so that they can take advantage of the future opportunities of which I believe we now have the clearest of signals.

On 17 March, the Secretary of State for Defence, Geoff Hoon, said:

"I have certainly made it clear that an extensive programme of shipbuilding is under way. It could amount to 30 large ships and, certainly, they will all be built in the United Kingdom . . . I look forward to that work providing for a revitalised British shipbuilding industry."—[*Official Report, House of Commons,* 17 April 2000; Vol 348, c 690.]

That is why I believe that it is entirely legitimate to argue that the Government should place the roll-on-roll-off vessel orders with Govan.

Much has to be done if our shipbuilding industry is to be helped to escape from gloomy short-term circumstances. The future could be good for the thousands of men and women who are employed in the industry, but it is essential that Govan is kept open. If it is not, the skills will be dispersed and lost for ever. That is why Govan needs the ro-ro order.

I see that the Deputy Presiding Officer wants me to cut my speech, so I will finish now. We need a healthy, toughly competitive and highly successful shipbuilding industry. The question is: do we have the political will to secure that objective?

17:33

The Minister for Enterprise and Lifelong Learning (Henry McLeish): I welcome the opportunity to reply in this debate. I congratulate Gordon Jackson on initiating the debate and I thank all members for their contributions.

We have representatives of the work force looking in on us. This is the voice of Scotland in action. All political parties, and those of no fixed party, support the case that the work force has made with such great dignity over such a long period. I, too, welcome Jamie Webster and his colleague on behalf of the Scottish people, the Executive and the whole Parliament.

Much has been said about this contract in recent weeks. Much has been, of necessity, speculation. That fuels uncertainty and concern, which is difficult for a work force that has already suffered a rollercoaster of emotions over the past year. Through today's debate, I hope that we can show—to the work force, to Glasgow and to the people of Scotland—a united front in our support for the Govan shipyard, and that we can pledge that all of us will do all that we can to support the work force in winning the order.

The subject is important—it is the first time that Parliament's voice has been heard on it. It is a reserved matter and one that influences Scotland's psyche. The point has also been raised by the nationalists that manufacturing matters; other points that they have made underline that.

This is about skills and expertise. It is about capacity and commitment and it is about building for the short term to secure the long term. No one in the chamber needs history lessons to tell them that in the early part of the century 50 per cent of the ships afloat on the planet were built on the Clyde.

Dorothy-Grace Elder (Glasgow) (SNP): Many members are rather tired of the expression "reserved issue". Does the minister agree that the agony of the workers is not a reserved issue? Does he also agree that this is the real test of Parliament? If we cannot protect the last major shipyard on the Clyde, we will be judged by the public to have failed and to be a powerless Parliament.

Henry McLeish: With the greatest respect, I have already said most of those things. This is a chance for the Parliament to be optimistic; it is not an inquiry before the event. I say to Dorothy-Grace Elder, as I would to anyone, that we should work hard together in the knowledge that there is an order waiting to be won. We should leave discussions about what might or might not have happened until later.

Mr John Swinney (North Tayside) (SNP): Will the minister make a broader comment on the worry about the impending situation? Does he accept that the situation at Govan gives rise to a message that we should listen to and put at the heart of much of the work that we do through the enterprise agencies? We must deliver the support that is required by many manufacturing companies so that they can have a long-term future. Can the enterprise agencies embrace that proactively, rather than as the result of a potential crisis situation such as we face at Govan?

Henry McLeish: John Swinney knows more than most people that the Enterprise and Lifelong Learning Committee, the enterprise companies and the Executive are examining all the various industrial sectors. As Tommy Sheridan and others have mentioned, different sectors face different problems. Those problems' origins are often global, but they are, nevertheless, important to the work forces.

It is right that—as is happening throughout the UK—there is a debate. The Scottish Trades Union Congress highlighted that a week ago. Manufacturing matters, but we also want to move to a knowledge economy. However, that knowledge and that technology are alive and well in the shipyards of Scotland. It is crucial to make that link.

There is no doubt about the Executive's position—we want shipbuilding on the Clyde to have a future. It is vital to a strong Scottish economy and every possible support should be given to help it to succeed. That is why, when there was a campaign to save the Govan shipyard last year, we all participated. The Scotland Office and the Scottish Executive worked together to ensure an excellent victory. What is important is that nobody in the Executive will walk away from the issue or from the need to secure the work that will maintain the yard after last year's victory.

The ro-ro ferry order was never going to be easy to win. Competition under European procurement rules was bound to be fierce, but I say to all colleagues in Parliament that the Executive, in common cause with the Scotland Office, is supporting every effort to reinforce the arguments that the industry is putting forward. We all—the work force, parliamentarians, the community and the management of BAe—have a good case to put.

In addition to that—and I say this to Gordon Jackson in particular—everybody in government at Westminster knows about the importance and sensitivity of the issue. A great deal of work is being done and will continue to be done.

Mr Lloyd Quinan (West of Scotland) (SNP): What stage are we at regarding the possibility of reclassification of the order? The stumbling block appears to be its military application. Is there any possibility that the order will be reclassified to a higher military level? It was suggested to me in the street today that to put the ships on the Royal Navy's active reserve list would mean that the criteria were being met.

Henry McLeish: These are all matters that have been in the public arena before and are being considered by all concerned. Let me answer the point that Trish Godman made by referring to what was said at Westminster on 17 April. What is encouraging is that it was Geoff Hoon, the Secretary of State for Defence, who stated:

"We hope to be in a position to announce a preferred bidder to meet our long-term strategic sealift requirement later this year."

For most of us, that is ro-ro ferries.

"We also expect to place contracts for Survey Vessels during the summer, for Demonstration and First of Class Manufacture of the new Type 45 Anti-Air Warfare Destroyer in the autumn, and for the Alternative Landing Ship Logistic (ALSL) in late 2000." [*Official Report, House of Commons*, 17 April 2000; Vol 348, c 56W.]

The decision on that was expected in April; it was expected after Easter. The Secretary of State for Defence is now saying that it will be made later this year. We have to use that time. This Parliament, the Scotland Office, the Secretary of State for Scotland, the First Minister, the work force, the management, the local community and the enterprise agencies must keep reinforcing the central message. There is no point in just saying that the yard deserves a future. We know that the yard has the skills and capacity to deal with the type 45 warships, which is the prize that we can win if we secure the orders that we seek.

In relation to Geoff Hoon's comment in another place, the Prime Minister has also said that no final decision has been taken. That is the honest assessment of where we are in an extraordinarily complex situation. I know that, for the work force, the delay is prolonging the uncertainty, which is incredibly unsettling. However, complex issues are involved and, if the delay leads to a successful conclusion for Govan, I am sure that we will all agree that the extra time has been worth while.

Mr Davidson: Can the minister assure us that the decision will be made by the Cabinet, which will pull in all the departments on which any loss would impinge, and not just by the Ministry of Defence?

Henry McLeish: The representations that we are making are going to the Prime Minister, the Secretary of State for Defence and the Secretary of State for Trade and Industry. Ultimately, this is a matter for Westminster. However, the Prime Minister has shown an extraordinary interest in the issue. I am not sure how the issue will finally be agreed on; I am not privy to that, although I can say that the matter is of sufficient import for the Prime Minister to be taking a big interest at this stage.

Mr Murray Tosh (South of Scotland) (Con): In the light of what the minister said a moment ago, is it conceivable that the rules would allow all or part of the order to be awarded to the Govan yard to preserve for the short term the capacity of the skills base and the work force? That would allow Govan to take on the orders that can clearly be allocated under the existing defence regulations to a British yard.

Henry McLeish: Westminster appreciates the time scale that is involved. There is a natural synergy in all this, because the Westminster Government, through the MOD, needs capacity that is skilled, committed and will put in competitive bids for the type 45 frigates. In the short term, we need the order for Govan to secure its future. That is a natural synergy, which has not been fully appreciated. In a curious way, the long-term interests of the UK are dependent on the short-term interests of Govan and the case that we are making for it.

Shipyard workers have proven time and again that they have the strength of will and the skills to endure a process such as this and to win through. I am sure that their expertise will help them to earn the right to build future naval vessels for the MOD, such as the type 45. The Executive, wholly supported by every section of this Parliament, will give them the broadest support to continue that campaign.

We have a Parliament that speaks for Scotland. Regardless of our political differences, this issue unites the nation. The strongest message that this Parliament can send is that we are united. We are at different levels of emotion and we are at different levels of wondering who is doing what, why this is not being done and who is speaking to whom.

Every possible effort is being made to ensure the short term, so that we can win the long term. Govan's long-term future is bright. It is about technology, skill and—more important—people whose jobs are under threat. Those people are represented here by the convener of the shop stewards and one of his colleagues. Let us fight together and unite, and let us be optimistic until we get the result that we want.

Meeting closed at 17:45.

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