COMMUNITIES COMMITTEE

Wednesday 21 September 2005

Session 2

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COMMUNITIES COMMITTEE
22nd Meeting 2005, Session 2

CONVENER

*Karen Whitefield (Airdrie and Shotts) (Lab)

DEPUTY CONVENER

*Donald Gorrie (Central Scotland) (LD)

COMMITTEE MEMBERS

*Scott Barrie (Dunfermline West) (Lab)
*Cathie Craigie (Cumbernauld and Kilsyth) (Lab)
*Christine Grahame (South of Scotland) (SNP)
*Patrick Harvie (Glasgow) (Green)
*Mr John Home Robertson (East Lothian) (Lab)
*Tricia Marwick (Mid Scotland and Fife) (SNP)
*Mary Scanlon (Highlands and Islands) (Con)

COMMITTEE SUBSTITUTES

Shiona Baird (North East Scotland) (Green)
Alex Johnstone (North East Scotland) (Con)
Christine May (Central Fife) (Lab)
Mike Rumbles (West Aberdeenshire and Kincardine) (LD)
Ms Sandra White (Glasgow) (SNP)

*attended

THE FOLLOWING ALSO ATTENDED:

Johann Lamont (Deputy Minister for Communities)

CLERK TO THE COMMITTEE

Steve Farrell

SENIOR ASSISTANT CLERK

Katy Orr

ASSISTANT CLERK

Jenny Goldsmith

LOCATION

Committee Room 6

Scottish Parliament

Communities Committee

Wednesday 21 September 2005

[THE CONVENER *opened the meeting at 09:30*]

Interests

The Convener (Karen Whitefield): Welcome to the 22nd meeting of the Communities Committee in 2005.

I invite Tricia Marwick to make a declaration of interests.

Tricia Marwick (Mid Scotland and Fife) (SNP): I have no interests to declare.

The Convener: Thank you, Mrs Marwick, and welcome to the committee. I am sure that you will make an interesting and, at times, controversial contribution to our work.

Subordinate Legislation

Housing Grants (Assessment of Contributions) (Scotland) Amendment Regulations 2005 (Draft)

The Convener: I welcome Johann Lamont, the Deputy Minister for Communities, who has joined us for item 2 on our agenda. Accompanying her is Jean Waddie, of the private sector housing team at the Scottish Executive.

As members are probably aware, this Scottish statutory instrument is subject to the affirmative procedure, so the minister is required under rule 10.6.2 of standing orders to propose by motion that the draft instrument be approved. Members have received copies of the draft Housing Grants (Assessment of Contributions) (Scotland) Amendment Regulations 2005 and the accompanying documentation. I invite the minister to speak briefly to the SSI.

The Deputy Minister for Communities (Johann Lamont): The regulations will make a small change to the test of resources for housing improvement grants in order to improve the position for adults with incapacity who might need adaptations to their homes. The test of resources for housing grants contains special provisions to help disabled people when they apply for grant to adapt their homes. The current regulations allow those additional benefits to come into play only when the application for grant is made by a disabled person, but there is no provision for application to be made on behalf of a disabled person. It was brought to our attention that that meant that disabled people who lacked the capacity to apply personally could be excluded from the special arrangements unless an intervention order or a guardianship order were obtained under the Adults With Incapacity (Scotland) Act 2000. We do not feel that that formal procedure is necessary in most cases for a grant application. The amendment will allow an application for a grant for an adaptation to be made on behalf of a disabled person, while allowing them still to benefit from the special arrangements on the test of resources. The person making the application would be treated as the applicant in all other respects, so that they will be able to deal with correspondence, payments and so on. The proposal should ensure that all disabled people can benefit from the grant arrangements, which are there to help them.

The Convener: As members have no comments to put—you have obviously answered all of our concerns, minister—I ask the minister to move motion S2M-3182.

Motion moved,

That the Communities Committee recommends that the draft Housing Grants (Assessment of Contributions) (Scotland) Amendment Regulations 2005 be approved.—[*Johann Lamont*].

Motion agreed to.

The Convener: Does the committee agree to report to Parliament on our decision on the regulations?

Members *indicated agreement.*

09:34

Meeting suspended.

09:36

On resuming—

Housing (Scotland) Bill: Stage 2

The Convener: Item 3 on the agenda is stage 2 of the Housing (Scotland) Bill. The Deputy Minister for Communities, Johann Lamont, is accompanied by Archie Stoddart of the Housing (Scotland) Bill team, Roger Harris of the private sector housing team, Colin Affleck of the bill team, Edythe Murie of the office of the solicitor to the Scottish Executive and Andy Beattie from the office of the Scottish parliamentary counsel.

It might be helpful to point out a few things before we commence. In order to speed things along, if a member does not wish to move their amendment, they should simply say, "Not moved." In that event, any other member can move the amendment, although I will not invite other members to do so. Assuming that no other member moves the amendment, I will simply go to the next amendment on the marshalled list.

Secondly, if a member wishes to withdraw an amendment, I will ask whether anyone objects. If any member objects, I will immediately put the question on the amendment.

Finally, if I am required to use my casting vote, I intend to vote for the status quo, which is the bill as it stands. I hope that that will not occur at any point today.

Section 1—Housing renewal areas: criteria

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

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): Committee members and the minister will be aware that when taking evidence on housing renewal areas, the committee heard that the provision in the bill was a move in the right direction. It was welcomed that local authorities would be able to take into account a range of factors when deciding to designate an area as a housing renewal area.

However, I do not believe that the bill goes far enough. The regeneration of failing communities is a priority for us all. The powers in the bill do not go far enough to address the recommendations that were made by the housing improvement task force, which took the view that housing renewal areas should be considered where there is evidence of wider housing market failure. I refer to situations in which the issue is not just the quality or standard of the houses, but falling house prices and low demand, with communities rejecting houses in an area.

We must ensure that the widest possible range of powers and interpretations of the legislation are

available to local authorities, so that they can use the bill to address situations in which a problem is not limited to the condition of the housing stock, whether it be socially rented or privately rented. All conditions and circumstances must be taken into consideration. That would allow local authorities the opportunity to address much wider social problems in a community. I hope that the minister will be able to accept amendment 19, which I am sure would improve the legislation.

I move amendment 19.

Mary Scanlon (Highlands and Islands) (Con): I am not sure what Cathie Craigie means by

"the stability of the local community",

whether that can be measured and whether it is appropriate to include it in legislation. I do not understand totally how we can measure stability in a community.

Donald Gorrie (Central Scotland) (LD): Cathie Craigie has raised an important issue, although I do not know whether the wording that she has chosen is absolutely correct. The bill deals with the appearance or state of repair of houses having an adverse effect on an area. There is also the matter of the psychological effect that that has on a neighbourhood. If there is a feeling of decline about an area, because houses are being neglected, that may result in people not wishing to take up tenancies or to buy houses there. It would be worth our while to consider the wider issue of the neglect of houses. I am interested in hearing what the minister has to say on the matter.

I did not lodge an amendment to this effect, but in line 17 on page 1 of the bill, in section 1(b), "are" should be "is". I hope that that will be corrected by the right person at the right time.

Johann Lamont: I am more than happy to receive any comments on punctuation and grammar and to pursue them vigorously, even if I can do nothing else. I know that the issue to which Donald Gorrie referred has already been identified.

The housing renewal area strategy would not necessarily be the only means of dealing with areas that are in decline and difficulties. We know that communities can spiral into difficulties when the properties are reasonably okay. Other strategies that we have in relation to antisocial behaviour and so on would be used to address those difficulties. It would be dangerous for us to say that the housing renewal strategy is the only means by which we can address some of the challenges that neighbourhoods face.

Amendment 19 is an attempt to address market failure or decline that impacts on a community. I understand where Cathie Craigie is coming from, but I believe that the amendment would not achieve its purpose, as it seeks to give local authorities powers for intervention that are not linked to the condition and quality of housing. The amendment is also unnecessary because the grounds for the designation of housing renewal areas will allow for intervention in areas that face market decline.

The housing improvement task force suggested a ground for a housing renewal area declaration on the terms that are set out in amendment 19, but it recommended that intervention that was triggered by market failure could also arise where that was likely to impact on

"the condition and/or quality of a significant proportion of the housing stock in the area or of the area as a whole".

The provisions in the bill reflect the aim of addressing area-based problems of condition and quality. A local authority can designate a locality as a housing renewal area if a significant number of houses in the area are substandard or if the appearance or state of repair of any houses in the locality is adversely affecting the amenity of that locality. That is a better provision than the one for which the housing improvement task force called. I believe that that approach, which is linked directly to the condition, state of repair or appearance of houses in an area, is a much sounder way of proceeding. The link between condition and intervention will be more easily understood by people who are affected, particularly as the remedies that local authorities propose will focus on addressing identified condition issues.

In practice, should the appearance or state of repair of unoccupied houses or a fall in the value of houses impact on the amenity of the area, it is likely that the areas that are caught by amendment 19 would fall within the criteria that are already in the bill. If we adopted an approach whereby local authorities could intervene in areas where there are no problems with the condition and quality of houses, that could be argued to be beyond the spirit of the bill. I ask Cathie Craigie to seek to withdraw her amendment, but I am content to explore the matter with her further and, given the points that were made by Mary Scanlon, to consider how the aim could be achieved.

09:45

Cathie Craigie: I could argue some of those points with the minister, but I am heartened by her final comment in which she offered to discuss the matter further. The aim of amendment 19 is to ensure that local authorities can intervene to help communities in which problems are occurring. I accept that, because the bill is a housing bill, housing and its condition must be a major issue, but there are many other issues that affect the stability of communities and I believe that local authorities should have the power that I seek for

them. However, given the minister's undertaking that she is willing to discuss the matter further with me and, if necessary, to come back and consider the matter at stage 3, I am happy to seek to withdraw my amendment.

Amendment 19, by agreement, withdrawn.

Section 1 agreed to.

Section 2 agreed to.

Schedule 1 agreed to.

Sections 3 to 9 agreed to.

Section 10—Local housing strategies

The Convener: Amendment 21, in the name of Cathie Craigie, is grouped with amendment 20.

Cathie Craigie: The amendment is about the local authority's policy framework for the implementation of its duties under part 2 of the bill. Its purpose is to ensure that local authorities' policies—

I am sorry, convener—will you give me a moment to get my paperwork? I am having a Christine Grahame moment, I think. [*Laughter.*]

Christine Grahame (South of Scotland) (SNP): That was untoward.

Cathie Craigie: Sorry, Christine—I know how it feels. If the committee could just bear with me for a moment until I get my paperwork. I am mixed up.

I am sorry about that. The purpose of amendment 21 is to ensure that the local authority's policy on providing assistance to homeowners is a key element of the local housing strategy. Section 69 of the bill requires local authorities to prepare and publish a statement of how they will apply the scheme of assistance to their area. However, when we took evidence and prepared the committee's report, we thought not only that local authority schemes should be determined to meet local needs, but that people should know exactly what the scheme was. My amendment would achieve that.

I move amendment 21.

Scott Barrie (Dunfermline West) (Lab): Amendment 20, in my name, is intended to require local authorities to incorporate within their local housing strategies a strategy that sets out what they will do to put private housing on course to meet the Scottish housing quality standard.

As we know, when the quality standard was introduced an obligation was placed on local authorities and registered social landlords to ensure that their housing stock complied with it by 2015, but there is no requirement on the private sector to achieve such quality standards. The amendment seeks to put our public and private sector stocks on a par to ensure that both are brought up to the standard that we expect in the 21st century.

Johann Lamont: I ask committee members to reflect further on the amendments; we might be able to pursue the issues a bit further between now and stage 3. I do not believe that amendment 21 would be effective in achieving what I think is Cathie Craigie's intention. It refers to the local authority's duties under part 2 of the bill, when the most important aspect of that part in delivering a local authority's housing strategy is the powers that it confers.

I appreciate the desire to ensure that the scheme of assistance approach is part of a local authority's strategic thinking, and I am happy to assure the committee that we share that desire. However, at this stage we do not think that it is necessary to make that a statutory requirement, given the nature of the local housing strategy and the other controls in the bill.

The local housing strategy is intended to cover all housing sectors. That is made clear in Communities Scotland guidance and, after the first round of strategies, we are encouraging more thorough strategic thinking in respect of how authorities deal with private sector housing condition.

Part 2 of the bill provides better tools for encouraging improved conditions in the private sector; the key thing for the scheme of assistance approach is to use those tools in a cost-effective way that has maximum impact on housing conditions in the local authority's area.

Section 69 already requires the local authority to make a formal statement about the criteria that it will adopt. To do that, an authority will need to think clearly about how it will use its powers.

Section 91 gives ministers powers to intervene with guidance and, if necessary, directions. Through Communities Scotland, ministers provide the bulk of the funding that is used by local authorities for those purposes. That is a strong lever, alongside guidance and monitoring of local housing strategies. Taken together, the arrangements will allow ministers to ensure that local authorities use the part 2 powers in a cost-effective way that will deliver for their local housing strategies. As I said, I am happy to pursue further with Cathie Craigie the issues that are raised in the amendments.

On amendment 20, the bill is about improving standards and quality in private sector housing, but I believe that the approach that is set out in amendment 20 would not necessarily pursue that. The effect of the amendment would be to require local authorities to have a strategy to ensure that all houses in the private sector meet the Scottish

housing quality standard by a date to be determined by the Executive.

The Scottish housing quality standard is, quite rightly, wide ranging and detailed in its scope. For example, with reference to kitchens, it describes storage, location and size of worktops and the minimum number of sockets that a kitchen should have. That is the right approach in the social rented sector, where standards of service delivery should be central, but I make a distinction in relation to the private sector, which is different. It could be argued that it is going too far to require of individual owner-occupiers that their houses meet such a standard whether they want them to or not. That would be before we began to consider the cost of such provision for individuals and local authorities.

There are already duties in the bill to the effect that the local housing strategy must set out the strategy for dealing with houses that are below the tolerable standard, as well as the policy for designating housing renewal areas. More generally, the strategy must set out how the local authority will exercise its functions and co-ordinate the functions of RSLs and others who are concerned with housing provision in a way that improves the standard of housing in the authorities' area. I argue that there are already sufficient powers for local authorities to address wider quality issues in private sector housing.

I therefore ask Cathie Craigie to seek to withdraw amendment 21 because we do not believe that it will achieve the desired effect. We could perhaps have further dialogue on that. I also ask Scott Barrie not to move amendment 20, for the reasons that I set out.

Cathie Craigie: The scheme of assistance is clearly one of the main delivery mechanisms for improving quality in the private housing sector. I listened to what the minister said and I am pleased that she is willing to discuss the matter further between now and stage 3. My goal is to ensure that the scheme of assistance for home owners is embedded in the local housing strategy. That is necessary if we want improvement. However, because the minister is willing to discuss the matter further, I am happy to seek to withdraw the amendment.

Amendment 21, by agreement, withdrawn.

Amendment 20 not moved.

Section 10 agreed to.

Section 11—Amendment of the tolerable standard

The Convener: Amendment 22, in the name of Mary Scanlon, is grouped with amendment 23. If amendment 22 is agreed to, I cannot call amendment 23.

Mary Scanlon: Amendment 22 is on the difference between thermal insulation and thermal performance, and Scott Barrie's amendment 23 deals with energy performance. In the light of the discussions that we will have, I hope that I will fully understand the difference between all three.

Testing for thermal performance is more suitable than limiting the test to thermal insulation. We heard in evidence that many older properties, of which there are undoubtedly more in rural areas, are constructed in such a way as to make insertion of insulation in walls and roofs practically impossible. By changing the test to measure thermal performance, other factors such as efficient heating systems could be taken into account in meeting the tolerable standard.

In addition to amendment 22, which concerns thermal performance rather than simply insulation, it is important that regard also be given to the age, character, prospective life and locality of a house in the same way as those factors are taken into account when determining whether a house meets the repairing standard. The difference between my amendment and Scott Barrie's about energy performance is that mine takes into account the age, character, prospective life and locality of a house.

I move amendment 22.

Scott Barrie: Mary Scanlon and I are trying to get at the same thing, but we are coming at it from slightly different positions. The policy memorandum states that thermal insulation components should be added to the tolerable standard because

"Modern expectations of a properly functioning house include thermal insulation ... Its inclusion will also promote sustainability in housing."

We took quite a bit of evidence on that at stage 1. We said in the committee report:

"the Committee is of the view that given the condemnatory nature of the standard, the Executive should give consideration to the proposals to change thermal insulation to 'satisfactory thermal performance.' As there are a variety of means of promoting higher thermal performance—most notably by more efficient heating systems—this would avoid properties being condemned on the basis that there was insufficient insulation. Given the evidence heard by the Committee on the difficulties and potentially high costs of insulation in certain buildings, the use of 'satisfactory thermal performance' might provide a more flexible means of achieving the same objective."

That is where Mary Scanlon is coming from in her amendment. If we exchange "thermal insulation" for "energy performance", it would get to the heart of what we are trying to do. Good insulation needs to go hand in hand with efficient heating—a home that has basic insulation measures, but which has a poor and inefficient heating system will be unsustainable and expensive to keep warm.

We must be careful to use the right terminology and find the right way of achieving what the bill seeks. Amendment 23 is a better way forward than what the Executive has suggested in the bill.

10:00

Patrick Harvie (Glasgow) (Green): Both Mary Scanlon and Scott Barrie have made a clear case for improving the tolerable standard, just as the evidence that we took made a clear case for doing so. Amendments 22 and 23 each have something slightly different to commend them. In relation to amendment 23, as well as recognising that the case for considering overall energy performance—in other words, taking account not just of insulation, but of efficient heating—is already strong, we should recognise that the micro-renewables agenda will become more important over the next few years. I think that houses that have some level of renewable energy generation capacity would be covered by the term "energy performance", given that such generation, which contributes to reduced fuel bills, reduced fuel poverty and reduced CO_2 emissions, will help us to achieve many policy objectives in the area of energy efficiency. My instinct would be to go for amendment 23, but I think that both amendments have something to commend them.

Donald Gorrie: I come at the issue from the same direction as the previous speaker. We must consider energy performance as a whole, not just thermal performance. Mary Scanlon has a strong point when she argues that regard should be had to the type of house and the locality in which it is situated. The case was strongly made to us that it would be ruinously expensive for the owners of some older rural houses to meet specified thermal requirements. If they had a private windmill in the back garden or a wee engine in the local burn, or if they were able to do something more sophisticated, they would achieve good "energy performance". I think that the phrase "energy performance" is better than the phrase "thermal performance".

Like another member of the committee, I have tried without great success to help a housing association to introduce more imaginative energy performance machinery into its new developments, but the funding system has actively discouraged it from doing that. We must have a much more grown-up look at energy in the round. In that regard, I think that amendment 23 is better than amendment 22 and I hope that the minister will support it.

Christine Grahame: Amendments 22 and 23 are both attractive; I wish that they had been married in some way. As other members have said, the committee received strong evidence that some rural properties—I can think of examples in the areas that I represent—cannot be expected to meet the same test of what is satisfactory as a city centre development that is 10 years old. We are talking about very old cottages that have stone walls, lath and plaster ceilings and old windows; some of them might be listed buildings. Those are all significant factors to be dealt with. It would cost landlords a fortune to make such properties meet such a test and the task would be practically impossible.

I have not come down on the side of amendment 22 or amendment 23; I will wait to hear what the minister has to say. We must include in the bill a provision that gives us flexibility to deal with older properties in rural areas and islands—there may be some such properties in town centres, too—the owners of which would find it almost impossible to meet a standard test of what is satisfactory.

Mr John Home Robertson (East Lothian) (Lab): I think that we are all trying to achieve the same thing. I will be interested to hear what the minister has to say so that we can work out the best way forward.

I want to pick up Donald Gorrie's suggestion about heat pumps. That idea probably has considerable scope for improving the thermal efficiency of houses in many parts of Scotland. I take Donald Gorrie's point. I know that East Lothian Housing Association has tried to implement such a system in some properties, but has run into funding difficulties. However, that is a separate issue.

The only point that I want to flag up at this stage—always in the interests of joined-up government in the Scottish Executive and elsewhere—is that I hope that our old friends at Historic Scotland can be wired into the argument. How often have we heard of cases in which an older property could benefit from double-glazing or from appropriate insulation, either in the walls or in the roof, and some purist at Historic Scotland says, "Oh no, you can't," because it would not look right or it would not be appropriate? People who live in older properties in all parts of Scotland—whether in urban or rural areas—should not be required to freeze in such buildings. I hope that Historic Scotland can be brought on board and that it can be a bit more flexible in its approach to granting consent. That is relevant to this debate.

Johann Lamont: I agree with John Home Robertson that we are all wrestling with similar issues in our aspirations generally to improve energy efficiency and to deal with the level at which energy efficiency is so poor that it is below tolerable standard. Sometimes those two issues are mixed up, but they could be separated. I recognise the issues around funding. I have seen some projects in which the housing association

has actively been supported to put in solar panels and so on. We need to consider that further. On Historic Scotland, I am more than happy to try to have dialogue or to get someone to have dialogue on those interesting issues.

However, the amendments are more specific than that. The issue of thermal efficiency was investigated by the housing improvement task force, which considered three broad approaches to specifying thermal efficiency: an overall house energy cost measure; a building material heat transmission measurement; and a qualified thermal insulation standard. It concluded that

"a flexible and practical approach was needed, which was best achieved through the inclusion of a qualified statement to the effect that a house should provide a basic level of thermal insulation".

The options that have been identified in the amendments were not supported by the housing improvement task force. The definition of a qualified statement would be addressed through guidance and it would specifically have to consider the issue of hard-to-insulate houses. That would be developed with an expert group. It is worth bearing in mind that the tolerable standard is a basic condemnatory standard and as such needs to be transparent, easy to understand and straightforward to implement. Following the task force recommendation is the best way of meeting those objectives.

Amendment 22 seems to be concerned with promoting energy efficiency and improving house condition, but it could be argued that it might have the opposite effect. That is because the amendment qualifies any standard with reference to

"the age, character and prospective life of the house, and the locality".

The amendment could seem to suggest that some houses would be deemed to meet the tolerable standard simply because of where they were located or perhaps because of the quality of the area. The Executive would take the view that that is not acceptable. The tolerable standard should be applied in the same way throughout the country. If a house does not meet the standard, it is not fit to live in. That is a base point, not an issue of aspiration, as has been reflected in part through the discussion that we have had. On the one hand, the tolerable standard has been seen as a way of improving energy efficiency and, on the other, it has been argued that some landlords might have a get-out clause from addressing the issue of insulation.

On amendment 23, I can understand members' concerns about energy efficiency. However, the tolerable standard is not a mechanism to improve the general level of energy efficiency in the country, but rather a measure below which a house is deemed as not fit to live in. As a result, we need a measure that is transparent and relates to the house concerned. A measure of thermal insulation is widely understood and is clearly linked to the fabric of the building. It does not depend on the detailed testing regime that is implied in amendments 22 and 23. There are other areas in which we can address the issue of insulation. We know the work that has been done through warm deal, we know how successful the central heating programme has been and generally we know the commitment of the Executive to address those issues in new build through building regulations.

I ask that Mary Scanlon withdraws her amendment and that Scott Barrie does not move his amendment. However, I recognise that they raise issues that we can pursue further.

Mary Scanlon: I thank my colleagues for making some good points on the issue, about which we certainly heard interesting evidence. I say to Donald Gorrie that people in the Highlands do not particularly want windmills in their back gardens—they have got enough. However, I will not go down that road just now.

The Convener: Mary, you never miss an opportunity to mention wind farms.

Mary Scanlon: I listened carefully to what the minister said. I am certainly not looking for a get-out clause, but I think that we need to bring Historic Scotland on board. There are specific circumstances relating to old cottages, many of which are in the Highlands and Islands, while others, as Christine Grahame said, are in the Borders. We should not consider them in the same way that we consider other houses. There has to be much more flexibility.

I noted that the minister said that the issue would be addressed through guidance and through an expert group. However, I would like to press amendment 22 in order to put down a marker for further discussion.

The Convener: The question is, that amendment 22 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Scanlon, Mary (Highlands and Islands) (Con)

AGAINST

Barrie, Scott (Dunfermline West) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Grahame, Christine (South of Scotland) (SNP)
Home Robertson, Mr John (East Lothian) (Lab)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
Whitefield, Karen (Airdrie and Shotts) (Lab)

ABSTENTIONS

Gorrie, Donald (Central Scotland) (LD)
Harvie, Patrick (Glasgow) (Green)

The Convener: The result of the division is: For 1, Against 6, Abstentions 2.

Amendment 22 disagreed to.

The Convener: I call Scott Barrie to move or not move amendment 23, which has already been debated with amendment 22.

Scott Barrie: I realise that I am supposed just to say "I move" or "Not moved" but I would like to make a point first. The committee is quite keen to pin the matter down and the minister said that she wants to have further discussions on it. Although I will not move amendment 23, I do not want to lose sight of the matter. We have to have further discussions if we are to get the approach right, for the reasons that have been mentioned by other members. I am not sure that what is currently in the bill is what we would want to have in the act, so we will return to the matter at stage 3, after discussions with the minister.

Amendment 23 not moved.

Section 11 agreed to.

Section 12 agreed to.

Section 13—The repairing standard

The Convener: Amendment 24, in the name of Cathie Craigie, is in a group on its own.

Cathie Craigie: Amendment 24 is designed to ensure that tenants and neighbours of properties let by private landlords have an enforceable minimum level of protection from the risk of fire in their properties.

Section 13, which sets out the minimum repairing standard for properties that are let in the private sector, has been broadly welcomed. However, it does not include any requirements relating to adequate fire detection, despite the fact that fire has posed one of the greatest risks to the safety and well-being of tenants in the private rented sector.

Under section 13, properties are required to be

"wind and water tight and … reasonably fit for human habitation".

Protection from fire should have an equal bearing in determining whether a property is suitable for renting, be it in the private or any other sector. Amendment 24 would ensure that private landlords have a clear obligation to provide a minimum level of fire protection.

I move amendment 24.

10:15

Johann Lamont: I am sympathetic to the purpose of amendment 24 and agree that the bill would be a suitable vehicle for taking such a step, but two practical difficulties with the amendment have been identified.

First, in dealing with cases based on the requirement in amendment 24, the private rented housing committee should have regard to advice from the fire and rescue service. Without that advice, substantial inconsistency could develop around what is acceptable fire detection, to the detriment of wider fire prevention policy.

Secondly, fire detection measures such as battery-powered smoke detectors will be appropriate in certain circumstances, but they can be compromised by the tenant, for example by removing batteries. The tenant's responsibility should be recognised, so that the landlord is not penalised for the tenant's breach of that responsibility.

I therefore ask Cathie Craigie to withdraw amendment 24 on the basis that there are difficulties with it, but I guarantee that we will consider the matter further and bring forward a stage 3 amendment if we can achieve a workable solution.

Cathie Craigie: I thank the minister for her response. It is welcome. I appreciate that she wants to accept the principle, but I understand the difficulties that are involved. I will seek leave to withdraw the amendment and I look forward to hearing about the Executive's work between now and stage 3.

Amendment 24, by agreement, withdrawn.

Section 13 agreed to.

Sections 14 to 21 agreed to.

Section 22—Application to private rented housing panel

The Convener: Amendment 15, in the name of Tricia Marwick, is grouped with amendments 16 to 18.

Tricia Marwick: Amendment 15 is a simple amendment. The bill states that a tenant may apply to the private rented housing panel. Paragraph 66 of the policy memorandum makes it clear that the private rented housing panel is not a general housing tribunal and the Executive wants to ensure that other people do not go to it. The policy memorandum states:

"The Panel will not accept applications from landlords, neighbours or local authorities."

It is well known that, traditionally, the private rented sector houses some of our most vulnerable people, such as people with disabilities or

incapacity, people who cannot read and write and people with language difficulties.

There is an omission in the bill. In cases where a tenant is unable to apply to the panel on their own behalf, the bill should allow somebody to apply on their behalf. It is interesting that we have just considered subordinate legislation to allow somebody acting on behalf of a disabled person to apply for a housing grant. The minister might say that the point is covered elsewhere in the bill, but we need to be explicit and state that, if a tenant cannot act on their own behalf, the private rented housing panel will accept an application made on their behalf.

I am thinking in particular about people who have social workers and who are living in appalling conditions. If the policy memorandum is to be believed, a local authority—that is, the employer of the social worker—will not be able to make such an application to the panel. The bill must make it absolutely explicit that the tenant is not the only person who can make an application and that someone else can act for them on their behalf if they give them permission to do so. After all, many people in the private rented sector will be unable to make their own applications.

I move amendment 15.

Donald Gorrie: Tricia Marwick has raised a good point. I am not expert in these matters, but I would have thought that with most tribunals, which are numerous in Britain, someone who is not as coherent as they might be can allow someone else to act on their behalf. For example, citizens advice bureaux provide a useful service that helps people in tribunals; the CABx could certainly speak up for someone who finds themselves in the position that Tricia Marwick describes. Obviously, we do not want our adjudicatory system to be clogged up with expensive advocates droning on for ever and earning lots of money. However, I do not think that such a risk arises in this case, because the people who live in such housing will not employ expensive advocates; indeed, in some circumstances, they might well ask their MSP to speak for them.

The basic concept behind amendment 15 is good and I wonder whether the minister's advisers can highlight any precedents for her. After all, all civil servants work on precedents. Are there any similar bodies that do not accept people speaking on others' behalf? If no such bodies exist, the civil servants will have to accept amendment 15.

Christine Grahame: As an ex-solicitor, I should say, at the risk of droning on, that section 22 is more about paperwork and the administrative stuff than about advocacy or representation.

Mary Scanlon: On Donald Gorrie's comments, I know from my work in Inverness that Advocacy Highland already represents many vulnerable people, particularly on housing issues. I simply put on record my view that there is no problem at all in that respect.

Mr Home Robertson: I had assumed that the substance of amendment 15 was already implicit in the bill and that the individual tenant or someone acting on their behalf would be able to make an application to the panel. At the moment, a person who wants someone else to act on their behalf can simply sign the papers and let them get on with it. As a result, I am not sure that amendment 15 takes us much further forward, but the minister will no doubt advise us on that.

Johann Lamont: I should make it clear that it is not for civil servants to decide whether to accept amendments. However, we must have regard to the legal advice on the implications for other pieces of legislation of any amendment that we might accept.

I do not think that we are terribly far apart on the matter. Everyone acknowledges Tricia Marwick's points about vulnerable tenants and people who are inhibited in taking the first step towards dealing with injustice because they do not know where to start. Indeed, all of us will have dealt with such people.

The provisions that amendments 15, 16 and 17 would affect are based on general legal principles about the use of an agent, whether they are employed or are, for example, a friend or relation. As a result, how we deal with the amendments could have implications for other provisions that might involve an agent.

On the basis of general legal principle, if a tenant authorises someone else to act on their behalf, that person can apply and notify others under section 22 as if he or she were the tenant. Under section 23, the president of the panel can consider such an application and take account of it in deciding whether a repeat application should be rejected. If necessary, the president may check that the tenant has in fact given the person authority to act.

Committee members might feel that there is an inconsistency with the regulations that they considered earlier today, but those regulations deal with a different situation. They are designed to help a disabled member of a household who is incapable of authorising someone to apply for grant on his or her behalf. The reason for the regulations is that a formal legal process to appoint such a person would be too burdensome if the only purpose were to ensure that only the disabled person's income was used to calculate grant.

The amendments that we are now considering relate only to the tenant and not to another family member. The tenant has legal obligations and if he

or she is not capable of dealing with those obligations or of authorising someone else to do so, there is good reason for going through the formal legal process to appoint such a person. Amendments 15, 16 and 17 are therefore unnecessary, because a person who is authorised to act on the tenant's behalf can do so without the need for a special provision in the bill. If the tenant is incapable of authorising someone, it would be appropriate to take formal legal steps to appoint such a person.

Amendment 18 would affect not what the tenant may do, but the way in which the president of the panel must act. As the amendment stands, it would require the president to notify anyone who may be acting on the tenant's behalf. Such a person might not have made the application to the panel and might not have been identified to the panel, in which case the president would fail in his or her duty. For that reason, we feel that amendment 18 would be unworkable. However, I appreciate the point that, when the president notifies the tenant of a rejection, it would be sensible also to notify the person who made the application on behalf of the tenant. We will therefore consider lodging a suitable amendment at stage 3 to achieve in a workable way what we understand to be the intention of amendment 18.

I hope that Tricia Marwick will be willing to withdraw amendment 15 and not to move amendments 16, 17 and 18.

Tricia Marwick: I am grateful to the minister for her comments. It is important that they are explicitly on the record and that there should be nothing to prevent a person from acting on behalf of a tenant in making an application to the private rented housing panel. I was also happy to hear from the minister that she will consider a stage 3 amendment to tighten up those provisions in the bill. In those circumstances, I seek the committee's agreement to withdraw amendment 15 and I will not move amendments 16, 17 and 18.

Amendment 15, by agreement, withdrawn.

The Convener: Amendment 25, in the name of Christine Grahame, is in a group on its own.

Christine Grahame: I will move amendment 25 and, subject to what the minister says, I might then seek leave to withdraw it.

The Convener: We will come on to that.

Christine Grahame: It was just a pre-emptive strike.

At first sight, I thought that amendment 25 looked like a daft little amendment. However, when I looked into it more carefully I saw that, although it is pretty technical, it has merit. In section 14(1), the bill makes a distinction between the start of a tenancy and the duration of a tenancy. My understanding is that a tenancy endures from the date on which it begins until the date on which it ends. However, section 14(1)(a) talks about

"the start of the tenancy"

and section 14(1)(b) talks about

"all times during the tenancy."

In both cases, the landlord

"must ensure that the house meets the repairing standard".

However, in section 22, the distinction is lifted. Section 22(1) says:

"A tenant may apply to the private rented housing panel for determination of whether the landlord has failed to comply with the duty imposed by section 14(1)(b)."

Section 22(1) mentions only section 14(1)(b). It seems to me that, for consistency, the "(b)" of "section 14(1)(b)" should be deleted so that we are left with only "section 14(1)". That would then catch both the cases mentioned in section 14(1).

As the bill stands, it could well be that some clever lawyer—and everybody seems to think that they are making pots of money—could admit that a house was not meeting the repairing standard at the start of a tenancy, but could then argue that section 22(1) prohibited a complaint from being made under section 14(1)(a).

I move amendment 25.

The Convener: Does any other member wish to speak on this "daft little amendment"?

Patrick Harvie: When she sums up, will Christine Grahame explain why, if the argument that she has just made is right, we do not also have to change other references to section 14(1)(b)? For example, there are a few in section 24.

The Convener: As no other member wishes to speak, I invite the minister to respond.

10:30

Johann Lamont: The purpose that lies behind the powers and procedures of the private rented housing panel and its committees is to achieve the repair of a tenant's house as required under the repairing standard. Amendment 25 would allow a tenant to apply to the panel if the house did not meet the repairing standard at the start of the tenancy. However, if a tenant takes up the tenancy of a house that is not up to the repairing standard and the landlord does not carry out the repair, he is immediately in breach of section 14(1)(b) of the bill and the tenant can seek redress through the panel. If the landlord repairs the tenant's house, the objective of the legislation has been achieved and no further basis for application to the panel is necessary. On that basis, I invite Christine Grahame to withdraw amendment 25.

Christine Grahame: I still have an itch that the provision in the bill is not quite right. I still do not follow why a distinction is made in section 14 between the start and the duration of the tenancy when in other sections—I thank Patrick Harvie for drawing my attention to the point—no such distinction is made. I hesitate to say this, but the drafting seems to be slightly clumsy. I seek leave to withdraw the amendment now and will perhaps return to the issue at stage 3, as I believe that there is a drafting issue that might create a loophole.

Amendment 25, by agreement, withdrawn.

The Convener: Amendment 26, in the name of Donald Gorrie, is grouped with amendments 30, 31, 32 and 43.

Donald Gorrie: Amendments 30, 31 and 32 are consequential to amendment 26.

Amendments 26 and 43 have the same genesis. When we took evidence, a number of groups that represent the interests of tenants told the committee that they thought that the PRHP should adjudicate on issues of management as well as on issues of the quality of the building, maintenance and so on. Some of them have contacted members of the committee to suggest amendments along those lines.

The issue is important. The introduction of management standards as well as building standards would improve the bill. There is a counter-argument that this is the wrong place to do it and that they are different issues, but they overlap greatly. It is not always easy to distinguish between a landlord's failure to maintain the building properly and their failure to use decent management systems in looking after the building as the two overlap considerably. It is in the interests of tenants that there is a one-door approach so that they can go to the panel and say not only that the roof is leaking and the landlord is doing nothing about it, but that various matters that he said he would ensure were properly dealt with have not been dealt with. It is important to bring in the issue of management.

Amendment 26 is less radical than Patrick Harvie's amendment—amendment 43. I naturally prefer amendment 43. My amendment states that ministers should, following consultation, set down management standards, but it does not attach a timescale. Patrick Harvie's amendment sets out the management standards in great detail and has a timescale attached, which is more sensible. All the measures should take effect at the same time. I strongly urge the minister and members of the committee to accept one amendment or the other. This is an important issue. Patrick Harvie's amendment is better than mine, but I will move my amendment to get the ball into play and to find out what other members think and what the minister thinks. One way or another, management standards should be brought within the PRHP's powers.

I move amendment 26.

The Convener: I invite Patrick Harvie to speak to amendment 43 and to the other amendments in the group.

Patrick Harvie: Thank you, convener, and thanks to Donald Gorrie for passing me the ball.

I hope that the Executive and the committee will support amendment 43. The committee will be aware, as Donald Gorrie rightly says, that we heard evidence on this issue at stage 1 from many organisations, including Shelter. I feel that we should congratulate Shelter on perhaps the most effective e-mail lobbying campaign that I have seen recently.

Mr Home Robertson: That is debatable.

Patrick Harvie: Well, certainly the most efficient.

As Donald Gorrie says, these amendments would establish the principle of management standards. I was very supportive of Cathie Craigie's amendment on a fit-and-proper person when the Antisocial Behaviour etc (Scotland) Bill went through the committee. For those who did not share the committee's joyful experience of dealing with that bill, I will explain my reasons for supporting her amendment. It stemmed partly from my experience of supporting people on housing issues in the not so dim and distant past of my student days and, more recently, as a youth worker being made aware of many tenants' lack of knowledge of their rights.

I have personal experience of being harassed out of a flat in Glasgow by a landlord who had refused to provide a tenancy agreement or any evidence that I had paid rent. My only redress was to call the police, who engaged him in a very uncomfortable conversation but who could do nothing more. As a result, I lost the flat. I was fortunate in having my family; otherwise, I would have been in a very difficult situation.

It is important that when we consider the kind of service that people should expect from their landlords we agree with Donald Gorrie that there is an overlap between physical standards and management standards. If we think that tenants are entitled to more than a basic minimum of rights and that that covers more than just physical standards, we should support the amendment.

Setting good management standards is not a high hurdle but a bare minimum. My amendment describes in more detail what the management standards should be; it covers the basic rights to

which tenants are entitled and provides them with redress if those rights are not given. It would also allow tenants to access the panel on these issues.

I hope that members agree that this is a useful place to introduce an important principle. Any tweaking of the fine detail can be done at stage 3.

Cathie Craigie: I imagine that irresponsible landlords dislike me more than any other committee member. Since we started talking about improving standards in housing when we were preparing for the Housing (Scotland) Act 2001, I and the committee have taken up this important issue.

I am pleased that we were able to get the amendments to the Antisocial Behaviour etc (Scotland) Bill agreed to in committee. Those amendments require private landlords to register and to be approved as a suitable person to be a landlord. I understand that the Executive has been working hard with local authorities and private landlords to develop a workable scheme that has the backing of all those involved and that the Executive recently consulted on that scheme.

I shall be interested to hear the minister's response to the amendment. Perhaps it is not necessary. There may be other measures that ensure that standards in the private sector are improved. That said, I look forward to hearing the minister's response.

Tricia Marwick: I will support amendment 43. As Patrick Harvie said, an opportunity is available to ensure that the bill—which deals with the private rented sector—lays down management standards. As he said, the requirements are hardly onerous; they are the minimum that people should expect from a landlord. However, the minimum is often not met. I see no reason why such a standard should not be in the bill. Having it would bring benefits. The bill should balance the obligation to repair with an obligation to manage properly. For those reasons, I will support Patrick Harvie's amendment.

Johann Lamont: Amendments 26, 30 to 32 and 43 have a similar purpose. Their intention is to allow a tenant to use the private rented housing panel to obtain redress if a landlord breaches any of a range of defined management standards. I appreciate the intention, but for several reasons the amendments would not achieve it.

A range of basic management standards already has legal protection through the courts. Ministers could not be given powers to use secondary legislation to remove existing powers from the courts and give them to the panel and a tenant could not have two routes through which to pursue a landlord for what might be a criminal offence, so the scope to use the powers that amendments 26 and 30 to 32 would create is very limited.

A tenant would still need to rely on the court's powers for a range of issues, such as a landlord's failure to provide a rent book for an assured or short assured tenancy or harassment of a tenant. If the amendments were agreed to, the result would be a confusing patchwork of provisions.

Amendment 43 encounters similar problems in a different way. It refers to several management standards that are already legal requirements. The amendment does not provide for the panel to be able to apply sanctions if a landlord does not rectify a breach and, to be effective, the panel would need to be able to do that. Using the panel to deal with such standards would duplicate the courts' role, which would be unacceptable.

The amendments would not allow the panel to deal with the full range of management issues, but the landlord registration system that is being introduced will allow a local authority to do that. It will allow a local authority to assess the overall situation and take effective action, if it is needed, to ensure that a landlord changes practices and if necessary is removed from letting.

Section 155 will allow ministers to reinforce those arrangements, if that is necessary, by making a letting code and requiring local authorities to take breaches of the code into account when deciding whether a landlord should be registered. Those registration powers, to which Cathie Craigie referred, are a more appropriate and effective way of dealing with failures in management standards than the proposals in the amendments. I therefore ask Donald Gorrie to withdraw amendment 26 and not to move amendments 30 to 32 and I encourage Patrick Harvie not to move amendment 43.

The Convener: I invite Donald Gorrie to wind up and to say whether he will press or withdraw amendment 26.

Donald Gorrie: Will the vote on amendment 43 be held on a later date?

The Convener: Yes. It will not be held until next week.

Donald Gorrie: That is a problem. I adhere to my previous position. Patrick Harvie's amendment 43 is preferable to my amendment 26, but my amendment is preferable to nothing. With due respect, I say that the minister has misconstrued what Patrick and I aim at. We want not to do the courts out of a job, but to resolve relatively minor issues that need not go to court. The courts are blocked up with many things that should not have to go to them and could be sorted out with a bit of mediation or sensible activity by the housing panel. To try to draw a clear distinction between the building and the management, which cannot be drawn, is unhelpful. The minister and her team, not us, muddle the whole thing up. The amendments would clarify the situation.

Subsection 2 of Patrick Harvie's amendment 43 would allow ministers to make regulations to enforce the standards, so it could work. If my amendments are not completely sound, their objective is sound and important and has been called for by a lot of people who know about the subject. It is therefore very important that the minister gives way. I have a problem in that if my amendment were carried, Patrick Harvie's would be dropped—is that correct?

10:45

The Convener: No, there is no pre-emption.

Donald Gorrie: In that case, I will press amendment 26.

The Convener: The question is, that amendment 26 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Gorrie, Donald (Central Scotland) (LD)
Grahame, Christine (South of Scotland) (SNP)
Harvie, Patrick (Glasgow) (Green)
Marwick, Tricia (Mid Scotland and Fife) (SNP)

AGAINST

Barrie, Scott (Dunfermline West) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Home Robertson, Mr John (East Lothian) (Lab)
Scanlon, Mary (Highlands and Islands) (Con)
Whitefield, Karen (Airdrie and Shotts) (Lab)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 26 disagreed to.

The Convener: I indicated earlier that Patrick Harvie's amendment 43 will be voted on next week. In fact, it is much more likely that that will happen at a later stage in the committee's deliberations.

Amendment 27, in the name of Mary Scanlon, is grouped with amendments 28 and 29.

Mary Scanlon: Amendments 27, 28 and 29 seek to alleviate concerns that tenants could abuse the private rented housing panel procedures. It would be reasonable to place some requirement on tenants to report the need for repairs promptly. If tenants delay reporting the need for a repair, much more major work, which is more expensive and more time-consuming to remedy, could be required.

As the bill is currently drafted, a tenant could delay reporting a damaged roof tile, for example, until such time as a major roof repair is required. He could then notify the landlord and immediately refer the matter to the private rented housing panel for enforcement. The landlord might be ordered to make the repairs within a short period of time, failing which rental income would be withdrawn. In the meantime, the tenant could avail himself of his common law remedy to withhold rent until the problem is sorted. Such a problem could have been more quickly and cheaply fixed if it had been notified promptly.

I move amendment 27.

Christine Grahame: I understand where Mary Scanlon is coming from, but I oppose the amendments because they introduce an element of uncertainty. There is no problem with evidence here. Section 22(3) states that

"No such application may be made unless the tenant has notified the landlord".

There we are; everyone knows where they are. The landlord has been notified that something requires to be remedied and the tenant does that. However, if we add

"or the landlord has become aware"

into section 22(3) by passing amendment 28, we get into evidential problems and they would be enormous. How is the landlord supposed to become aware if he is an absentee landlord? That would not be clear law.

The same could be said of amendment 29, which would insert into section 22(3) the words

"and the landlord has failed to carry out that work within a reasonable time."

What is meant by "a reasonable time"?

Amendment 27 would insert into section 22(2) the words

"including the tenant's reasons for considering that the landlord has had a reasonable time to complete any work required to comply with the duty after becoming aware that such work was necessary".

That seems to take away the clarity and certainty of a quite straightforward position.

As the bill stands, people will know where they are and that is what we require from the law: the tenant notifies the landlord of something that needs to be fixed; if the landlord does not do anything about it, the tenant goes to the private rented housing panel.

Johann Lamont: Amendment 29 is intended to ensure that landlords have a reasonable time to carry out any repair works that are needed to bring a house to the repairing standard, after the need for the works has come to his or her attention. That would be an unnecessary addition to the bill because section 14(4) already ensures that landlords have reasonable time to carry out works. A private rented housing committee could not in practice decide that a landlord had failed in his or her duty by taking an unreasonably long time to

carry out works until a reasonable time to do the works had elapsed.

As well as being unnecessary, amendment 29 would require tenants to wait for the time it would reasonably take to do the works before making an application, even though the landlord had refused to do the works. Without amendment 29, tenants will not be required to allow reasonable time before applying and so should not have to give reasons for thinking that the time is reasonable, as would be required by amendment 27.

By allowing a tenant to apply to the panel without notifying their landlord that repairs were needed, amendment 28 would lead to difficulties. If a tenant applied to the panel because he or she supposed that the landlord was aware of the need for repairs, but it subsequently emerged that the landlord was not aware of the need until after the application had been made, the application would be invalidated, however pressing the need for works was. There seems no good reason why tenants should not notify their landlord of necessary works before they apply to the panel, as will be required under the bill. The notification will establish a sound footing for the panel process—it is hard to prove awareness and better to rely on notification.

I therefore invite Mary Scanlon to withdraw amendment 27 and not to move amendments 28 and 29.

Mary Scanlon: I disagree with Christine Grahame—which is not unusual—that there is no evidence on the matter; in fact, we had clear evidence from some of the witnesses who came along. The amendments would bring clarity to the issue but, given the minister's response, I am minded to withdraw amendment 27.

Amendment 27, by agreement, withdrawn.

Amendments 16, 28 and 29 not moved.

Section 22 agreed to.

Schedule 2

PRIVATE RENTED HOUSING COMMITTEES: PROCEDURE ETC

The Convener: Amendment 2, in the name of the minister, is in a group on its own.

Johann Lamont: Amendment 2 would allow travelling expenses to be paid to parties who attend a hearing of a private rented housing committee. Although such expenses are not at present payable for attending the rent assessment committees, from which the new private rented housing committees will evolve, we want to encourage full use of the redress that will be available under the bill if a landlord fails to meet the repairing standard. The amendment would remove a practical barrier, as the committee requested in the light of evidence from the Scottish Committee of the Council on Tribunals. The amendment is a unifying point in the consideration of the bill.

I move amendment 2.

The Convener: As no member wishes to comment, we go back to you, minister, to wind up.

Johann Lamont: I am delighted that my call for unity has been agreed to.

Amendment 2 agreed to.

Schedule 2, as amended, agreed to.

The Convener: I now suspend the meeting for a short comfort break. We will reconvene at 11 o'clock.

10:54

Meeting suspended.

11:03

On resuming—

Section 23—Referral to private rented housing committee

Amendments 17 and 18 not moved.

Section 23 agreed to.

Section 24—Determination by private rented housing committee

Amendments 30 to 32 not moved.

The Convener: Amendment 33, in the name of Mary Scanlon, is in a group on its own.

Mary Scanlon: Amendment 33 considers the need for the circumstances of a particular house to be factored into the panel's decision on the length of time that is allowed for carrying out repairs. In rural areas, as we heard in evidence, it is likely to take longer to arrange repairs, due to shortages of tradesmen—although I realise that there are shortages of tradesmen in other areas, too. Although the time allowed must be reasonable, the bill gives no indication of the type of factors that a panel must take into account in coming to a decision. Even if the panels were to sit locally, what a panel that sat in Inverness, for example, would deem a reasonable time may not, in fact, be reasonable for a more remote part of the Highlands, or particularly for the islands, where there is a lack of tradesmen and where the transportation of materials can be difficult. Any worsening of the condition of the house due to a tenant's delay in notifying the landlord should be taken into consideration in ascertaining the length of time that is permitted to remedy it.

I move amendment 33.

Johann Lamont: Amendment 33 specifies factors that a private rented housing committee would have to take into account in deciding what period to set for the landlord to complete works that are required by a repairing standard enforcement order. The first of those factors—the nature of the repair—is not something that the committee could reasonably ignore in deciding how long the repair should take, so it does not need to be stated.

The second factor is, in my view, irrelevant. The committee will consider the condition of the house and what repairs are required. Whether the condition of the house is partially a result of the tenant's inaction alters neither the nature of the repairs that are needed nor what would be a reasonable time in which to do them. The committee should not be asked to penalise a tenant by inviting the landlord to take longer than is reasonably necessary to do repairs.

The third factor is, in my view, also superfluous. The points that are covered could affect the nature of the repairs that are required and, as I have said, the committee would take that factor into account. Otherwise, those matters are irrelevant to the time that it should take to do the repairs. I therefore invite Mary Scanlon to withdraw the amendment.

Mary Scanlon: I listened to what the minister said. If the condition of the house is already considered in the determination by the panel, that is quite reassuring. I also like to think that the reasonable time would take into account the shortage of tradesmen and the problems in transporting tradesmen to remote islands. If I could get a nod from the minister to indicate that such factors would be taken into account, I would be inclined to withdraw amendment 33.

Johann Lamont: The committee would have to take into account what would be reasonable in the circumstances, but we would not want to establish a situation in which people could just disregard the fact that they are expected to do the repair within a reasonable time by finding lots of reasons why they cannot do so.

Mary Scanlon: With that reassurance from the minister, I am minded to withdraw my amendment.

Amendment 33, by agreement, withdrawn.

Section 24 agreed to.

Sections 25 to 28 agreed to.

After section 28

The Convener: Amendment 34, in the name of Tricia Marwick, is in a group on its own.

Tricia Marwick: Members are well aware that one of the reasons why we need the bill in the first place is that not all private landlords are the most reasonable people. Patrick Harvie has referred to his experiences as a student.

For the private rented housing panel to work, tenants must have confidence in its ability to protect them when they apply to it. However, as the bill stands, tenants will be given minimum protection when they apply to the panel. There will be nothing to stop a landlord evicting a tenant for most of the time during which the landlord is being investigated.

Amendment 34 would resolve two issues, the first of which relates to the form of protection that is afforded to the tenant. As it stands, the bill will make it an offence for the landlord to enter into a new tenancy agreement when an enforcement order is in effect. That will not prevent the landlord from evicting the tenant, but will simply ensure that he cannot enter into an agreement with a new tenant in any property.

The protection for tenants should be directly strengthened to prevent eviction and bolster the panel's effectiveness. Amendment 34 would suspend the landlord's right to evict without grounds by referring to the Housing (Scotland) Act 1988 and the grounds that are needed to terminate a short assured tenancy. In effect, a landlord would not be able to bring a short assured tenancy to an end if the panel had decided that a case that had been brought by a tenant should be heard, but if the landlord needed to evict the tenant because of antisocial behaviour, for example, he could still take the tenant to court under section 18 of the 1988 act and prove grounds to a sheriff. Therefore, the amendment would remove not the landlord's right to evict, but only the right to evict without proving grounds to a sheriff.

I do not accept the argument that has been made that such an approach would tamper with a landlord's property rights. Shelter, which supports amendment 34, does not accept that argument either. Once an individual decides to rent out their property—that is, once they decide to become a landlord—they are subject to a number of laws that amend their right of access to that property. The landlord cannot enter the property without giving 24 hours' notice, for example. Each of those laws is necessary and proportionate and balances the tenants' rights with the landlord's ability to operate.

Secondly, amendment 34 would change the point at which the protection would kick in. Under the current proposals, the landlord will not be banned from letting the property to someone else until the panel has investigated and made an enforcement order. There is nothing in the bill that will prevent the landlord from evicting the tenant as soon as the committee begins an investigation, which is a critical anomaly that could seriously

undermine the operation of the panel and confidence in it and the likelihood that tenants will use it to gain legal redress. The amendment would ensure that a landlord's power to evict was suspended for the time during which the committee was investigating the landlord and that protection for the tenant would kick in as soon as referral had been made to the committee—that is, as soon as an investigation begins rather than when an enforcement order is granted.

I move amendment 34.

Johann Lamont: I appreciate that amendment 34 seeks a way of protecting a tenant from being evicted because he or she has referred the landlord to the panel. Section 28(5) already provides protection, but neither approach would prevent the landlord from ending the tenancy after he or she had completed the works that are required by a private rented housing committee, if they wished to do so. I have compared the two approaches and do not think that amendment 34 strikes the right balance between the landlord and the tenant.

The landlord and the tenant enter into a short assured tenancy knowing that the landlord is entitled to end it when he or she wants to do so, subject to the statutory procedures and timescales. Amendment 34 would take effect when the case was referred to a private rented housing committee, at which point there would have been no investigation to demonstrate whether the landlord was in the wrong. Therefore, although the landlord might have very good reasons for ending the tenancy—such reasons could include the tenant's antisocial behaviour, for example—the tenant would be likely to be able to stop the tenancy being ended by making an application to the panel. The amendment would therefore create the potential for abuse by some tenants.

The provisions in the bill at section 28(5) will prevent the landlord from entering into a new tenancy without the committee's consent. Therefore, although the landlord may evict the tenant who has complained, he or she will receive no income until the works have been completed. That is a strong incentive not to evict the existing tenant unless there are other good reasons why doing so is necessary. The provisions will also avoid the potential for abuse that I have described. Therefore, I invite Tricia Marwick to seek to withdraw amendment 34.

11:15

Tricia Marwick: I had hoped that at my first meeting I would not be quite as controversial as it was suggested I would be, but I do not accept what the minister has said. Section 28(5) makes it clear that

"A landlord commits an offence if the landlord enters into a tenancy or occupancy arrangement in relation to a house at any time during which a repairing standard enforcement order has effect".

Amendment 34 would offer protection to the tenant from the point at which he or she applies to the panel. The argument is about the point at which the tenant should be given protection. If the panel is to work and if tenants are to have confidence that the panel will look after their interests, an application to the panel cannot be allowed to precipitate an eviction in the period before an enforcement order is granted.

I covered in my opening remarks the point that the minister made about tenants' abuse of the procedure in relation to antisocial behaviour. Nothing in amendment 34 would stop a tenant being evicted for antisocial behaviour; the amendment would stop a tenant being evicted without the landlord having to go to the sheriff to prove the grounds for the eviction. Even if amendment 34 is agreed to, it will still be open to the landlord to take the tenant to court at any time, to prove antisocial behaviour and get the eviction that they seek.

We are arguing about when we give the tenant protection. The investigation into the landlord could take a long time and there is nothing in the bill to prevent the landlord from evicting the tenant during that time. The point of protection for the tenant must be the point at which they apply to the private rented housing panel. We are erring if we do not accept that tenants have rights. If we want the panel to work, we must ensure that tenants have confidence in it and that if they apply to it they are not immediately evicted. That is why amendment 34 is important and I will press it.

The Convener: The question is, that amendment 34 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Gorrie, Donald (Central Scotland) (LD)
Grahame, Christine (South of Scotland) (SNP)
Harvie, Patrick (Glasgow) (Green)
Marwick, Tricia (Mid Scotland and Fife) (SNP)

AGAINST

Barrie, Scott (Dunfermline West) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Home Robertson, Mr John (East Lothian) (Lab)
Scanlon, Mary (Highlands and Islands) (Con)
Whitefield, Karen (Airdrie and Shotts) (Lab)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 34 disagreed to.

Sections 29 to 39 agreed to.

Section 40—Acquisition of houses to be demolished

The Convener: Amendment 3, in the name of the minister, is grouped with amendment 10.

Johann Lamont: These technical amendments will ensure that the procedures of the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 will apply in two situations. Amendment 3 will apply when a local authority compulsorily purchases a house and its site, where it is authorised by section 35 to demolish the house, and amendment 10 will apply when it compulsorily acquires any land or premises for the purpose of improving the amenity of a predominantly residential locality.

The 1947 act relates to land, but leaves that term to be defined by the legislation in question. Given that the bill's definition excludes land that consists of or on which there are any premises, there could be a doubt as to whether the 1947 act could be applied in those two situations. Amendments 3 and 10 will remove that doubt and I hope that the committee will support them.

I move amendment 3.

Amendment 3 agreed to.

Section 40, as amended, agreed to.

Sections 41 to 43 agreed to.

Section 44—Maintenance plans for two or more houses

The Convener: Amendment 35, in the name of Cathie Craigie, is in a group on its own.

Cathie Craigie: The purpose of amendment 35 is to assist owners who live in multi-owned buildings to secure the long-term common maintenance of their homes. It would require them, in certain circumstances, to establish owners associations for the purpose of long-term planning of maintenance. The bill states that local authorities may require home owners to appoint a person to manage the implementation of a maintenance plan and to establish a maintenance account. Therefore, the Scottish Executive has acknowledged that common repairs can be extremely difficult for home owners, particularly in older properties where title deeds say little about responsibilities and owners associations rarely exist.

As I understand it from the research that the Scottish Executive has carried out, owners associations are common in property management schemes in other countries where flat ownership is common. The research shows that, where owners associations exist, people are generally more willing and able to carry out maintenance and more satisfied with the outcomes. The title deeds of most flats built since the 1980s contain rules that require owners associations to be set up through a decision-making process. Where owners associations are established in the title deeds, they can be effective in ensuring that the property is regularly maintained and fit for purpose and that owners are aware of their current and future responsibilities and obligations to contribute to common repairs.

The Scottish Executive has grappled with the unfortunate fact that owners associations do not usually exist in mixed-tenure areas or older tenements. From my experience in my constituency, it seems sensible to encourage the development of owners associations. It is important to spend public money wisely and partnership working is what we are all about. Groups of people should work together and share information so that, when a property is sold, the new buyer knows exactly what they are responsible for. I strongly believe that the establishment of owners associations where they do not exist would be a positive development.

Maintenance plans will be critical to local authorities because of the resources that go into supporting owner occupation, and local authorities have had to revisit maintenance issues in properties that have already had assistance. The bottom line is that an owners association would stop local authorities having to revisit properties more than once, and would protect the property and owners in the long term. I hope that the minister agrees that that would be a positive step.

I move amendment 35.

Tricia Marwick: Section 44(3) makes it clear that the maintenance plan "may" also include various things. If Cathie Craigie's amendment 35 is agreed to, it "may … require owners to establish an owners association", but that will be discretionary. I am minded to support the amendment because of that, as there would be difficulty in requiring owners—particularly if there are only two of them—to appoint a person to manage the maintenance plan. Provided that the measure is discretionary, Cathie Craigie's amendment will do no harm. Indeed, it could be a good thing, so I am minded to support it.

Donald Gorrie: My point is similar. We must be careful about telling people precisely what they must do, but using the law to enable people to do things if they so wish is helpful. The majority of owners who take life seriously will like to have co-operative arrangements, but a minority might not. An arrangement that gives authority to the majority in insisting that all the people who are involved in the property—be they owners or tenants—do their part would be useful, and an enabling measure would be good. The more we can get people to co-operate the better. I managed to persuade the

then Liberal Party in the late 1970s to support the concept of tenants co-operatives as a mainstay of our housing policy, then Mrs Thatcher got elected and started selling all the council houses, so it became an irrelevance. Most of our parties would like Scotland to be a co-operative society. Amendment 35 would be useful.

Johann Lamont: No matter what Margaret Thatcher attempted to do with council housing, she did not destroy the tenants co-op movement or the housing co-operative movement generally, as evidenced in our communities and in many of the Executive's social rented housing policies.

Amendment 35 seeks to add to the powers of local authorities when they require that a maintenance plan be prepared for two or more houses. The Executive supports the principle of owners organising themselves into owners associations, but amendment 35 poses a number of difficulties.

The first point—which perhaps would not weigh most heavily on people—is that the creation of owners associations is caught by the reservation of business associations by schedule 5 to the Scotland Act 1998. In that context, business associations carry on any kind of business, whether or not for profit. By requiring such associations, we could be acting beyond the power of the Scottish Parliament.

However, the reservation question is not the only issue with amendment 35. There is a practical issue about how the amendment would operate day to day and how it would be enforced. Also, if people are willing to co-operate to come together in an association, it begs the question whether they have difficulties that require local authority intervention. I know from my experience as a tenement dweller that even when you are reasonable and want to co-operate with folk, it is difficult to deal with them if they are obdurate, so it is debatable whether a provision that "may … require" an owners association to be established would take matters forward.

The maintenance plan provisions are underpinned by enforcement powers for local authorities. If a satisfactory maintenance plan is not produced, the local authority can step in and produce one. If work is not carried out, the local authority can carry out the work and recover the costs from owners. It is not clear from the amendment how the requirement to establish an owners association would be delivered and what penalties would apply for non-compliance. I entirely support Cathie Craigie's position that we should encourage the involvement of people in owners associations—indeed, that is the Executive's position—but I would argue that the amendment does not offer what is sought. Therefore, I ask Cathie Craigie to withdraw the amendment.

11:30

Cathie Craigie: I say to Donald Gorrie that the amendment is not about telling people what to do; it is about helping people to do what is needed to maintain their properties and homes. Section 42(1), in chapter 6, says that

"The local authority may by order (a 'maintenance order') require the owner of a house to prepare a plan"

if it feels that there is a problem that needs to be addressed. Therefore, the chances are that the people whom my amendment is meant to deal with are not those who have been willing to sit down with their fellow residents and make plans for the maintenance of their property. I am talking about a situation that has got to the stage at which considerable amounts of money—including public money—will have to be invested in the property if it is to be brought up to an acceptable standard. I do not think that it is at all unreasonable to ask owners to form an association so that they do not get into the position of having to have a maintenance order served on them.

The minister said that she would like me to withdraw the amendment. I do not know whether she would be willing to have discussions on the matter before stage 3. I would welcome such discussions because I feel strongly that the proposal in the amendment offers a way by which we can protect people in multi-owned buildings and ensure that public money can be spent on bringing our housing stock up to an acceptable standard. May I ask the minister now whether it would be possible to have such discussions between now and stage 3? If not, I will be tempted to press my amendment.

The Convener: The minister may respond to your request at my discretion, and that might be helpful in the circumstances.

Johann Lamont: The issue is how we can force unco-operative people to establish an owners association in a way that will do anything other than bring them to the table reluctantly. What would be the consequences if they refused to participate? That said, we are thinking along the same lines in relation to the positive role of owners associations, but we will need to explore whether the ability to insist on the creation of an owners association is a reserved matter. We could also discuss how we can create a culture in which people view an owners association as being something positive for managing their properties. I am more than happy to discuss those issues with Cathie Craigie.

Amendment 35, by agreement, withdrawn.

Section 44 agreed to.

Sections 45 to 47 agreed to.

Section 48—Implementation of maintenance plans

The Convener: Amendment 4, in the name of the minister, is grouped with amendments 5 to 8.

Johann Lamont: Amendment 8 will give local authorities the power to provide grant aid towards the cost of opening, winding up or closing any maintenance account; the other amendments in the group will make consequential changes. A maintenance account is a bank or building society account that is set up to hold money to pay for maintenance work on premises that consist of two or more houses.

As drafted, the bill would allow local authorities to contribute to such costs only when owners had set up a maintenance account as a result of a local authority requirement that a maintenance plan be put in place or when a local authority had used its power to pay the missing share of a house owner who had not contributed towards maintenance costs. It would be inequitable to allow local authorities to provide grant aid only in those two circumstances and not when house owners had voluntarily established a maintenance account and had all contributed to it. We want to encourage owners to establish such accounts, which could include long-term arrangements such as reserve or sinking funds.

The housing improvement task force recommended that local authorities should be able to give grant aid to encourage the setting up of such funds. Therefore, we consider that local authorities should have the power to provide grant aid towards the costs of opening, winding up or closing any maintenance account.

I move amendment 4.

Amendment 4 agreed to.

Amendment 5 moved—[Johann Lamont]—and agreed to.

Section 48, as amended, agreed to.

Section 49—Enforcement of maintenance plans

Amendment 6 moved—[Johann Lamont]—and agreed to.

Section 49, as amended, agreed to.

Section 50—Power of majority to recover maintenance costs

Amendment 7 moved—[Johann Lamont]—and agreed to.

Section 50, as amended, agreed to.

After section 50

Amendment 8 moved—[Johann Lamont]—and agreed to.

The Convener: That ends our consideration of amendments for day 1. At our next meeting, we will consider amendments to section 51 through to section 94. All amendments should be lodged with the clerks by 12 noon on Friday 23 September.

Donald Gorrie, who is currently the committee's deputy convener, will be leaving us to take up a new position with the Parliament's Procedures Committee. On behalf of all committee members, I wish him well in his new parliamentary venture and I thank him for his contribution to the Communities Committee over the past two years.

Donald Gorrie: If I may, I will respond. I thank the committee for its forbearance, I congratulate the convener on her excellent convenership and I wish the committee all the best in dealing with housing, planning and various other forms of entertainment.

The Convener: Thank you for your good wishes.

Meeting closed at 11:39.

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