OFFICIAL REPORT
AITHISG OIFIGEIL

# Net Zero, Energy and Transport Committee

**Tuesday 24 June 2025**

Session 6

The Scottish Parliament
Pàrlamaid na h-Alba

# Tuesday 24 June 2025

## CONTENTS



## NET ZERO, ENERGY AND TRANSPORT COMMITTEE
**24th Meeting 2025, Session 6**

**CONVENER**

*Edward Mountain (Highlands and Islands) (Con)

**DEPUTY CONVENER**

*Michael Matheson (Falkirk West) (SNP)

**COMMITTEE MEMBERS**

*Bob Doris (Glasgow Maryhill and Springburn) (SNP)
*Monica Lennon (Central Scotland) (Lab)
*Douglas Lumsden (North East Scotland) (Con)
*Mark Ruskell (Mid Scotland and Fife) (Green)
*Kevin Stewart (Aberdeen Central) (SNP)

*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Tim Eagle (Highlands and Islands) (Con)
Fergus Ewing (Inverness and Nairn) (Ind)
Mairi Gougeon (Cabinet Secretary for Rural Affairs, Land Reform and Islands)
Rhoda Grant (Highlands and Islands) (Lab)
Emma Harper (South Scotland) (SNP)

**CLERK TO THE COMMITTEE**

Peter McGrath

**LOCATION**

The Mary Fairfax Somerville Room (CR2)

# Scottish Parliament

## Net Zero, Energy and Transport Committee

*Tuesday 24 June 2025*

*[The Convener opened the meeting at 08:44]*

## Decision on Taking Business in Private

**The Convener (Edward Mountain):** Good morning, and welcome to the 24th meeting in 2025 of the Net Zero, Energy and Transport Committee. Our first item of business is a decision on taking items 3, 4 and 5 in private. Item 3 is consideration of a draft report on the legislative consent memorandum on the Planning and Infrastructure Bill. Item 4 is consideration of the committee's approach to stage 1 scrutiny of the Ecocide (Scotland) Bill, and item 5 is consideration of the committee's work programme.

Do members agree to take those items in private?

**Members** *indicated agreement.*

## Land Reform (Scotland) Bill: Stage 2

08:45

**The Convener:** Our second item of business is stage 2 consideration of the Land Reform (Scotland) Bill and I welcome the non-committee members who join us for the discussion: Fergus Ewing, Rhoda Grant and Emma Harper. [*Interruption*.] Sorry, we also have Tim Eagle, who is hiding in the corner. Mr Eagle has been here so often that it almost feels as though he is a member of the committee, but he is not. Welcome.

This is our fifth and, I hope, final stage 2 meeting. The stage 2 deadline is 27 June. I will not go through the procedure again, unless anyone specifically wants me to, although I do not see there being any appetite for that.

Before we get into the discussion, I remind members of my entry in the register of members' interests. I have a farming partnership in Moray. Specifically, I declare an interest as the owner of approximately 500 acres, or 202 hectares, of farmland, of which 50 acres, or 22 hectares, is woodland. I also declare that I am a tenant of approximately 500 acres, or 202 hectares, in Moray under a non-agricultural tenancy. I have another farming tenancy under the Agricultural Holdings (Scotland) Act 1991, and I sometimes take on grass lets on an annual basis. Do any other members wish to make a declaration?

**Tim Eagle (Highlands and Islands) (Con):** It is all in my entry in the register of members' interests, but I run a small farm in Moray. Specifically in relation to today's discussion, I have two short limited-duration tenancies, one with Moray Council and another with the Crown Estate.

**The Convener:** We will go straight to our discussion of the bill. We will all remember where we finished the discussion at our previous committee meeting.

### Section 10—Registration of interest and right to buy

*Amendment 224 moved—[Mairi Gougeon]—and agreed to.*

*Amendment 225 moved—[Mairi Gougeon].*

**The Convener:** The next group of amendments includes amendments to the cabinet secretary's amendment 225. After the debate on the group, amendments 225A to 225C will be disposed of. I will then put the question on amendment 225. Amendment 225A, in the name of Tim Eagle, is grouped with amendments 225B, 225C and 543. If

amendment 226 in the group on “rights to buy” is agreed to, amendment 543 will be pre-empted.

**Tim Eagle:** Thank you, and good morning. My amendment 225A is a practical amendment to the cabinet secretary’s amendment 225, which relates to a tenant’s right to buy, which we debated last week. My amendment would ensure that the notice that is referred to is given in writing to ensure that a commencement date is noted and a paper trail is kept. That avoids the possibility of any vexatious claims and I believe that that is in keeping with what happens under current rules.

My amendment 225B would further amend the cabinet secretary’s amendment 225 and seeks to strengthen the legal language from “may” to “must” to ensure that there is an obligation on ministers to set out the period in which notice can be given.

My amendment 225C would delete from amendment 225 proposed new section 29(9) of the 2003 act. As drafted, that new power would allow ministers to make regulations and, therefore, changes to timescales for exercising a right to buy.

My amendment 543 seeks to restrict the powers that are given to ministers. Currently, section 10(2) of the bill would enable ministers to make regulations that include provisions on a wide variety of things. It would allow the Scottish ministers to modify sections 24 to 28 of the Agricultural Holdings (Scotland) Act 2003 and also, if they

“consider it necessary ... to make consequential provision which modifies the other provisions”

in that part of the 2003 act. I believe that the scope of those powers is far too wide and could allow for numerous unspecified changes to be made by regulations. Therefore, my amendment seeks to delete those lines from section 10(2). Instead, I invite the cabinet secretary to re-draft a narrower and more specific provision for stage 3.

I move amendment 225A.

**The Convener:** No other member wishes to speak, so over to you, cabinet secretary.

**The Cabinet Secretary for Rural Affairs, Land Reform and Islands (Mairi Gougeon):** I realise that we debated the amendments relating to the pre-emptive right-to-buy process for small landholders as well as 1991 act tenant farmers, including amendment 225, last week. It is, of course, amendment 225 that Tim Eagle is seeking to amend through his amendments.

In relation to amendment 225A, it is standard practice that such notices are in writing. That is also reflected by the requirement on the tenant to send a copy of the notice to the keeper, so I do not think that it is necessary to amend section 10 in that way. However, I am more than happy to have a conversation with Tim Eagle in relation to that, and to bottom out any concerns that might persist.

Tim Eagle’s amendments 225B and 225C seek to amend the regulation-making power included in amendment 225, which empowers a tenant to exercise their right to buy when their landlord takes certain steps with a view to transferring land and fails to notify the tenant. The amendment enables the Scottish ministers to make regulations for the timescales in which a tenant will be required to notify their landlord that they intend to exercise that right.

On amendment 225B, while it is the Scottish Government’s intention to engage with stakeholders and to make regulations, it would not be appropriate to amend the power in the way suggested, given that whether regulations are made is ultimately a decision for the Scottish Parliament, in line with the affirmative procedure.

Amendment 225C also seeks to restrict the scope of the power under amendment 225 in a way that would limit its effectiveness and ministers’ ability to make the intended changes. The ability of the regulations to modify section 29 of the 2003 act when providing for a period within which notice is to be given provides flexibility in the drafting approach, including for making any necessary consequential changes.

I cannot support amendment 543, for the reasons that I set out last week in relation to Tim Eagle’s amendment 226. Amendment 543 likewise seeks to limit the powers in the bill for the Scottish ministers to make regulations for how 1991 act tenant farmers can register their interest in acquiring the land comprised in their lease.

I ask the committee not to support the amendments in this group.

**The Convener:** I call Tim Eagle to wind up.

**Tim Eagle:** I have nothing further to add. I wish to press amendment 225A.

**The Convener:** The question is, that amendment 225A be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Lumsden, Douglas (North East Scotland) (Con)
Mountain, Edward (Highlands and Islands) (Con)
Ruskell, Mark (Mid Scotland and Fife) (Green)

**Against**

Doris, Bob (Glasgow Maryhill and Springburn) (SNP)
Lennon, Monica (Central Scotland) (Lab)
Matheson, Michael (Falkirk West) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)

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

*Amendment 225A disagreed to.*

*Amendment 225B moved—[Tim Eagle].*

**The Convener:** The question is, that amendment 225B be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Lumsden, Douglas (North East Scotland) (Con)
Mountain, Edward (Highlands and Islands) (Con)

**Against**

Doris, Bob (Glasgow Maryhill and Springburn) (SNP)
Lennon, Monica (Central Scotland) (Lab)
Matheson, Michael (Falkirk West) (SNP)
Ruskell, Mark (Mid Scotland and Fife) (Green)
Stewart, Kevin (Aberdeen Central) (SNP)

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

*Amendment 225B disagreed to.*

*Amendment 225C not moved.*

*Amendment 225 agreed to.*

**The Convener:** I call amendment 226, in the name of Tim Eagle, already debated with amendment 497. If amendment 226 is agreed to, I cannot call amendment 543.

*Amendment 226 not moved.*

*Amendment 543 moved—[Tim Eagle].*

**The Convener:** The question is, that amendment 543 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Lumsden, Douglas (North East Scotland) (Con)
Mountain, Edward (Highlands and Islands) (Con)

**Against**

Doris, Bob (Glasgow Maryhill and Springburn) (SNP)
Lennon, Monica (Central Scotland) (Lab)
Matheson, Michael (Falkirk West) (SNP)
Ruskell, Mark (Mid Scotland and Fife) (Green)
Stewart, Kevin (Aberdeen Central) (SNP)

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

*Amendment 543 disagreed to.*

*Amendment 227 not moved.*

*Amendments 228 and 229 moved—[Mairi Gougeon]—and agreed to.*

*Section 10, as amended, agreed to.*

**After section 10**

*Amendment 230 moved—[Mairi Gougeon].*

**The Convener:** The question is, that amendment 230 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Doris, Bob (Glasgow Maryhill and Springburn) (SNP)
Lennon, Monica (Central Scotland) (Lab)
Matheson, Michael (Falkirk West) (SNP)
Ruskell, Mark (Mid Scotland and Fife) (Green)
Stewart, Kevin (Aberdeen Central) (SNP)

**Against**

Lumsden, Douglas (North East Scotland) (Con)

**Abstentions**

Mountain, Edward (Highlands and Islands) (Con)

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

*Amendment 230 agreed to.*

*Amendment 231 moved—[Mairi Gougeon].*

**The Convener:** The question is, that amendment 231 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Doris, Bob (Glasgow Maryhill and Springburn) (SNP)
Lennon, Monica (Central Scotland) (Lab)
Lumsden, Douglas (North East Scotland) (Con)
Matheson, Michael (Falkirk West) (SNP)
Ruskell, Mark (Mid Scotland and Fife) (Green)
Stewart, Kevin (Aberdeen Central) (SNP)

**Abstentions**

Mountain, Edward (Highlands and Islands) (Con)

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

*Amendment 231 agreed to.*

*Amendment 232 moved—[Mairi Gougeon].*

**The Convener:** The question is, that amendment 232 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Doris, Bob (Glasgow Maryhill and Springburn) (SNP)
Lennon, Monica (Central Scotland) (Lab)
Matheson, Michael (Falkirk West) (SNP)
Ruskell, Mark (Mid Scotland and Fife) (Green)
Stewart, Kevin (Aberdeen Central) (SNP)

**Against**

Lumsden, Douglas (North East Scotland) (Con)

**Abstentions**

Mountain, Edward (Highlands and Islands) (Con)

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

*Amendment 232 agreed to.*

*Amendment 233 moved—[Mairi Gougeon]—and agreed to.*

### Section 11—Resumption in relation to 1991 Act tenancies

**The Convener:** Amendment 529, in the name of Fergus Ewing, is grouped with amendments 234 to 245, 530, 246 to 249, 531, 250 to 253, 532, 533, 382, 254 to 259, 522, 260, 523, 261 to 267 and 534. I remind members that pre-emptions apply in this group, as set out on the groupings paper. I call Fergus Ewing to speak to and move amendment 529 and to speak to other amendments in the group.

**Fergus Ewing (Inverness and Nairn) (Ind):** Good morning. At the committee deliberations last Wednesday evening, I moved amendment 528, regarding the tenant farming commissioner. I moved that amendment on the same basis that I will move amendments 529 to 534 this morning, namely, that Scottish Land & Estates requested that I move them in order that there be a debate to enable discussion and to get a response from the cabinet secretary to facilitate an agreement after further discussions have taken place between all stakeholders and the cabinet secretary and her officials over the summer.

I should make it clear that I am not expressing partiality for one side or another. You could say that I am taking an independent stance in the hope that agreement can emerge after the discussions. Some fruitful discussions have already taken place, as landlords and tenants recognise.

SLE has drafted amendments 529 to 533 and its position is that the amendments set out an alternative to the provisions in the bill for the valuation of compensation that is due to a tenant under a 1991 act secure tenancy when the tenant is dispossessed of occupation of part of the land in the tenancy.

09:00

SLE-drafted amendment 534 deals with the more modern fixed-duration tenancies that were created in 2003 and would not apply changes to the statutory default terms of those tenancies. The amendment seeks to provide a much-needed point of clarification, as I will detail shortly. The amendments are of a probing nature, and I accept that there are deficiencies in the drafting. They are minor deficiencies but they are, nonetheless, deficiencies. I will not go through those, because I think that they will be communicated directly to the cabinet secretary's officials, if that has not already been done. The intention is to provide a fair approach to compensation that stands a far greater chance of meeting the needs of current and prospective tenants and landlords than what is currently set out in the bill.

I believe that amendments 529 to 533 have the backing of the various stakeholders from the sector on the tenant farming advisory forum. I listed them in the last meeting, so I will not do that again, other than to say that they represent landlords, farmers, professional advisers and lawyers. Amendment 534 also has the backing of all those bodies, with the exception of the Scottish Tenant Farmers Association, whose position I will cover separately at the end of my remarks.

Amendment 529 sets out the heads of compensation that would be due to a tenant, including a new head of claim, reflecting the value of the tenant's interest in the part of the lease being resumed. The wording of that head of claim would replace the potentially damaging and controversial provisions in the bill that would have equated the tenant's interest in the lease with the capital value of underlying land. It would also replace the existing rent multiplier and the related cap on disturbance costs, which most now agree is out of kilter with today's rising costs and comparatively low rents. There are inevitably costs associated with part of the lease being resumed, such as the requirement for new gates or fencing. It is a matter of common sense that, if you take a piece of land away, appropriate action would need to be taken to fence off the old from the new. Although there would not be a limit on the amount that could be claimed for disturbance costs, the tenant would be required to minimise the costs and to provide vouching evidence that the costs resulted from the resumption.

Amendment 530 would remove the prescriptive valuation methodology from proposed new schedule 2A. A valuation of the tenant's interest in the lease should be conducted by an expert valuer, as is the case in agricultural tenancy law for matters such as assignation. My amendment to new schedule 2A would provide for the appointment of the valuer by agreement between the parties, or, if that is not possible, within defined timescales. Where both parties cannot agree on the appointment of a valuer within the prescribed timescale, an application would be made to the tenant farming commissioner to appoint an independent valuer. I believe that that reflects the cabinet secretary's own amendments.

My amendment 534 would ensure that there are no changes to the 2003 act, which sets out the default statutory terms if parties do not agree otherwise. It would simply provide clarification, which landlords and tenants have sought, with regard to section 17 of the 2003 act, that parties

are not bound by the statutory default if they can agree something else between themselves. That means that tenants could, for example, seek a maximum percentage of the tenancy that could be resumed or an alternative compensation calculation and that landlords could seek, for example, an alternative to the 12-month notice period. It would allow parties to come to arrangements that suited their particular circumstances but in the knowledge that, if they could not agree, the statutory defaults would apply. All the organisations in the forum, with the exception of the STFA, believe that leaving the rest of the terms of the 2003 act unchanged would be a much-needed signal to the sector that the Government will not interfere retrospectively with existing agreements between landlords and tenants and that these leases are safe to use for longer lets.

Although it is recognised that landlords' confidence has been damaged by changes to legislation and that landlords argue that that confidence might take some time to recover, it is hoped that these amendments would be a first step to the creation of much-needed opportunities for new entrants or progressing farmers to access land on a more secure footing than mere annual contracts provide. That would be of benefit to landlords, tenants and the agricultural sector as a whole.

I am sorry that my contribution is somewhat long, but the amendments are rather technical.

Landlords believe that those changes would encourage more letting and lead to better agreement between the parties and a more positive overall relationship in the countryside. That is the thrust of where they are coming from, as I understand it.

Although Chris Nicholson was heavily tied up with the Royal Highland Show, he nonetheless took time last night to send me a short note on the STFA's position. The STFA says that, unfortunately, it cannot support the probing amendments 529 to 533, which incorporate provision

"which disadvantages the tenant ... including a reduction in the notice period"—

from one year to six months—

"loss of a tenant's right to terminate the tenancy, and loss of the tenant's right to have land restored"

to the lease following resumptions. It says that those changes have not been agreed among stakeholders. It says:

"While STFA recognise it may be possible to further modernise disturbance payments to tenants following resumptions, with the time constraints on the Land Reform Bill we accept the certainty provided by the current provisions in the Bill."

The STFA supports the principle of amendment 528, which was debated last week, to enable the tenant farming commissioner to produce a code of practice and guidance on loss of land from a tenancy through resumption or an incontestable notice to quit.

The STFA says that, although it does not support the probing amendment 534, it

"would encourage Scottish Government to further develop a fair methodology around compensation for 2003 Act tenants when land is resumed from their leases while clarifying S17 of the 2003 Act."

I hope that I have made that clear. Reading this debate and, in particular, hearing the cabinet secretary's response in a moment might be of some value to those in rural Scotland with an interest in the matter. I am happy to have spoken to my, as I said, probing amendments.

I move amendment 529.

**The Convener:** I call the cabinet secretary to speak to amendment 234 and any other amendments in the group.

**Mairi Gougeon:** The Scottish Government amendments in the group make procedural changes to the provisions on appointing a valuer for the resumption process that is set out in sections 11 and 12. Ultimately, those changes meet stakeholders' asks in that area. The current processes require the tenant farming commissioner to appoint a valuer in every resumption by the landlord of land in the lease. It should be noted that my amendments relate to the procedural aspects of the resumption notice and the appointment of a valuer, not to the basis of compensation for a tenant and what the valuer is to value. The amendments do not change those aspects of the bill.

My amendments 234 to 237, 242 and 243 modify the wording of section 11, which is named "Resumption in relation to 1991 Act tenancies", in order to align it to the legal position that a landlord of a 1991 act tenancy cannot resume all of the land in the holding. The amendments are required because the existing wording could cause confusion.

My amendment 238 removes the requirement for the landlord to send the tenant farming commissioner a copy of the resumption notice that is issued to the tenant.

My amendments 241 and 258 extend the timescale in which a tenant can terminate a tenancy following receipt of a notice of resumption from 28 days to six weeks. Amendment 241 covers 1991 act tenancies and amendment 258 covers 2003 act tenancies. The extension will provide tenants with more time to fully consider

the implications of a notice of resumption prior to coming to a decision on termination.

My amendments 522 and 523 make consequential changes arising from amendments 256, 257 and 260 that are similar to those made by amendments 239, 246 and 248.

My amendments 245, 251 to 253 and 263 to 265 make minor textual changes to how the tenant farming commissioner is referred to in provisions for 1991 act and 2003 act tenancies.

The Government and the non-Government amendments in this group provide the first chance to consider the issues about resumption that were raised during stage 1.

In agricultural tenancies, a landlord and tenant agree in the farm lease that the tenant will have exclusive use of the farm for the term of the lease, but there are circumstances when the landlord is able to take back part of the farm before the lease has ended. That might be reasonable for a particular case, provided that the tenant is properly compensated for loss and inconvenience.

All sides agree that the current level of compensation for resumption is too low and therefore unfair. The bill changes that for tenancies under both the 1991 act and the 2003 act. The approach for both types of farm lease is for the landlord and the tenant to share the uplift in the value of the land being resumed. That capital value approach uses the model that was previously agreed by the Parliament for compensation for the relinquishment of tenancies.

**The Convener:** We spent a large part of a committee evidence session discussing that exact principle, which was not agreed by the tenant farming commissioner. Why are you sticking to something that the tenant farming commissioner advised you not to do?

**Mairi Gougeon:** Again, because it is the approach that was agreed previously. I realise that there has been a lot of discussion about it over the past few years, but because the model was previously agreed, we intend to maintain it.

I appreciate that there is a debate and discussion about the general approach that has been taken. I have listened carefully to members' views, including those of Fergus Ewing in relation to his amendments, which offer an alternative valuation methodology.

Tim Eagle's amendment 240 proposes to decrease the amount of time between the landlord serving a notice of resumption to a tenant and the date of that resumption, which would interfere with the valuation process following the serving of a notice of resumption. Given the range of factors at play in a valuation, that would unnecessarily restrict the timing of that part of the process.

I am grateful to Fergus Ewing and others for raising these issues in their amendments, but I have not heard anything to convince me that we need a different approach to the valuation of 1991 act claims. The bill already provides for an affirmative power that enables the Scottish ministers to revise the valuation method for resumptions for 1991 act tenancies, so I am committed to proceeding with the measures that we have set out in that regard.

However, I agree that we need to explore whether a different approach would be better for 2003 act tenancies. It is important that we do everything that we can to reach a consensus about how to value that type of claim. It is also important that we do not kick the issue into the long grass. Accordingly, I reiterate the offer that I made last week in relation to working with Fergus Ewing and other members of the committee and having discussions to enable us to lodge an amendment at stage 3 that would give ministers an appropriate regulation-making power for 2003 act tenancies.

I also intend to lodge a similar amendment at stage 3 to address the points that Rhoda Grant will no doubt speak to in relation to her amendment 382, so that we can deal with concerns about ensuring fair compensation for a tenant who receives an incontestable notice to quit from their landlord. Of course, that is different from resumption, but the concerns were raised as part of this debate.

To conclude, I ask members not to support the amendments from Fergus Ewing, Tim Eagle and Rhoda Grant.

**The Convener:** I call Tim Eagle to speak to amendment 240 and any other amendments in the group.

**Tim Eagle:** As drafted, the bill requires notice to be given by the landlord at least a year before resumption takes place. My amendment 240 seeks to reduce that period to six months. I do not think that it is reasonable to expect landlords to provide a full year's notice that they want to resume the land from a tenant, and requiring that could cause the landlord challenges in going forward with their intentions for the resumed land. I am really trying to stop the slowing down of rural development, which is what we all want.

I listened to the cabinet secretary's remarks on Fergus Ewing's amendments. My understanding is that the tenant farming advisory forum worked very hard to draft the amendments and that everybody agreed on the issue until very recently. I think that the cabinet secretary just said that, but I wonder whether there is a pressing need to discuss the issue over the summer, because a thriving tenanted sector is absolutely vital for our

rural communities and it is important that we get this right.

**The Convener:** I call Rhoda Grant to speak to amendment 382 and other amendments in the group.

**Rhoda Grant (Highlands and Islands) (Lab):** The concern that my amendment 382 and other amendments in the group try to address is the unintended consequence where it may be more cost effective for a landowner to resume the whole farm rather than part of it, if they need part of it for development. My amendment is quite simple; it just suggests that the valuation should take that into account. However, I am happy to have further discussions with the cabinet secretary, because I think that we need to sort that out. I am not seeking to constrain the compensation that a tenant would get in any way—it is right that they should be compensated. However, if the unintended consequence is that they lose their whole farm rather than part of it, that is obviously not a good situation to be in. On the understanding that we might have discussions ahead of stage 3 on how to sort out that anomaly, I will not move my amendment.

09:15

**The Convener:** As no other member wishes to speak, I will say a few words, if I may. I find this really difficult because, during the evidence session, we heard that there has been a definite slowdown in the tenanted farming sector as a result of previous changes to legislation under which contracts had been entered into and agreed by both parties. I believe that we need a thriving and stable tenanted sector for Scotland's rural economy to survive; we do not need to see it reducing in size. Amending provisions that were agreed in the Agricultural Holdings (Scotland) Act 1991 and the Agricultural Holdings (Scotland) Act 2003 will just exaggerate the problem of the decline in the tenanted sector. I also take the view that if the tenant farming commissioner or his predecessor—both of whom I have huge respect for and have worked with during their time in office—have made a recommendation, it is dangerous to go against them, given that their view is probably based on experience.

In my experience, resumption of parts of farmland either for the landlord or to give bits up—as I have done myself—usually involves a conversation around the kitchen table and is done amicably until an agreement is thrashed out. My problem with the amendments that are being made to both the 1991 act and the 2003 act is that they make the situation open-ended. I totally agree that the multipliers of one times the rent for disturbance and four times the rent for reorganization are completely overtaken by events, because costs have risen. That is why I tried to push for a multiplier of 15 in order to give a clear signal to both parties. If the rent on a bit of land was £1,000, a tenant in the old days would get just a £5,000 payment, whereas, under the system that I was proposing, they would get a £15,000 payment. That would be a significant uplift, which, to me, reflects the cost.

To be honest, I am also disappointed that, although I thought that one had been reached, we do not seem to have any agreement on this between tenants and landlords. The very fact that they have not agreed means that we are in a situation where neither side can work out what is best for the tenanted farming sector. What is clear is that where we are is not suitable and will cause a further reduction in tenanted farms. For that reason, I make it entirely clear that, until agreement is reached between the parties, I will vote against any amendment on this matter that I see before me at this stage, and I encourage members to vote against it, too.

**Bob Doris (Glasgow Maryhill and Springburn) (SNP):** Convener, this is quite a complex area, and you have some lived experience due to your professional background outwith the Parliament. You suggest that a multiplier of 15 should be used for compensation. What is the basis for that, other than your gut feeling and experience? Is it based on consultation with landlords or with tenants? What is the evidence base for that suggestion? The Government has done a lot of work on the issue so, as a committee member, I wonder why a multiplier of 15 would be better than looking at the increase in the capital value. How did you arrive at that multiplier? I am asking so that I can think about it ahead of stage 3.

**The Convener:** I think that it was based on the information that I had received in discussions with both the tenanted sector and the landlord sector, which was that the figure was too high for the landlord sector and just marginally too low for the tenanted sector. It was therefore in the middle. In fairness, I mentioned the figure to the cabinet secretary in meetings that I had with her, and I asked her to explore it further. I am disappointed that it is not in the bill. It is what I think would be an equitable solution and, to my mind, is the only way in which we can ensure that, in amending the legislation, we will not put tenants off. On that basis, I have declared how I will vote.

I call Fergus Ewing to wind up and to press or withdraw amendment 529.

**Fergus Ewing:** It is an interesting area. Like you, convener, I am acutely aware of the difficulties of law reform in this area. Some of us can remember and, indeed, were on the Rural Development Committee that considered the 2003

act. The act led to the Scottish Government being defeated in the case of Salvesen v Riddell, because the law sought to change contracts retrospectively. At the end of the day, that was deemed to contravene article 1 of protocol 1 of the European convention on human rights, which protects property rights. Therefore, as a matter of principle, it is a difficult area, because there is a risk that any retrospective change in contracts will lead to the legislation hitting the rocks.

I was on the committee that considered the act; I do not think that the ECHR was ever mentioned at that point, but I believe that officials are now very much aware of it—perhaps unsurprisingly. It is a difficult area and, like the convener, I think that it would be preferable if both sides—tenants and landlords—could reach an agreement. The fact that we are going into the summer recess will provide a useful opportunity. In not pressing the amendment, I thank the cabinet secretary for listening to the arguments. I hope that parties can come together—I do not think that they are that far apart—and that an agreement can be reached. I would think that that would be better than having anything imposed on them, as past experience has shown.

In saying all that, I must caveat that, although I am a lawyer, I am by no means an expert in the area. Had I been in practice now, there is no way that I would have taken on any such litigation, for fear of risking invoking my professional negligence insurance.

*Amendment 529, by agreement, withdrawn.*

*Amendment 234 to 239 moved—[Mairi Gougeon]—and agreed to.*

*Amendment 240 moved—[Tim Eagle].*

**The Convener:** The question is, that amendment 240 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Lumsden, Douglas (North East Scotland) (Con)
Mountain, Edward (Highlands and Islands) (Con)

**Against**

Doris, Bob (Glasgow Maryhill and Springburn) (SNP)
Lennon, Monica (Central Scotland) (Lab)
Matheson, Michael (Falkirk West) (SNP)
Ruskell, Mark (Mid Scotland and Fife) (Green)
Stewart, Kevin (Aberdeen Central) (SNP)

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

*Amendment 240 disagreed to.*

*Amendments 241 to 245 moved—[Mairi Gougeon].*

**The Convener:** Does any member object to a single question being put on amendments 241 to 245?

**Members:** Yes.

**The Convener:** We will deal with each amendment in turn.

The question is, that amendment 241 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Doris, Bob (Glasgow Maryhill and Springburn) (SNP)
Lennon, Monica (Central Scotland) (Lab)
Matheson, Michael (Falkirk West) (SNP)
Ruskell, Mark (Mid Scotland and Fife) (Green)
Stewart, Kevin (Aberdeen Central) (SNP)

**Against**

Lumsden, Douglas (North East Scotland) (Con)
Mountain, Edward (Highlands and Islands) (Con)

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

*Amendment 241 agreed to.*

**The Convener:** I will try again. [*Interruption*.] Amendments 242 to 245 were moved en bloc. Does any member object to a single question being put on amendments 242 to 245?

There being no objection, the question is, that amendments 242 to 245 be agreed to.

*Amendments 242 to 245 agreed to.*

**The Convener:** Sorry; when I go off script, I have to make sure that I am in the right ballpark.

Amendment 530, in the name of Fergus Ewing, was debated with amendment 529. I point out that if amendment 530 is agreed to, I cannot call amendments 246 to 249, 531 and 250 to 253. I call Fergus Ewing to move or not move amendment 530.

**Fergus Ewing:** Not moved.

**The Convener:** I could have saved myself the list, there.

**Douglas Lumsden (North East Scotland) (Con):** Can I move the amendment?

**The Convener:** You can.

*Amendment 530 moved—[Douglas Lumsden].*

**The Convener:** The question is, that amendment 530 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Lumsden, Douglas (North East Scotland) (Con)
Mountain, Edward (Highlands and Islands) (Con)

**Against**

Doris, Bob (Glasgow Maryhill and Springburn) (SNP)
Lennon, Monica (Central Scotland) (Lab)
Matheson, Michael (Falkirk West) (SNP)
Ruskell, Mark (Mid Scotland and Fife) (Green)
Stewart, Kevin (Aberdeen Central) (SNP)

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

*Amendment 530 disagreed to.*

*Amendments 246 to 249 moved—[Mairi Gougeon]—and agreed to.*

*Amendment 531 not moved.*

*Amendments 250 to 253 moved—[Mairi Gougeon]—and agreed to.*

*Amendments 532, 533 and 382 not moved.*

*Amendments 254 and 255 moved—[Mairi Gougeon]—and agreed to.*

*Section 11, as amended, agreed to.*

09:30

### Section 12—Resumption in respect of limited duration tenancies and repairing tenancies

*Amendments 256 to 259, 522, 260, 523 and 261 to 267 moved—[Mairi Gougeon]—and agreed to.*

*Amendment 534 not moved.*

*Section 12, as amended, agreed to.*

*Section 13 agreed to.*

### Section 14—Compensation for improvements

**The Convener:** Amendment 268, in the name of the cabinet secretary, is grouped with amendments 269, 270, 544, 271 to 273, 535, 274 to 276, 276A, 277 to 288 and 540. I invite the cabinet secretary to move amendment 268 and speak to all the amendments in the group.

**Mairi Gougeon:** I am happy to, convener. The amendments in my name in this group reflect the commitment that I made at stage 1 to clarify proposed new schedule 5 to the Agricultural Holdings (Scotland) Act 1991, following the range of evidence and information that was provided by tenant farming stakeholders.

Amendment 287 seeks to remove new part 4 of schedule 5 to the 1991 act, which contains a list of improvements that facilitate or enhance sustainable regenerative agricultural production. Amendments 282 to 285 seek to modify parts 1 to 3 of the schedule to rehome the improvements that were included in part 4, which will now be included in the illustrative lists for which the consent of the landlord is required or of which the tenant may be required to notify the landlord.

I support Ariane Burgess's amendment 286, which seeks to add to part 3 of the schedule two of the improvements that were listed in part 4.

Amendment 271, 275, 276 and 277 seek to modify the provisions on the Scottish Land Court's determining whether to approve a proposed improvement following the removal of part 4 of the schedule. The court will still be required to consider whether an improvement is likely to facilitate or enhance sustainable or regenerative agricultural production. The corresponding improvements will be set out alongside those provisions rather than in part 4 of schedule 5.

Amendments 272, 273 and 274 seek to set out the process for notifying a landlord or obtaining their consent to carry out an improvement. The changes include requiring the landlord to provide written reasons to the tenant when they have not agreed on the terms of consent for a proposed improvement, or when they object to a proposed improvement following notification by a tenant.

Amendments 268 to 271, 275, 278, 279, 281 and 288 are minor consequential amendments, which relate to those that I have already discussed.

I hope that members will support my amendments.

I turn to Tim Eagle's amendments. Amendment 544 sets out a statutory process for the landlord to request further information from the tenant about a proposed improvement for which the landlord's consent is sought—including the timeframe for responding and the effect of failing to do so. That would add unnecessary complexity to the process and place an unreasonable burden on the tenant to respond to a further request for information.

Amendment 535 would permit the landlord to notify the tenant that they will carry out on the tenant's behalf improvements required by enactments or by the lease. That could have an effect on the rental value, because improvements that are paid for by the landlord are included in rental calculations.

I understand the issue that amendments 544 and 535 are trying to resolve, but what they propose needs further consideration and discussion with the industry. I am not sure that the bill is the right place for what they are trying to do. That would be something for future legislative change, because the range of unintended consequences needs to be fully considered, given the interface of amendment 535 with not only the

houses on a tenancy but the rental values of tenancies.

Amendment 276A seeks to modify the list of matters that the Scottish Land Court must consider when it is deciding whether to approve the carrying out of an improvement. The list would include whether sufficient information has been provided to the landlord to enable them to make an informed decision, in line with the new duty that Tim Eagle seeks to create in amendment 544. The Scottish ministers already have the ability to prescribe the information that a tenant's notice must include. However, there might be cases in which, for various reasons, less information is available. Ultimately, it is in both parties' interests to provide sufficient information in relation to a proposed improvement, given that the tenant will be seeking the landlord's consent or hoping that they do not object following a notice. Therefore, I do not think that amendment 276A is necessary.

Amendment 280 seeks to require that the affirmative procedure be used to alter the illustrative activities for the non-exhaustive lists for parts 1 and 2 of new schedule 5 to the 1991 act, and to add any activities to part 3.

In my response to the stage 1 report, I confirmed that we are

"committed to working closely with stakeholders before bringing forward any changes that might be helpful for the sector."

However, there are technical issues in relation to the drafting of the amendment, and it fails to make a necessary consequential change.

Amendment 540 would restrict the ability of a tenant to object to a proposed improvement detailed in a landlord improvement notice under section 14A, which would mean that a tenant would be prohibited from objecting to an improvement if it related to an item of fixed equipment that was considered by the landlord

"to be an economic requirement for the purposes for which the farm is let"

and the landlord has given the tenant the opportunity to relinquish the item. A tenant would not be entitled to compensation if an item of fixed equipment was relinquished in such circumstances.

Amendment 540 is a significant amendment that would have a range of potential unintended consequences that would place financial burdens on tenants, and there would be no ability to recover costs if the item was relinquished.

Accordingly, I ask members not to support Tim Eagle's amendments in this group.

I move amendment 268.

**The Convener:** I call Tim Eagle to speak to amendment 544 and other amendments in the group.

**Tim Eagle:** Section 14 of the bill applies to compensation for improvements under the Agricultural Holdings (Scotland) Act 1991. The bill requires a tenant to give notice to a landlord requesting consent for proposed improvements. If the landlord has not responded to a notice requesting consent, the bill allows for a period of 70 days, after which they will be deemed to have consented.

My amendment 544 would provide balance in the process for the tenant. It says that,

"Where notice is given"

by the tenant about improvements,

"the landlord may request further information from the tenant about the improvement."

It would require the tenant, within 14 days of being asked for more information, to provide it to the landlord. If the tenant fails to provide that information,

"the tenant is deemed to have withdrawn the notice"

that they have given for improvements.

The purpose of amendment 544 is to provide a balanced process. As the bill stands, the landlord will not be able to make fully informed decisions if the tenant is unwilling to provide information or if they delay in doing so. The bill could put the landlord in the very difficult situation of having their silence interpreted as unconditional consent.

Under the bill, the Scottish Land Court is given the ability to overrule the landlord's refusal of consent. Therefore, it is only reasonable that the landlord should be able to ask for full details of the proposal in order to make a decision. Amendment 544 would not delay the process for more than 14 days, but it would allow the landlord to take crucial steps to ensure that they were making a fully informed decision. By providing for the provision of more clear information, the amendment is also intended to avoid the need to take proposals to the Land Court and the expense of doing so.

My amendment 535 seeks to alter section 38 of the 1991 act, which considers that compensation is not payable for certain improvements to the land

"unless the tenant gave notice to the landlord"

of their intention to carry out those improvements and of the manner in which they proposed to do so.

Section 38(1)(c) of the 1991 act brought in a new list of improvements in relation to which compensation would not be payable unless the tenant gave notice to the landlord of their intention to carry out said improvements.

Section 38(3) of the 1991 act sets out the requirements for such notice. As well as having to be given "in writing", it must fulfil a shortlist of criteria, one of which is contained in section 38(3)(c), which requires that, for the new improvements that are listed in the 1991 act, notice had to have been provided

"not less than 3 months, before the tenant began to carry out the improvement."

Amendment 535 seeks to ensure that, if the tenant is the relevant person to whom the duty applies, the requirement for notice of not less than three months to be provided would not apply if it would place the tenant in breach of their duty. Instead, it would mean that notice would have to be provided only

"as soon as reasonably practicable."

Amendment 535 would also mean that, if those circumstances applied, the landlord could notify the tenant that they would carry out the improvements on behalf of the tenant.

My amendment 276A relates to section 39 of the 1991 act, which deals with compensation for certain improvements. The bill notes what the Land Court is to consider when determining whether to give permission to the tenant to carry out an improvement. Amendment 276A relates to proposed new subsection (1BA), which my amendment 544 would insert in the bill. Amendment 276A would mean that the Land Court would need to give consideration to

"whether sufficient information has been provided to the landlord"

following the tenant giving notice that they intended to carry out an improvement and the landlord asking for more information.

My amendment 540 seeks to add a new section following section 14 of the bill, which deals with compensation for improvements. Amendment 540 would modify section 14B of the 1991 act, which deals with objections by the tenant to improvement notices given by the landlord. In that section, the tenant is able to object to an improvement notice

"before the end of the period of 2 months beginning with the day on which the tenant received the landlord improvement notice."

That notice of objection

"must be dated and must state the tenant's reasons as to why the improvement is not necessary to enable the tenant to fulfil the tenant's responsibilities to farm the holding in accordance with the rules of good husbandry."

Amendment 540 seeks to add to that provision by setting out circumstances in which the tenant could not object to an improvement notice. They could not do so when

"an item of fixed equipment subject to an improvement notice is considered by the landlord to be an economic requirement for the purposes for which the farm is let,"

or when the tenant

"is given an opportunity to relinquish the item of fixed equipment."

**The Convener:** I call Mark Ruskell to speak to Ariane Burgess's amendment 286 and other amendments in the group.

**Mark Ruskell (Mid Scotland and Fife) (Green):** I again offer apologies on behalf of Ariane Burgess, who is convening this morning's meeting of the Local Government, Housing and Planning Committee.

As the cabinet secretary mentioned, amendment 286 is related to the other amendments in the group that clarify whether the improvements that are currently set out in part 4 of schedule 5 will be moved to parts 1, 2 or 3. Amendment 286 seeks to move two kinds of improvements to part 3, which will mean that a tenant will not need to seek the landlord's consent or to notify them in order to carry out such improvements.

The improvements in question are

"creating species-rich pasture"

and

"converting the holding (or a significant part of it) to a standard of organic farming that is capable of being accredited by a recognised accreditation organisation".

It is important that our tenant farmers are able to make such improvements to enable them to undertake more sustainable and regenerative agricultural practices. Those improvements will help to support biodiversity through increasing the amount of species-rich pasture available for insects and vertebrates, while providing more species-rich grazing for livestock. The change in approach will assist tenant farmers in their conversion to organic farming.

I note that the success of the Government's organic action plan, the increase that we are now seeing in organic conversion across different land classes and the subsequent growth in the market for organic produce are very positive.

I encourage members to support amendment 286.

**The Convener:** Some of the terminology in the bill—I am thinking of the references to terms such as warping or weiring and osier beds—takes me back to my planning days. I am not convinced that I understand that warping or weiring, although it might be an improvement, would be allowed under the law in relation to modifying watercourses without strict consent. I think that that would be covered under the Water Environment (Controlled

Activities) (Scotland) Regulations 2011. Perhaps you could cover that off in your summing up, cabinet secretary, to which we now come.

**Mairi Gougeon:** Thank you, convener. I would have to look at that specific point. Other than that, I do not have anything further to add to my comments.

**The Convener:** Thank you. The question is, that amendment 268 be agreed to.

*Amendment 268 agreed to.*

**The Convener:** Everyone was very quiet there. I have obviously lulled members into a false sense of security.

*Amendments 269 and 270 moved—[Mairi Gougeon]—and agreed to.*

*Amendment 544 moved—[Tim Eagle].*

**The Convener:** The question is, that amendment 544 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Lumsden, Douglas (North East Scotland) (Con)
Mountain, Edward (Highlands and Islands) (Con)

**Against**

Doris, Bob (Glasgow Maryhill and Springburn) (SNP)
Lennon, Monica (Central Scotland) (Lab)
Matheson, Michael (Falkirk West) (SNP)
Ruskell, Mark (Mid Scotland and Fife) (Green)
Stewart, Kevin (Aberdeen Central) (SNP)

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

*Amendment 544 disagreed to.*

*Amendments 271 to 273 moved—[Mairi Gougeon]—and agreed to.*

*Amendment 535 moved—[Tim Eagle].*

**The Convener:** The question is, that amendment 535 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Lumsden, Douglas (North East Scotland) (Con)
Mountain, Edward (Highlands and Islands) (Con)

**Against**

Doris, Bob (Glasgow Maryhill and Springburn) (SNP)
Lennon, Monica (Central Scotland) (Lab)
Matheson, Michael (Falkirk West) (SNP)
Ruskell, Mark (Mid Scotland and Fife) (Green)
Stewart, Kevin (Aberdeen Central) (SNP)

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

*Amendment 535 disagreed to.*

09:45

*Amendment 274 moved—[Mairi Gougeon]—and agreed to.*

*Amendment 275 moved—[Mairi Gougeon].*

**The Convener:** The question is, that amendment 275 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Doris, Bob (Glasgow Maryhill and Springburn) (SNP)
Lennon, Monica (Central Scotland) (Lab)
Matheson, Michael (Falkirk West) (SNP)
Ruskell, Mark (Mid Scotland and Fife) (Green)
Stewart, Kevin (Aberdeen Central) (SNP)

**Against**

Lumsden, Douglas (North East Scotland) (Con)
Mountain, Edward (Highlands and Islands) (Con)

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

*Amendment 275 agreed to.*

*Amendment 276 moved—[Mairi Gougeon].*

*Amendment 276A moved—[Tim Eagle].*

**The Convener:** The question is, that amendment 276A be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Lumsden, Douglas (North East Scotland) (Con)
Mountain, Edward (Highlands and Islands) (Con)

**Against**

Doris, Bob (Glasgow Maryhill and Springburn) (SNP)
Lennon, Monica (Central Scotland) (Lab)
Matheson, Michael (Falkirk West) (SNP)
Ruskell, Mark (Mid Scotland and Fife) (Green)
Stewart, Kevin (Aberdeen Central) (SNP)

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

*Amendment 276A disagreed to.*

**The Convener:** Apparently, cabinet secretary, I must give you the opportunity to press or withdraw amendment 276.

**Mairi Gougeon:** I press the amendment.

**The Convener:** I thought you might. The question is, that amendment 276 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Doris, Bob (Glasgow Maryhill and Springburn) (SNP)
Lennon, Monica (Central Scotland) (Lab)
Matheson, Michael (Falkirk West) (SNP)

Ruskell, Mark (Mid Scotland and Fife) (Green)
Stewart, Kevin (Aberdeen Central) (SNP)

**Against**

Lumsden, Douglas (North East Scotland) (Con)
Mountain, Edward (Highlands and Islands) (Con)

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

*Amendment 276 agreed to.*

*Amendments 277 to 279 moved—[Mairi Gougeon].*

**The Convener:** Does any member object to a single question being put on amendments 277 to 279?

**Douglas Lumsden:** Yes.

**The Convener:** I do, too, so two of us object. Therefore, we will vote on each amendment in turn.

The question is, that amendment 277 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Doris, Bob (Glasgow Maryhill and Springburn) (SNP)
Lennon, Monica (Central Scotland) (Lab)
Matheson, Michael (Falkirk West) (SNP)
Ruskell, Mark (Mid Scotland and Fife) (Green)
Stewart, Kevin (Aberdeen Central) (SNP)

**Against**

Lumsden, Douglas (North East Scotland) (Con)
Mountain, Edward (Highlands and Islands) (Con)

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

*Amendment 277 agreed to.*

**The Convener:** The question is, that amendment 278 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Doris, Bob (Glasgow Maryhill and Springburn) (SNP)
Lennon, Monica (Central Scotland) (Lab)
Matheson, Michael (Falkirk West) (SNP)
Ruskell, Mark (Mid Scotland and Fife) (Green)
Stewart, Kevin (Aberdeen Central) (SNP)

**Against**

Lumsden, Douglas (North East Scotland) (Con)
Mountain, Edward (Highlands and Islands) (Con)

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

*Amendment 278 agreed to.*

*Amendment 279 agreed to.*

*Amendment 280 moved—[Tim Eagle].*

**The Convener:** The question is, that amendment 280 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Lennon, Monica (Central Scotland) (Lab)
Lumsden, Douglas (North East Scotland) (Con)
Mountain, Edward (Highlands and Islands) (Con)

**Against**

Doris, Bob (Glasgow Maryhill and Springburn) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Ruskell, Mark (Mid Scotland and Fife) (Green)
Stewart, Kevin (Aberdeen Central) (SNP)

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

*Amendment 280 disagreed to.*

*Amendments 281 to 285 moved—[Mairi Gougeon].*

**The Convener:** Does any member object to a single question being put on amendments 281 to 285?

**Douglas Lumsden:** Yes.

**The Convener:** In relation to which amendments, Mr Lumsden?

**Douglas Lumsden:** I wish to vote against amendments 282 and 285.

**The Convener:** Okay. We will go through each amendment.

*Amendment 281 agreed to.*

**The Convener:** The question is, that amendment 282 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Doris, Bob (Glasgow Maryhill and Springburn) (SNP)
Lennon, Monica (Central Scotland) (Lab)
Matheson, Michael (Falkirk West) (SNP)
Ruskell, Mark (Mid Scotland and Fife) (Green)
Stewart, Kevin (Aberdeen Central) (SNP)

**Against**

Lumsden, Douglas (North East Scotland) (Con)
Mountain, Edward (Highlands and Islands) (Con)

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

*Amendment 282 agreed to.*

*Amendments 283 and 284 agreed to.*

**The Convener:** The question is, that amendment 285 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Doris, Bob (Glasgow Maryhill and Springburn) (SNP)
Lennon, Monica (Central Scotland) (Lab)
Matheson, Michael (Falkirk West) (SNP)
Ruskell, Mark (Mid Scotland and Fife) (Green)
Stewart, Kevin (Aberdeen Central) (SNP)

**Against**

Lumsden, Douglas (North East Scotland) (Con)
Mountain, Edward (Highlands and Islands) (Con)

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

*Amendment 285 agreed to.*

*Amendment 286 moved—[Mark Ruskell]—and agreed to.*

*Amendments 287 and 288 moved—[Mairi Gougeon]—and agreed to.*

*Section 14, as amended, agreed to.*

**After section 14**

*Amendment 540 moved—[Tim Eagle].*

**The Convener:** The question is, that amendment 540 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Lumsden, Douglas (North East Scotland) (Con)
Mountain, Edward (Highlands and Islands) (Con)

**Against**

Doris, Bob (Glasgow Maryhill and Springburn) (SNP)
Lennon, Monica (Central Scotland) (Lab)
Matheson, Michael (Falkirk West) (SNP)
Ruskell, Mark (Mid Scotland and Fife) (Green)
Stewart, Kevin (Aberdeen Central) (SNP)

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

*Amendment 540 disagreed to.*

**The Convener:** This seems an opportune moment to take an eight-minute break. I will see members back here at 10 o'clock.

09:52

*Meeting suspended.*

10:01

*On resuming—*

**Section 15—Notice of and objection to diversification**

**The Convener:** Welcome back. Amendment 289, in the name of Tim Eagle, is in a group on its own.

**Tim Eagle:** Amendment 289 would amend section 15 of the bill, which deals with notice of and objection to diversification, and which largely amends the Agricultural Holdings (Scotland) Act 2003. The bill as drafted seeks to substitute the wording

"land for agricultural purposes",

which is in the 2003 act, with

"whole of the land comprised in the lease for the purpose of sustainable and regenerative agriculture".

My amendment seeks to prevent that change, as there is no clear definition in the bill of sustainable and regenerative agriculture. My intention in lodging the amendment is to ask the cabinet secretary whether that should have been defined in the bill.

I move amendment 289.

**Mairi Gougeon:** Amendment 289 does not take account of the need for tenant farming businesses to be able to play their part in sustainable and regenerative agriculture.

On definitions, the member will no doubt be aware that we had similar discussions throughout the passage of the Agriculture and Rural Communities (Scotland) Act 2024. That act required us to publish a code of practice, which we did last week. The code of practice provides guidance and examples, recognising that sustainable and regenerative agriculture is a collection of different practices. That is how we addressed the issue that the member raises. We did not look to define it in that legislation, which is why we are not looking to define it in this bill.

At present, a tenant's landlord can object to a tenant's diversification if it will substantially prejudice the use of the land being diversified for agricultural purposes in the future. Tenants need to be able to take a whole-farm approach to making the right decision for them. As the people who actively manage the land, they know more than anyone else what works and what needs to be done. The bill helps them to do that by reforming the grounds on which a landlord can object to proposed diversification, so that the objection must be that the diversified use would substantially prejudice the use of all the land in the lease for the purposes of sustainable and regenerative agriculture. Therefore, the amendment would simply mean that we maintain the status quo and that tenant farmers would not have the same ability to take part in or benefit from our future support framework. It is a backward step that should be resisted. I ask the committee not to support the amendment.

**The Convener:** I ask Tim Eagle to wind up and to press or withdraw amendment 289.

**Tim Eagle:** I have nothing further to add. I seek agreement to withdraw amendment 289.

*Amendment 289, by agreement, withdrawn.*

*Section 15 agreed to.*

*Sections 16 to 19 agreed to.*

### Section 20—Compensation for damage by game etc

**The Convener:** Amendment 290, in the name of Tim Eagle, is grouped with amendments 524, 291 to 295, 518, 519 and 296. I call Tim Eagle to speak to and move amendment 290 and to speak to the other amendments in the group.

**Tim Eagle:** My amendments in this group all relate to game damage, and they follow a variety of discussions with groups that are involved in country sports and shooting. Section 20 outlines instances where the tenant is entitled to be compensated by the landlord where game or game management has caused the tenant to sustain certain damage, for example, damage to crops or livestock.

Amendments 290 and 291 seek to delete "or game management" from the proposed new section title in the Agricultural Holdings (Scotland) Act 1991 and from the reasons why tenants would be entitled to compensation. It is unclear to me why game management, rather than just game, such as deer, would contribute to damage in those circumstances. Moreover, any damage that is caused by persons and relates to game management would already be covered under common law, such as through breach of contract or delict.

**The Convener:** May I ask a question?

**Tim Eagle:** Yes, certainly.

**The Convener:** On game management, one of the issues that has been mentioned to me is that people driving round to carry out game management might make continued use of a non-track across grass fields. Including "game management" in the bill might make it easier for the tenant to claim, should that happen. Do you think that common law is a better remedy than having that sort of thing in the bill?

**Tim Eagle:** I do not know whether I can answer that right now. I think whatever you think, convener. [*Laughter.*]

**Tim Eagle:** Can I continue?

**The Convener:** Yes.

**Tim Eagle:** Section 14 applies to compensation for improvements under the Agricultural Holdings (Scotland) Act 1991. The bill requires a tenant to give a landlord a notice requesting consent to proposed improvements. If a landlord has not responded to a notice requesting consent within a period of 70 days, the bill also allows—where am I? Sorry, I am getting lost in my notes, convener.

My amendment 524 would provide balance in the process for the tenant. It would provide that, when notice of a proposed improvement is given by the tenant, the landlord can request further information from the tenant about the improvement. The amendment requires the tenant, within 14 days of being asked for more information, to provide that to the landlord—hang on a minute, convener. Am I in the right place? I do not think that I am.

**The Convener:** I do not know, Mr Eagle. Maybe it is all down to my intervention; perhaps that confused you.

**Tim Eagle:** You have got me lost, convener, because I was sure that I wanted to answer the question about grass tracks.

**The Convener:** I will give you a moment to gather your thoughts.

**Tim Eagle:** I will move on to amendments 292 and 293. The bill as drafted states that the

"tenant is entitled to be compensated by the landlord where game or game management have caused the tenant to sustain ... damage",

for example,

"damage to crops".

My amendments 292 and 293 seek to ensure that that damage is damage that is directly caused. As I have set out in previous amendments, claims against landowners that are outwith direct causation potentially encompass a wide range of losses over which those landowners may have little or no control.

Amendment 294 seeks to remove "damage to fixed equipment" as a reason that would allow a tenant to be entitled to compensation if that damage was caused by game. Under the 1991 act, fixed equipment includes

"all permanent buildings ... all permanent fences ... all ditches, open drains ... farm access or service roads"

and so on. It is not possible for game to damage farm buildings, ditches, drains or service roads. Therefore, the definition needs to be narrowed to make it more appropriate for the possibility of damage caused by game.

Amendment 295 is a probing amendment on the utilisation of the broad and overreaching definition of "habitat". The bill as drafted also includes "damage to habitats" as a reason why a tenant would be entitled to compensation if that damage is caused by game. Given the scale and complexity of habitats, it could be argued that

increased biodiversity, such as more ground-nesting birds, that is caused by effective game and conservation management could cause game damage. For example, cover crops that are planted for game birds could encourage more other birds and mammals. Therefore, the amendment seeks to delete "damage to habitats" from the reasons for entitlement to compensation, and I look forward to the cabinet secretary's explanation for its inclusion in the bill. Similarly, amendment 296 seeks to delete

"trees forming part of a shelterbelt"

from the definition of trees. That is to avoid the duplication of references to shelterbelts, which are included in the definition of fixed equipment.

Turning to other amendments in the group, I will not be able to support Emma Harper's amendments 518 and 519, as I think that, rather than using a process of arbitration, the power to determine questions such as tenants' entitlement to compensation should remain with the Scottish Land Court. However, I am keen to listen to Emma Harper's reasoning.

I move amendment 290.

**The Convener:** I call Emma Harper to speak to amendment 524 and any other amendments in the group.

**Emma Harper (South Scotland) (SNP):** Good morning. It is good to be here. My amendment 524 might seem like a simple replacement of wording—replacing "or" with "and"—but the drafting of section 20(2) might prevent a tenant from claiming compensation for game damage to crops, including deer damage. Scottish Land & Estates and the Scottish Tenant Farmers Association suggested replacing "or" with "and", which maintains the current meaning of section 52 of the Agricultural Holdings (Scotland) Act 1991 and maintains fairness for both the landlord and the tenant.

My amendment 518 may be considered a probing amendment. Where there is game damage, it can be assessed and determined by an arbitrator. For example, if the landlord and tenant do not agree regarding the damage, that would go directly to arbitration. The process of direct arbitration and assessment of damage would be more cost effective, accessible, timely and efficient as a means of dispute resolution, instead of proceeding to the Land Court.

My amendment 519 allows the legislation to be flexible, so that the provision of and process for arbitration can be determined based on an assessment of what works and what does not, and any regulations that are made regarding the arbitration would be subject to the affirmative procedure.

My amendments future proof the legislation and support effective, faster, cost-effective dispute resolution.

**The Convener:** If no other member wishes to speak on this group, I will say a couple of things before I invite the cabinet secretary to come in. When we considered the bill at stage 1, the issue of game damage was discussed. There was some evidence of game damage being a problem, but the majority of people from whom we heard evidence suggested that it was not.

My problem, when we have considered the issue, has always been with the inclusion of fixed equipment, buildings and fences. I am not sure how one attributes damage to fences to game management. For example, if deer are crossing a boundary fence where there is a tenancy, it usually falls to the landlord to maintain it, so it is a responsibility of the landlord anyway. Under convention, there is a 50-50 split between the two landowners on either side of the fence. That is the way that things have always been done, to my knowledge.

Internal fences then become the issue. My struggle with the proposal is this: if deer are moving, for example, over a boundary fence from land owned by Forestry and Land Scotland and then trash an internal fence, I have a problem understanding why the landlord of the holding is responsible when there has clearly been a failure on the part of the neighbour to manage the deer within their holdings. I struggle with that.

I also struggle when it comes down to the definition of ditches. In my career I have seen very little damage to ditches due to game. I have seen more damage due to beavers, in the short time they have been moving all the way round Scotland, than due to pheasants or deer.

Turning to another issue, I am not sure that I fully understand the reasons for removing game management purely on the principle of it. Perhaps that proves that the committee does not necessarily divide along party lines, and that we are instead examining issues individually with regard to their importance, which I think that we have done throughout stage 2. I will leave that observation for those who have commented otherwise in the press.

**Douglas Lumsden:** You asked Tim Eagle whether he felt that common law was sufficient to deal with a situation in which people who were involved in game management had caused damage through their use of non-tracks and so on. From your experience, do you feel that those laws are sufficient, or do you think that the bill needs to address that?

**The Convener:** My problem is that, for example, people managing deer may cause

damage by constantly using a track down the edge of a grass field over the course of a winter, when it is particularly wet and muddy. That means that the tenant has to repair it at the end of that period, perhaps by discing it and rolling it. To take that to a civil claim makes things particularly difficult, so I can see some merit in including provisions on that in section 20. I would like to explore that further with the cabinet secretary to ensure that we are dealing with the right area.

I will close my remarks by noting that I am not sure why buildings are included. I am still struggling in my mind to work out how a building is going to be damaged by a pheasant or a deer. Perhaps the cabinet secretary can give me examples or tell me how a deer would damage a steel building.

**Mairi Gougeon:** I hope that I will be able to shed light—

**The Convener:** Sorry—I should say that we will come to you now, cabinet secretary. You are quick off the blocks.

10:15

**Mairi Gougeon:** Thank you, convener. I hope that I will be able to address some of the points that have been raised in relation to the amendments in this group.

Tim Eagle's amendments 290 to 296 are intended to shift costs from the landlord to the tenant, so the tenant would not then be able to claim compensation for damage that had been caused by poor game management. Ultimately, that is unfair. The tenant farming commissioner has already published a code of practice on the management of relationships between agricultural tenants and holders of sporting rights. There is already a lot of help and guidance for landowners, and I touched on that last week when we were discussing similar issues. We know that poor practice persists, as we have been hearing from stakeholders. That is why the changes in the bill have been introduced, and they are important.

The tenant would not be able to claim compensation for indirect damage under the amendments, and that is unfair. Tenants could claim for damage to the crop, but not for further real costs that they have incurred. The tenant would not be able to claim compensation for damage to fixed equipment and habitats, as we have also touched on. That is unfair. Fixed equipment includes many things that many of us would recognise as the fixtures and fittings of the holding, including dry-stone dykes and fencing.

Habitats include the natural areas of the farm that the tenant is paid to maintain, and they would have to pay to restore them if there is damage to them by game. In addition, if the amendments were passed, the tenant would not be able to claim compensation for damage to shelterbelts. A shelterbelt is part of the infrastructure of a holding and it directly supports the running of the farm, whether it acts as a windbreak or shelters livestock.

That all comes back to the point that any claim that is put forward has to be evidenced. The damage has to have led to loss or to injury. Those are real costs that tenants suffer, for reasons that are completely outwith their control. That is why I think that it is only fair that they are compensated for all those matters, and that is what the bill seeks to do.

I can see that you are looking at me, convener, as if you wish to make an intervention.

**The Convener:** Yes. I was wondering if you were going to answer the question about compensation being sought from a landlord in relation to deer that are moving from somebody else's holding in the middle of the night, say, and then moving back to that other person's holding before daybreak. I do not understand how the landlord can be held responsible for that if they are not in a position to control the deer. I do not suppose that the cabinet secretary is expecting landlords to sit up all night waiting for deer to cross into their land and damage their crop, when it should be the person whose land the deer have come from who should be controlling them.

**Mairi Gougeon:** In relation to the control of deer, those matters are being dealt with and considered through the Natural Environment (Scotland) Bill; that is where matters in relation to control are considered. Here, we are dealing with the impact on the tenant. Ultimately, we are trying to ensure that there is fair compensation to the tenant for damage that comes about through no fault of theirs.

Emma Harper's amendment 524 reverses a change made by the bill to clarify the law. I do not believe that the amendment is necessary. A tenant who has a right to kill and take game does not require permission from the landlord to do so. They do not need to have a right and permission, which is the effect of the amendment.

Amendments 518 and 519 seek to take away the right of a landlord or tenant to refer a question about compensation to the Scottish Land Court. Instead, there would be compulsory arbitration, which is unusual. It would be left to ministers to make that work, if they could, through secondary legislation. I appreciate the reasons why those amendments have been introduced. I agree that it would be helpful to consider, over the longer term, how alternative dispute resolution processes such as arbitration might help the tenant farming sector.

However, we need to be able to explore those issues further in discussions with our wider stakeholders.

I mentioned last week that we would look to consult on the powers of the tenant farming commissioner. We will look to add to that the theme of alternative dispute resolution, so that we can tease the matter out more thoroughly.

I ask the member not to press her amendments.

**The Convener:** I ask Tim Eagle to wind up and to press or withdraw amendment 290.

**Tim Eagle:** I have nothing further to add. I seek agreement to withdraw amendment 290.

*Amendment 290, by agreement, withdrawn.*

*Amendments 524, 291 to 295, 518, 519 and 296 not moved.*

*Section 20 agreed to.*

*Sections 21 and 22 agreed to.*

### Section 23—Rent review: 1991 Act tenancies

**The Convener:** Amendment 545, in the name of Douglas Lumsden, is grouped with amendments 297, 298, 536, 537, 299, 299A, 299B, 300, 541, 301, 302, 538, 539, 303, 304, 520 and 521. I call Douglas Lumsden to move amendment 545 and speak to other amendments in the group.

**Douglas Lumsden:** I will be happy to move amendment 545, which would insert only three little words but which I think is quite important for the section. Section 23(2) substitutes a new subparagraph in paragraph 7 of schedule 1A to the Agricultural Holdings (Scotland) Act 1991—the wording has been simplified and condensed, and the former paragraphs 7(4)(b), 7(4)(c)(i) and 7(4)(c)(ii) have been merged. In so doing, it appears that a few words have been omitted from paragraph 7(4)(b), which has changed the meaning of the subparagraph and rendered it meaningless. I believe that it was intended to include surplus housing and other fixed equipment provided by the landlord at the time when rent review is being used for a non-agricultural purpose. However, the omission of the words "that is used" means that it includes only fixed equipment provided by the landlord for a non-agricultural purpose. It would be very unusual for fixed equipment to be provided at the outset for a non-agricultural purpose, but it is quite common for fixed equipment to be provided for an agricultural purpose but to be used subsequently for a non-agricultural purpose—such as surplus housing.

Without amendment 545, the rent review provisions would not envisage rent accounting for houses that are surplus to the agricultural purposes of the farm. That would be an inequitable position when a tenant has a house that they are getting benefit from, whether in monetary terms or in kind—for example, to provide low-rent housing for family members—but they are not accounting for that asset in rent to their landlord. It is essential for fairness and balance that those words be reinstated.

My amendments 299A and 299B, which seek to amend amendment 299, would also insert a few words. Amendment 299 correctly carries over some of the wording from the current section 13 of the 1991 act to ensure that the rent review provisions in the bill are workable in ways identified at stage 1 by various stakeholder groups. Again, when it has been carried over, the wording has been condensed, but the omission of certain words changes the meaning from what I believe was intended. It is correct that the court should disregard any increase in rental value that arises as a result of improvement work carried out at the tenant's expense. However, as it is drafted, amendment 299 would result in an unfair outcome for the landlord, because the Land Court would have to disregard all the increase in rental value even when only part of the work was at the tenant's expense.

Equally, it is accepted that the landlord would not benefit from any resulting increase in rent for grant-aided expense. The current section 13 of the 1991 act disregards that increase only in so far as the work was grant aided—which is fair—but, in the bill as it is drafted, all the value would have to be disregarded, even if only part of it benefited from grant aid. That is an inequitable outcome that I do not think could have been intended.

I move amendment 545.

**The Convener:** Thank you, Douglas. I call the cabinet secretary to speak to amendment 297 and other amendments in the group.

**Mairi Gougeon:** My amendments 297 and 301 reverse a language change made by the bill. I recognise that concerns were raised about replacing the word "similar" with the word "comparable". That change was supported by tenant farming stakeholders and was recommended by the Agricultural Law Association.

My amendments 298 and 302 amend the bill provisions to list the matters that should not be taken into account by the Land Court when fixing the rent for a holding. Again, stakeholders have asked for that, as they consider that the equivalent provision in section 13 of the 1991 act, as now in force, is well understood by the sector.

My amendments 299 and 303 amend the 1991 act and the 2003 act by listing elements that the Land Court must have regard to when determining

a fair rent for a holding. The amendments make specific provision about the improvements that must be taken into account as part of a rent review and matters to be taken into account when rental value is reduced. Those changes are supported by stakeholders, who consider that they are necessary elements that will enable the court to determine a fair rent for the holding. The amendments take account of the list of matters in section 13 of the 1991 act that require to be taken into account when calculating rent.

My amendments 300 and 304 update a cross-reference in the respective powers of the Scottish ministers to make further provision and regulations in relation to matters that the Land Court is to consider. Failure to make that change would result in a misalignment of the process.

Douglas Lumsden's amendments 299A and 299B would alter the wording of my amendment 299 to make it use the exact wording from section 13 of the 1991 act. I do not think that they would deliver the outcome that Douglas Lumsden is looking for, but I am happy to give the matter further consideration ahead of stage 3, if he is willing to have that discussion with me.

Douglas Lumsden's amendment 545 proposes to further amend the Agricultural Holdings (Scotland) Act 1991 to precisely mirror the wording of section 13 of that act. That would mean that the Land Court would be required, when determining a fair rent for a 1991 act agricultural tenancy, to have regard to the open market rental value of any fixed equipment provided by the landlord and used by the tenant for a non-agricultural purpose. The amendment raises some interesting points, and I hope that I can continue the discussion with Douglas Lumsden in advance of stage 3.

Emma Harper's amendments 536 and 538 seek to amend the list of matters that the Land Court must not have regard to when determining the fair rent of a holding for 1991 act tenancies and 2003 act tenancies, by adding the term

"tenant being in occupation of the holding"

to that list. I ask the committee to support those amendments, because it is important that tenants are not financially penalised because of the very fact that they have a tenancy.

Amendments 537 and 539, in Emma Harper's name, would require the Land Court to provide to both parties a list of comparable holdings that it had considered when determining the rent for a holding for 1991 act tenancies and 2003 act tenancies. However, I do not think that the amendments would deliver the intended outcome. This is part of an issue that appears to be handled differently north and south of the border. I would like to explore the issue further with Emma Harper prior to stage 3, so I ask her not to move the amendments at this time.

Emma Harper's amendments 520 and 521 seek to take away the right of a landlord or tenant to refer a legal question about rent reviews to the Scottish Land Court and propose that arbitration be used instead. I completely appreciate the intent behind those amendments, but more development work is needed, including making sure that necessary rights of appeal are in place for ECHR purposes. Again, I would like to explore the issue further with industry so that we can get it right. For those reasons, I ask Emma Harper not to move those amendments.

Finally, Tim Eagle's amendment 541 would enable the landlord to require an increase in rent if an improvement was required to be made in order for the landlord to comply with the duty conferred on them by any enactment. I understand the issues that tenants and landlords face when there is an increased regulatory burden that results in an increased financial burden, but I think that the amendment goes too far. A landlord who has breached a duty or is at risk of doing so should not simply be able to pass on the compliance costs to the tenant. Indeed, the breach of duty might mean that the landlord is also in breach of the lease agreement. That would be an issue for future legislation whereby we could scrutinise it appropriately. I ask the committee not to support amendment 541.

**The Convener:** I call Emma Harper to speak to amendment 536 and any other amendments in the group.

**Emma Harper:** I lodged amendments 536 to 539 to enable a more open and transparent rent review process. There is widespread practice of rent being applied without the tenant knowing which other farm was used as the equivalent that the proposed rent is based on or, indeed, whether another comparable farm was used to assess the rent at all. That results in unnecessary delays and expense in agreeing rent, and it delays the outcome of rent reviews in relation to the increase in rent for the occupier of the holding. I take on board what the cabinet secretary has said regarding amendments 537 and 539, however, and I am happy to consider a different form of wording.

10:30

Amendments 536 and 538 relate to rent being assessed on the basis of a hypothetical tenant, not the actual tenant who occupies the holding, because a tenant in occupation of the holding could be persuaded to pay rent that was higher than normal. That is sometimes referred to as ransom rent. Tenants might agree to a higher rent

in order to avoid the costs of disruption associated with moving to another holding. It is fundamental to ensure that rent is determined on the basis of a hypothetical tenant, not the actual tenant, because that provides an equitable basis for rent review. That is a long-standing principle, so I am keen to move amendments 536 and 538.

On amendments 520 and 521, the issue of arbitration has come up a lot in the discussions that I have had regarding the need to have an easier process of negotiating and coming to agreement when there are disagreements between a landlord and a tenant. Provisions on short-form arbitration and for determining the arbitration process would be made by regulation by the Scottish ministers. I hear what the cabinet secretary said about having wider engagement with stakeholders on the best methods for arbitration. I am keen that we support a more cost-effective, more accessible and quicker dispute resolution mechanism, so I am happy to engage more widely with stakeholders, hear what they think and then come back to the issue.

**The Convener:** I call Tim Eagle to speak to amendment 541 and any other amendments in the group.

**Tim Eagle:** Amendment 541 seeks to add a new section after section 23 of the bill. It deals with situations in which rents could increase following certain improvements being made by the landlord. It would modify section 15 of the 1991 act, which currently deals with that matter and notes that the rent of a holding can be increased

"Where the landlord of an agricultural holding has ... carried out on the holding an improvement"

in certain situations. For example, it could be

"at the request of, or in agreement with, the tenant".

Amendment 541 would alter the conditions and mean that, following an improvement that was made at the request of, or in agreement with, the tenant, a review could be carried out

"whether or not in compliance with a duty conferred on the tenant by any enactment".

Amendment 541 is designed largely to clarify the bill.

**The Convener:** No other member wishes to speak, so I call Douglas Lumsden to wind up and to press or withdraw amendment 545.

**Douglas Lumsden:** I do not have much to add. Rent reviews are quite an important and, I imagine, quite a contentious part of the bill. I am pleased that the cabinet secretary is willing to work on many of the amendments that have been lodged, so I will not press or move mine.

I have some concerns about amendment 297 in relation to the difference between "similar" and "comparable". I will support it today, but more information might need to be provided before stage 3.

I will not press amendment 545.

*Amendment 545, by agreement, withdrawn.*

*Amendment 297 moved—[Mairi Gougeon]—and agreed to.*

*Amendment 298 moved—[Mairi Gougeon].*

**The Convener:** The question is, that amendment 298 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Doris, Bob (Glasgow Maryhill and Springburn) (SNP)
Lennon, Monica (Central Scotland) (Lab)
Matheson, Michael (Falkirk West) (SNP)
Ruskell, Mark (Mid Scotland and Fife) (Green)
Stewart, Kevin (Aberdeen Central) (SNP)

**Against**

Lumsden, Douglas (North East Scotland) (Con)
Mountain, Edward (Highlands and Islands) (Con)

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

*Amendment 298 agreed to.*

*Amendment 536 moved—[Emma Harper].*

**The Convener:** The question is, that amendment 536 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Doris, Bob (Glasgow Maryhill and Springburn) (SNP)
Lennon, Monica (Central Scotland) (Lab)
Matheson, Michael (Falkirk West) (SNP)
Ruskell, Mark (Mid Scotland and Fife) (Green)
Stewart, Kevin (Aberdeen Central) (SNP)

**Against**

Lumsden, Douglas (North East Scotland) (Con)
Mountain, Edward (Highlands and Islands) (Con)

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

*Amendment 536 agreed to.*

*Amendment 537 not moved.*

*Amendment 299 moved—[Mairi Gougeon].*

*Amendments 299A and 299B not moved.*

**The Convener:** The question is, that amendment 299 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Doris, Bob (Glasgow Maryhill and Springburn) (SNP)
Lennon, Monica (Central Scotland) (Lab)
Matheson, Michael (Falkirk West) (SNP)
Ruskell, Mark (Mid Scotland and Fife) (Green)
Stewart, Kevin (Aberdeen Central) (SNP)

**Against**

Lumsden, Douglas (North East Scotland) (Con)
Mountain, Edward (Highlands and Islands) (Con)

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

*Amendment 299 agreed to.*

*Amendment 300 moved—[Mairi Gougeon]—and agreed to.*

*Section 23, as amended, agreed to.*

**After section 23**

*Amendment 541 not moved.*

**Section 24—Rent review: limited duration tenancies**

*Amendment 301 moved—[Mairi Gougeon].*

**The Convener:** The question is, that amendment 301 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Doris, Bob (Glasgow Maryhill and Springburn) (SNP)
Lennon, Monica (Central Scotland) (Lab)
Matheson, Michael (Falkirk West) (SNP)
Ruskell, Mark (Mid Scotland and Fife) (Green)
Stewart, Kevin (Aberdeen Central) (SNP)

**Against**

Lumsden, Douglas (North East Scotland) (Con)
Mountain, Edward (Highlands and Islands) (Con)

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

*Amendment 301 agreed to.*

*Amendment 302 moved—[Mairi Gougeon].*

**The Convener:** The question is, that amendment 302 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Doris, Bob (Glasgow Maryhill and Springburn) (SNP)
Lennon, Monica (Central Scotland) (Lab)
Matheson, Michael (Falkirk West) (SNP)
Ruskell, Mark (Mid Scotland and Fife) (Green)
Stewart, Kevin (Aberdeen Central) (SNP)

**Against**

Lumsden, Douglas (North East Scotland) (Con)
Mountain, Edward (Highlands and Islands) (Con)

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

*Amendment 302 agreed to.*

*Amendment 538 moved—[Emma Harper].*

**The Convener:** The question is, that amendment 538 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Doris, Bob (Glasgow Maryhill and Springburn) (SNP)
Lennon, Monica (Central Scotland) (Lab)
Matheson, Michael (Falkirk West) (SNP)
Ruskell, Mark (Mid Scotland and Fife) (Green)
Stewart, Kevin (Aberdeen Central) (SNP)

**Against**

Lumsden, Douglas (North East Scotland) (Con)
Mountain, Edward (Highlands and Islands) (Con)

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

*Amendment 538 agreed to.*

*Amendment 539 not moved.*

*Amendment 303 moved—[Mairi Gougeon].*

**The Convener:** The question is, that amendment 303 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Doris, Bob (Glasgow Maryhill and Springburn) (SNP)
Lennon, Monica (Central Scotland) (Lab)
Matheson, Michael (Falkirk West) (SNP)
Ruskell, Mark (Mid Scotland and Fife) (Green)
Stewart, Kevin (Aberdeen Central) (SNP)

**Against**

Lumsden, Douglas (North East Scotland) (Con)
Mountain, Edward (Highlands and Islands) (Con)

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

*Amendment 303 agreed to.*

*Amendment 304 moved—[Mairi Gougeon].*

**The Convener:** The question is, that amendment 304 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Doris, Bob (Glasgow Maryhill and Springburn) (SNP)
Lennon, Monica (Central Scotland) (Lab)
Matheson, Michael (Falkirk West) (SNP)
Ruskell, Mark (Mid Scotland and Fife) (Green)
Stewart, Kevin (Aberdeen Central) (SNP)

**Against**

Lumsden, Douglas (North East Scotland) (Con)
Mountain, Edward (Highlands and Islands) (Con)

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

*Amendment 304 agreed to.*

*Section 24, as amended, agreed to.*

*Section 25 agreed to.*

**After section 25**

*Amendment 520 not moved.*

*Sections 26 and 27 agreed to.*

**After section 27**

*Amendment 305 moved—[Mairi Gougeon].*

**The Convener:** The question is, that amendment 305 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Doris, Bob (Glasgow Maryhill and Springburn) (SNP)
Lennon, Monica (Central Scotland) (Lab)
Matheson, Michael (Falkirk West) (SNP)
Ruskell, Mark (Mid Scotland and Fife) (Green)
Stewart, Kevin (Aberdeen Central) (SNP)

**Against**

Lumsden, Douglas (North East Scotland) (Con)
Mountain, Edward (Highlands and Islands) (Con)

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

*Amendment 305 agreed to.*

*Amendment 306 moved—[Mairi Gougeon].*

**The Convener:** The question is, that amendment 306 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Doris, Bob (Glasgow Maryhill and Springburn) (SNP)
Lennon, Monica (Central Scotland) (Lab)
Matheson, Michael (Falkirk West) (SNP)
Ruskell, Mark (Mid Scotland and Fife) (Green)
Stewart, Kevin (Aberdeen Central) (SNP)

**Against**

Lumsden, Douglas (North East Scotland) (Con)
Mountain, Edward (Highlands and Islands) (Con)

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

*Amendment 306 agreed to.*

*Amendment 307 moved—[Mairi Gougeon].*

**The Convener:** The question is, that amendment 307 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Doris, Bob (Glasgow Maryhill and Springburn) (SNP)
Lennon, Monica (Central Scotland) (Lab)
Matheson, Michael (Falkirk West) (SNP)
Ruskell, Mark (Mid Scotland and Fife) (Green)
Stewart, Kevin (Aberdeen Central) (SNP)

**Against**

Lumsden, Douglas (North East Scotland) (Con)
Mountain, Edward (Highlands and Islands) (Con)

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

*Amendment 307 agreed to.*

*Amendment 308 moved—[Mairi Gougeon].*

**The Convener:** The question is, that amendment 308 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Doris, Bob (Glasgow Maryhill and Springburn) (SNP)
Lennon, Monica (Central Scotland) (Lab)
Matheson, Michael (Falkirk West) (SNP)
Ruskell, Mark (Mid Scotland and Fife) (Green)
Stewart, Kevin (Aberdeen Central) (SNP)

**Against**

Lumsden, Douglas (North East Scotland) (Con)
Mountain, Edward (Highlands and Islands) (Con)

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

*Amendment 308 agreed to.*

*Amendments 383 to 385 and 503 not moved.*

**The Convener:** Amendment 542, in the name of Emma Harper, is in a group on its own.

**Emma Harper:** I state for the record that I have had a lot of support from the Scottish Tenant Farmers Association in drafting my amendments.

My final amendment relates to dispute resolution. It would allow arbitration rules to limit the grounds of appeal by adding the following:

"Any appeal against the award of the arbiter is to be to the Court of Session under the provisions of the Scottish Arbitration Rules as set out in ... Schedule 1 to the Arbitration (Scotland) Act 2010."

The amendment would create a mechanism for dispute resolution by arbitration to be binding, with appeal to the Court of Session possible only on limited grounds, as per the Arbitration (Scotland) Act 2010. I am conscious of time, convener, so I will stop there.

I move amendment 542.

**The Convener:** If no other member wishes to speak on this group, I will mention my concern about going to the Court of Session, given the incredible costs involved. That raises the question

of how one can actually appeal. If the arbitration is such that the only point that you can appeal is whether the arbiter has been correctly appointed, your final backstop is the Court of Session. Perhaps when she winds up, Emma Harper can clarify the costs that would be involved should anyone wish to challenge the arbitration.

We will move to the cabinet secretary to hear what she has to say.

**Mairi Gougeon:** As we have touched on in our debates on previous groupings of amendments, including groups 37 and 38, I absolutely appreciate why Emma Harper has lodged amendment 542 and why we should consider encouraging arbitration for some disputes. However, there needs to be space for alternative dispute resolution more generally. Although the amendment focuses on arbitration, there are other tools that can be considered.

10:45

There are also technical issues with the amendment, given that parts of the Arbitration (Scotland) Act 2010 have yet to be commenced, in part because of the challenges of making arbitration work for statutory disputes. At present, under the Agricultural Holdings (Scotland) Act 1991, tenant farmers and their landlords are able to undertake arbitration and still have the right of appeal, on a point of law, to the Land Court. However, that process is not used, because some parties consider that the system does not work and will not be entered into in good faith.

For the reasons that I have outlined in relation to previous groupings, and because of the wider commitment to tease out some matters in more detail and have a wider discussion with industry and stakeholders, I ask Emma Harper not to press amendment 542.

**Mark Ruskell:** Will the cabinet secretary take an intervention?

**Mairi Gougeon:** I have concluded my remarks, but I am happy to take a point from Mark Ruskell.

**Mark Ruskell:** I appreciate that, given that this has been a long stage 2.

Throughout the morning, we have discussed a range of amendments from the STFA and other stakeholders. I feel that a lot of the discussion could have taken place earlier in the development of the bill. Issues often come up during the passage of bills that require further reflection, and we have the summer to do that with this bill. However, I wonder what the process of engagement with stakeholders now looks like from the Government's point of view. I am sure that stakeholders had concerns way back when the bill was being developed, but those concerns do not seem to have been fully incorporated into the drafting of the bill. What I am looking for is a resolution to those issues and some clear examples from members and the Government of how that can be done before we sit in the chamber at stage 3 and ask, "How do we make sense of this?"

**Mairi Gougeon:** I absolutely appreciate that. The reason why we are discussing these issues is because they are not necessarily easy to resolve. Some of them have been under discussion for quite some time. However, notwithstanding the issues that relate to amendment 542, I am keen to commit to having wider discussion, engagement and consultation, because there are issues in relation to the Arbitration (Scotland) Act 2010, some parts of which have not been commenced. Ultimately, we want to ensure that we get this right for everybody involved in the process, which is why wider engagement and consultation are so important.

**The Convener:** I ask Emma Harper to wind up and press or withdraw amendment 542.

**Emma Harper:** I understand what Mark Ruskell is saying. When I was approached about the amendments and, in particular, about arbitration, the issues of cost, timeliness and dispute resolution often came up. The cabinet secretary is proposing that wider engagement should take place so that we can have an improved process for arbitration and dispute resolution. I am therefore happy not to press amendment 542, which will allow us to do some work to improve the process and engage more widely with stakeholders.

*Amendment 542, by agreement, withdrawn.*

**Before section 28**

*Amendment 386 not moved.*

*Section 28 agreed to.*

**Section 29—Regulation-making powers**

*Amendments 504, 505, 387, 388 and 521 not moved.*

*Amendments 506, 309 and 513 moved—[Mairi Gougeon].*

**The Convener:** Does any member object to a single question being put on amendments 506, 309 and 513?

**Douglas Lumsden:** Yes.

**The Convener:** Which one do you object to?

**Douglas Lumsden:** Amendment 513.

**The Convener:** The question is, that amendments 506 and 309 be agreed to. Are we agreed?

*Amendments 506 and 309 agreed to.*

**The Convener:** The question is, that amendment 513 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Doris, Bob (Glasgow Maryhill and Springburn) (SNP)
Lennon, Monica (Central Scotland) (Lab)
Matheson, Michael (Falkirk West) (SNP)
Ruskell, Mark (Mid Scotland and Fife) (Green)
Stewart, Kevin (Aberdeen Central) (SNP)

**Against**

Lumsden, Douglas (North East Scotland) (Con)
Mountain, Edward (Highlands and Islands) (Con)

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

*Amendment 513 agreed to.*

*Section 29, as amended, agreed to.*

*Sections 30 and 31 agreed to.*

*Long title agreed to.*

**The Convener:** That concludes stage 2 consideration of the bill. I thank all members of the committee for their attendance at these meetings and for following procedure. I also thank members who are not on the committee and who moved their amendments. Cabinet secretary, I pity you for all the agreements that you have made to meet members during the summer. I am not sure that you are going to get a summer holiday, but I wish you well in that process, before the bill comes back to the Parliament at stage 3.

10:52

*Meeting continued in private until 12:11.*

Published in Edinburgh by the Scottish Parliamentary Corporate Body, the Scottish Parliament, Edinburgh, EH99 1SP

All documents are available on
the Scottish Parliament website at:

www.parliament.scot

Information on non-endorsed print suppliers
is available here:

www.parliament.scot/documents

For information on the Scottish Parliament contact
Public Information on:

Telephone: 0131 348 5000
Textphone: 0800 092 7100
Email: sp.info@parliament.scot

The Scottish Parliament
Pàrlamaid na h-Alba