JUSTICE 2 COMMITTEE

Tuesday 15 June 2004
(*Afternoon*)

Session 2

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JUSTICE 2 COMMITTEE
22nd Meeting 2004, Session 2

CONVENER

*Miss Annabel Goldie (West of Scotland) (Con)

DEPUTY CONVENER

*Karen Whitefield (Airdrie and Shotts) (Lab)

COMMITTEE MEMBERS

*Jackie Baillie (Dumbarton) (Lab)
*Colin Fox (Lothians) (SSP)
*Maureen Macmillan (Highlands and Islands) (Lab)
*Mike Pringle (Edinburgh South) (LD)
*Nicola Sturgeon (Glasgow) (SNP)

COMMITTEE SUBSTITUTES

Ms Rosemary Byrne (South of Scotland) (SSP)
Cathie Craigie (Cumbernauld and Kilsyth) (Lab)
Michael Matheson (Central Scotland) (SNP)
Margaret Mitchell (Central Scotland) (Con)
Margaret Smith (Edinburgh West) (LD)

*attended

THE FOLLOWING ALSO ATTENDED:

Sarah Boyack (Edinburgh Central) (Lab)
Mrs Mary Mulligan (Deputy Minister for Communities)

CLERK TO THE COMMITTEE

Gillian Baxendine
Lynn Tullis

SENIOR ASSISTANT CLERK

Anne Peat

ASSISTANT CLERK

Richard Hough

LOCATION

Committee Room 1

Scottish Parliament

Justice 2 Committee

Tuesday 15 June 2004

(*Afternoon*)

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

Tenements (Scotland) Bill: Stage 2

The Convener (Miss Annabel Goldie): I welcome everybody to the 22nd meeting in 2004 of the Justice 2 Committee. The agenda, item 1 of which is stage 2 of the Tenements (Scotland) Bill, should have been circulated to everyone. Members should have with them the marshalled list of amendments and a list of groupings. The papers look quite voluminous, but I hope that we will get through them all today if members are not too loquacious or inquisitive, although I say that without in any way impugning the necessary work of the committee in discharging its proper responsibilities at stage 2.

I welcome to the committee the Deputy Minister for Communities, Mary Mulligan. She is accompanied by Scottish Executive officials Joyce Lugton, Willie Ferrie, Norman Macleod and Edythe Murie. We are grateful to you all for making yourselves available.

Members are no doubt familiar with the stage 2 procedure, although I have to admit that it never ceases to baffle me. I remind the committee that the amendments have been grouped to facilitate debate. The order in which they will be called is dictated by the marshalled list and we cannot go backwards in the list. We will have one debate on each group of amendments. Members can speak to their amendments if they are in the group that is being debated, but there will be only one debate on the group.

I welcome Sarah Boyack to the committee. She has lodged some amendments and we are happy to have her here.

I hope that members have a copy of the bill. We have to go through the whole bill, so we will be considering not only the amendments but the sections of and the schedule to the bill as well. I hope that we can conclude our stage 2 consideration today. If we cannot, we have the option of continuing on 22 June. We will see how we get on. Without further ado, we will get weaving.

Sections 1 to 3 agreed to.

Section 4—Application of the Tenement Management Scheme

The Convener: The first amendment on the marshalled list is amendment 85, in the name of Sarah Boyack, which is in a group on its own.

Sarah Boyack (Edinburgh Central) (Lab): I heard what you said, convener, and will not speak for hours on end. I will say just a few brief words about why I lodged amendment 85.

I have read the committee's stage 1 report and the discussions that members held at stage 1, so I realise that the committee has heard detailed evidence. However, I wanted to hear the minister's interpretation and to tease out exactly how the bill will apply. I have lodged amendment 85 on the basis of lots of casework in my constituency. I know the complexity of the existing private arrangements between different owners in tenements.

The Executive's housing improvement task force identified a key problem: in the management of common repairs and maintenance, owners often have little awareness of what is in their own title deeds, never mind what is in anyone else's. As I understand it, the management scheme applies only when existing deeds are silent.

I know that the committee has decided to accept the principles of the bill, but I am keen for the minister to clarify how the bill will kick in. I think that the bill leaves the potential for owners who want to avoid their responsibilities to try to delay the resolution of any issues through lengthy legal disputes on the interpretation of existing burdens. Will the minister clarify that majority voting will apply when provisions are made on some burdens but not on others? How will the bill apply if there are different burdens—relating to decision making on maintenance or the appointment of a manager—in different flats in the same tenement? In those circumstances, will the bill kick in?

Another issue is whether people understand how the bill works. I am concerned because I feel that people will not only have to read the bill, but will then have to go to a lawyer to try to work out whether they should use their existing deeds or should apply the bill. Will the minister produce guidelines that are not just written for local authorities and people with a legal background? The guidelines should be written in a way that allows ordinary members of the public to understand how the bill relates to them. That will be very important when the bill becomes law.

Does the minister expect solicitors, when asked by the public, to provide a plain-English explanation of how people's burdens relate to common maintenance? Will she do anything to promote legal services, so that support is available in the community? For example, citizens advice

bureaux could have clear, helpful guidelines to explain to the public how their existing burdens are interpreted and how they relate to the application of a tenement management scheme. I am keen for the minister to clarify some of those matters.

How does the bill relate to the Title Conditions (Scotland) Act 2003? I am aware that it makes it easier for people to change their titles with the support of the 2003 act, so I would be grateful if the minister explained how that will happen when an ordinary member of the public faces a maintenance issue and they are not sure what is in everybody else's titles.

I move amendment 85.

The Convener: I shall leave the minister to ponder that; I do not envy her position. Do any committee members wish to comment on the amendment? I will clarify one matter with Sarah Boyack. Would the amendment restrict the application of existing title burdens? Under the bill, if existing title deeds cover procedures for owners to make decisions and the same procedures apply to each flat, the management scheme will not come into play. Would the amendment restrict that?

Sarah Boyack: I think so. That is why I am conscious that the committee may not be over-keen on the amendment, given its views at stage 1. However, I would still like the minister to clarify outstanding issues.

The Deputy Minister for Communities (Mrs Mary Mulligan): I will try to reply to each of Sarah Boyack's points. If I miss anything, I am sure that she will prompt me.

Paragraph (a) in amendment 85 would make rule 2 of the tenement management scheme apply when owners decided on matters that relate to the maintenance of scheme property and the appointment of a manager. The bill already provides for that. Rule 2 of the tenement management scheme sets out procedures for owners to make decisions when title deeds are silent on decision-making procedures. Rule 3 gives owners the power to make decisions and provides a list of matters on which scheme decisions may be made, which includes carrying out maintenance to scheme property and the appointment or dismissal of a manager. As rule 2 will automatically apply, I suggest that paragraph (a) in the amendment is not needed.

Paragraph (b) in the amendment would make rule 2 apply

"when any other type of decision is to be made".

Any type of decision other than the decisions that are set out in rule 3.1 can be made only under the title deeds. Section 4 of the bill provides that decisions will be made under rule 2 only when title deeds do not set out decision-making procedures. An element of circularity arises. The amendment would work only if paragraphs (a) and (b) of section 4(4) were deleted, but I am not aware of an amendment to do that and I do not think that the committee would be willing to delete those paragraphs.

The committee has expressed, in its stage 1 report and in speeches by committee members in the stage 1 debate, emphatic support for the principle of free variation. Section 4(4) encapsulates that principle for decision making. Section 4 provides that, if title deeds contain procedures for decision making, they should prevail. The amendment would strike at that principle. Paragraph (b) in the amendment would extend rule 2 to any decision that owners were empowered to make under title deeds, but only when the titles failed to provide an adequate procedure. As the purpose of the amendment's paragraph (a) has been provided for, I hope that Sarah Boyack feels able to withdraw the amendment.

I will pick up the other points that Sarah Boyack made. We intend to ensure adequate publicity of the measures that we seek to enact through the bill. We recognise that not just lawyers or local authorities but owners must be aware of the legislation, as its purpose—as part of the package—is to ensure that owners are supported in their responsibilities. Therefore, we need to let owners know what those responsibilities are. We are already working on that matter.

We want to encourage lawyers to use plain English as much as possible. I am not sure that we can legislate for that, but we will consider seriously supporting that suggestion, because we recognise that using plain English is important if people are to understand the legislation.

Sarah Boyack mentioned the read-across with the Title Conditions (Scotland) Act 2003. The intention of that act was to make it easier to change burdens and it would meet the points that she made. However, I suggest that it is best if we respond in writing on that matter, because it is detailed. Rather than going into it this afternoon, I reassure Sarah Boyack that her points have been taken up and will be followed through. We will write to the convener and the committee on that matter, as well as to Sarah Boyack.

14:15

Sarah Boyack: I am glad that the minister has clarified the points about publicity and how the legislation will work in practice, because it is critical that individual owners understand what is expected of them. I ask the permission of the committee to withdraw amendment 85 at this

stage, because I want to read the comments that Mary Mulligan has committed to put in writing about the relationship between the bill and the Title Conditions (Scotland) Act 2003.

Amendment 85, by agreement, withdrawn.

The Convener: Amendment 1, in the name of the minister, is grouped with amendments 2 to 5.

Mrs Mulligan: Amendments 1 and 2 are drafting amendments. I am conscious that that phrase might come up frequently this afternoon, but it is important to have the information on the record. The amendments remove references to amounts of scheme costs and replace them with references to "liability for" those costs. That is because it is unlikely that provisions in title deeds will refer to actual amounts of money. If title deeds did so, the amounts specified would quickly bear little relationship to the cost of work to scheme property because of increases in the cost of living. The amendments make the bill consistent with the provisions of section 5 of the Title Conditions (Scotland) Act 2003.

Amendments 3, 4 and 5 disconnect rules 4 and 5 of the tenement management scheme from each other so that the provisions in rule 5 will apply where scheme costs have been apportioned, either according to the burdens in the title deeds of the tenement or where rule 4 of the tenement management scheme applies. Rule 4 covers liability and apportionment of scheme costs; rule 5 covers the redistribution of a share of scheme costs and liability for scheme costs where there has been a procedural irregularity; and rule 5.3 gives some protection to an owner where there has been a procedural irregularity—for example, if he or she is not aware of a scheme decision, he or she might not be liable for any costs that arise from that decision.

The objective of this group of amendments is to extend rule 5 so that it covers liability arising under the burdens in the title deeds. If, however, the title deeds contain equivalent provisions to those set out in rule 5, they would prevail.

Amendment 4 makes changes to section 4(7) to remove the connection between rules 4 and 5. Amendments 3 and 5 are consequential to amendment 4. The reference to rule 5 in section 4(10) is therefore now redundant.

I move amendment 1.

Amendment 1 agreed to.

Amendments 2 to 5 moved—[Mrs Mary Mulligan]—and agreed to.

The Convener: Amendment 86, in the name of Sarah Boyack, is grouped with amendment 88.

Sarah Boyack: I lodged amendments 86 and 88 because I am keen to find out how far the minister has got on promoting the idea of owners associations. In Edinburgh, a pilot association is being developed locally, which I think is a great idea. The pilot is being tried in traditional tenement blocks and in mixed-tenure blocks. The idea of the pilot is to support some of the principles behind the bill, which seeks to change the culture in tenement properties so that people get into the way of regular repair and maintenance. It is important to provide a structure for doing that, whereby people would have to meet up regularly—on an annual basis, for example—to discuss what progress had been made on getting work done on their properties.

We need a clear mechanism and a legal framework for owners and members of community associations to come together to do that, so I seek an indication from the minister of how far she has got with the idea of owners associations. I know that the issue is complex from the point of view of the Parliament's legal competence. The proposal is not about requiring all tenement owners to be in an owners association; it is about providing a legal framework that enables people to form a group in their tenement that they can see will be beneficial. That would help to change the culture and to provide for much more regular maintenance.

There are many community associations in other parts of the world—in Europe, North America and Australia—in which owners come together to consider how they maintain their properties. I am keen to hear how the minister thinks that such associations might be developed. She might advise me that my amendments are not worded in such a way as to enable me to achieve what I would like to achieve—I know that ministers often use that tactic—or she might tell me that she agrees with my idea but would like to implement it in another manner. I would be keen to hear whether there is another way in which we could achieve what I seek.

I suppose that my key objective is to enable people to establish owners associations without having to reinvent the wheel every time they wish to do so. I want us to have a general approach that can be set out in legislation or in secondary guidance. I am hoping that the minister will tell us whether she is happy to accept my amendments to the bill or whether there is another way of delivering what they propose. For example, would the Title Conditions (Scotland) Act 2003 offer a way of establishing owners associations? I seek clarification of how we can make progress on owners associations and of whether the minister is keen to accept amendments 86 and 88.

I move amendment 86.

The Convener: As no other members have a burning desire to speak, I invite the minister to respond.

Mrs Mulligan: The bill cannot include provision for owners associations because, as members will be aware, that would mean that it would touch on a reserved matter. Under the Scotland Act 1998, the creation, operation, regulation and dissolution of business associations are reserved matters. Business associations are defined as

"any person (other than an individual) established for the purpose of carrying on any kind of business, whether or not for profit; and 'business' includes the provision of benefits to the members of an association."

As an owners association would fall within that definition, it would not be within the Scottish Parliament's competence to deal with any provision that sought to set up an owners association. A requirement for an owners association would have to be provided for by a section 104 order under the Scotland Act 1998.

I am pleased to be able to tell the committee that we have had discussions with our colleagues at the Department of Trade and Industry and that I have received a letter from Jacqui Smith, who is one of the ministers at the DTI, to confirm that it is happy with the principle of the way in which we intend to proceed. We now need to discuss the details. I appreciate that the committee has been keen to pursue the option of owners associations, so I hope that members will be happy that we are pursuing the matter further. We hope to come back with a satisfactory resolution.

I am aware of the Edinburgh example that Sarah Boyack mentioned—in fact, I met some of her constituents earlier in the year and they were enthusiastic about the way in which the scheme operates. We must learn lessons from that and from the suggestions that Sarah Boyack made. I hope that we will be able to bring the issue to a successful conclusion but, as the amendment deals with a reserved matter, I ask Sarah Boyack to withdraw it at this stage.

Sarah Boyack: I am delighted to hear that progress is being made. The minister did not mention a timescale, but I am keen for the provision to be brought forward as soon as possible. I am happy to withdraw my amendment on the basis that the minister is delivering owners associations by effective means.

Amendment 86, by agreement, withdrawn.

The Convener: Amendment 6, in the name of the minister, is grouped with amendment 76.

Mrs Mulligan: Amendments 6 and 76 follow from correspondence with the Subordinate Legislation Committee. Rules 3.3 and 3.4 in the tenement management scheme contain procedures that are intended to safeguard funds that are required to be deposited by owners in a maintenance account following a written notice to each owner that a scheme decision has been taken to carry out maintenance. The written notice must contain or have attached to it a summary of the nature and extent of the maintenance to be carried out, along with an estimate of the costs and a timetable for the work.

During consultation on the bill, concerns were expressed that those procedures were not appropriate when routine or small-scale maintenance work, such as stair cleaning or minor repairs, were involved. The bill was therefore amended prior to introduction so that the procedures would not apply when the sum involved was less than £100. The bill also gives Scottish ministers the power to vary that figure. That power is intended to take into account the effect of inflation; if the figures are not increased from time to time, there would be a risk that the procedures in rules 3.3 and 3.4 would be applied to small repairs and routine cleaning and maintenance, which would defeat the intention of the provision.

Amendments 6 and 86 make it clear that the power of Scottish ministers will be limited to varying the figure of £100 to take account of changes in the value of money—that addresses the issue that was raised by the Subordinate Legislation Committee, which was concerned that the power to vary the figure was too wide. There are similar provisions in section 29 of the Title Conditions (Scotland) Act 2003, on majority voting on the instruction of common repairs, so it seems appropriate for a similar amendment to be made to section 22 of the Tenements (Scotland) Bill, as that will bring the procedures of the two pieces of legislation into line. The Executive is grateful to the Subordinate Legislation Committee and hopes that the amendments will be supported.

I move amendment 6.

Amendment 6 agreed to.

Section 4, as amended, agreed to.

Schedule

TENEMENT MANAGEMENT SCHEME

The Convener: Amendment 7, in the name of the minister, is grouped with amendments 8 and 9.

14:30

Mrs Mulligan: Rule 1.2(b) of the tenement management scheme refers to property that

"must be maintained by two or more of the owners".

Amendment 7 makes it clear that that should also include property where the obligation in the title deeds is not to maintain but to pay for maintenance. The point of the amendment is to remove any ambiguity about whether the rule

includes property where the obligation is to pay rather than to maintain.

Amendments 8 and 9 are technical drafting amendments. They clarify the definition of "scheme property" in rule 1.2 of the tenement management scheme. Rule 1.2(c) lists key parts of a tenement that are to be considered scheme property. Rule 1.2(a) deals with any part of a tenement that is the common property of the owners of two or more flats. Rule 1.2(b) deals with any part of a tenement that the title deeds require to be maintained by the owners of two or more flats. The rule makes it clear that paragraphs (a) and (b) are mutually exclusive. Paragraph (c) is also an exclusive category, as it relates only to other parts of a tenement. Amendments 8 and 9 make the distinction clearer by spelling out that a part is only scheme property under rule 1.2(c) if it is not scheme property under rule 1.2(a) or rule 1.2(b). That matters, as it affects the apportionment of liability for scheme costs under the default rules in rule 4.

I move amendment 7.

Amendment 7 agreed to.

Amendments 8 and 9 moved—[Mrs Mary Mulligan]—and agreed to.

The Convener: Amendment 87, in the name of Sarah Boyack, is in a group on its own.

Sarah Boyack: In amendment 87, I am keen to reflect the situation of many of my constituents, who do not have a secure entry to their tenements and who find it very difficult to get residents to agree to put such an entry in place.

I am aware that the committee has debated the definition of "maintenance" in the bill. It is not my intention to take away the protection that exists in the bill against the majority of residents agreeing to out-and-out improvements that would be too expensive for flat owners or that would be unreasonable. However, there are grey areas concerning the repair or replacement of items that might not be hugely expensive. I would like the minister to clarify whether those will be covered by the bill as it is at the moment. My intention in seeking to amend the bill by inserting the phrase "to a modern standard" is to ensure that it covers replacing tenement main doors with secure entry doors and phone systems.

I will give the committee an example. Many tenements in Edinburgh have very old door entry systems that are operated by metal wires and pulleys. Many of those systems are broken and have been vandalised over the years. If there is such a system in a tenement, will repairs to it be covered as maintenance? Clearly, adding electricity to the system so that people are let in by a door buzzer would be an improvement. That is a different type of system, but it is based on exactly the same principle. Furthermore, does the bill cover installation of a door entry system in a tenement that previously had no such system and had merely a main-door entrance?

One problem that we have—which is linked to the problem of antisocial behaviour—is that of people breaking down main doors and taking drugs or alcohol on the stairs. We have considerable experience of residents being intimidated. It can take ages to get a door entry system fixed. I hope that the bill will make the process much more straightforward and protect residents who at the moment have to wait ages to get absolutely everyone on board. If there are several council flats in a tenement, the council sometimes takes on the work, but often people have to wait years to take action. I hope that the bill, as amended in the way in which I suggest or as clarified by the minister, will make a difference to problems of vandalism, intimidation and the deterioration of property, which people find very difficult to stop because they have to get all residents to agree to carry out repairs. That is the reason for amendment 87. I have raised the matter with the minister before, and I know that the situation with door entry systems and so on is even more complicated than we might imagine. I hope that she will be able to make some progress on the issue and give me some reassurance about it.

I move amendment 87.

The Convener: Although you have illustrated your amendment with reference to a door entry system, the effect of your amendment would in fact be to extend the phrasing to numerous other matters. Is that correct?

Sarah Boyack: That is correct.

Mrs Mulligan: Amendment 87 seeks to permit the replacement of part of a tenement building "to a modern standard". That phrase is rather ambiguous. In any case, I believe that the amendment is rather unnecessary, as the provisions of the bill already allow for replacement to a modern standard.

Under rule 1.5 of the tenement management scheme, the definition of "maintenance" includes replacement. It goes on to make it clear that improvement is permissible if it is "reasonably incidental" to that maintenance. Therefore, the definition already allows for replacing and modernising an existing feature using up-to-date materials and technology. That means that replacement improvements can go ahead on a majority vote under the provisions of the tenement management scheme if that is not provided for in the title deeds.

I fully understand Sarah Boyack's desire that majority voting should be permitted to allow for the installation of entry phones. I am sure that members will agree that they are useful and beneficial for securing tenements. However, amendment 87 deals only with replacement. Although Sarah Boyack's comments in support of the amendment went further, the amendment itself does not do so.

I recognise Sarah Boyack's concerns about security, particularly in relation to entry phones, but I do not want to accept her amendment at this stage. As the convener points out, it could bring with it other obligations for owners that we have not discussed. I ask Sarah Boyack to withdraw amendment 87, because those cases where replacement is involved are already covered in the bill and we need to consider further those cases where it is not.

Sarah Boyack: Before winding up, I ask the minister to clarify that she is relaxed about the fact that existing door entry systems that are perhaps a couple of hundred years old, and that have fallen into disrepair, will be covered by the bill.

Mrs Mulligan: The bell-pull systems that many tenements have, even if they are not working, will still be covered by the bill.

Sarah Boyack: I am very glad to hear that. On that basis, I will go away and think about the matter. I would like to read the *Official Report* of the meeting and consider what the minister has said. I might return to the matter at stage 3.

Amendment 87, by agreement, withdrawn.

The Convener: Amendment 10, in the name of the minister, is grouped with amendments 16, 17, 28 to 30, 39, 41 and 42.

Mrs Mulligan: The amendments in this group remove the cross-references between the individual rules of the tenement management scheme, which are highly technical. The rules or, in some cases, parts of them, supplement the title deeds, and they need to be independent of one another.

Amendment 10 deals with voting rights for scheme decisions. Rule 2.3 of the scheme is about voting rights in a tenement. The purpose of the rule is to ensure that an owner does not get a vote in relation to maintenance of part of a tenement if he or she is not liable for the cost of maintaining that part. Amendment 10 clarifies that that is the case as long as the owner is not liable. There should not be different rules depending on whether the liability arises from the title deeds or from another management scheme that applies to the tenement.

Amendments 16, 17, 28 and 29 seek to remove the cross-references between rules 4 and 5 to allow them to operate independently.

Amendment 30 deals with the cost of common insurance when the title deeds provide for common insurance but do not apportion a cost. It makes it clear that the cost of common insurance will be a scheme cost under rule 4.1 of the tenement management scheme, whether the common insurance is arranged as a result of a scheme decision under rule 3.1(e) or because of a burden in the title deeds.

Amendments 39, 41 and 42 seek to make changes to section 4(7) and rule 5 of the TMS to remove the connections between rules 4 and 5 and rules 3 and 5, so that the provisions in rule 5 will apply when scheme costs have been apportioned either according to the burdens in the title deeds of the tenement or when rule 4 of the tenement management scheme applies.

I move amendment 10.

Amendment 10 agreed to.

The Convener: Amendment 11, in the name of the minister, is grouped with amendment 12.

Mrs Mulligan: Committee members will recall that witnesses expressed concern that two flat owners in a tenement of three would have no remedy if the remaining owner refused to agree to a repair. The Law Society of Scotland argued that the two owners should not be denied the advantage of majority voting. Amendments 11 and 12 respond to that concern.

At present, the procedures that are set out in rule 2.6 of the TMS require a unanimous vote for scheme decisions where the tenement contains three flats or fewer, because it was originally felt that it was less difficult to achieve unanimity in small tenements and that majority voting was open to abuse—perhaps because of personality clashes—if only two votes were required for the majority. That scenario affects not only small tenements but any block where part of the tenement is owned in common by the owners of only three flats as, under rule 2.3, only three votes would be allocated for a scheme decision related to the maintenance of that property.

The Executive has been persuaded by the arguments on majority voting in tenements of only three flats. Amendment 12 will remove rule 2.6, so that majority voting will apply in all tenements where scheme decisions are made under rule 2. Amendment 11 is consequential. We also intend to make a corresponding amendment to the Title Conditions (Scotland) Act 2003, where we feel that the same arrangements should apply in relation to majority voting in communities.

I move amendment 11.

The Convener: Thank you, minister. The issue was raised with the committee as a matter of some concern. There is appreciation of the note that has been taken of that.

Amendment 11 agreed to.

Amendment 12 moved—[Mrs Mary Mulligan]—and agreed to.

The Convener: Amendment 13, in the name of the minister, is grouped with amendments 14, 15, 83 and 84.

Mrs Mulligan: The group comprises technical amendments relating to the sending of notices. Rules 8.2 to 8.5 of the TMS contain detailed provisions on the giving of notices under the scheme, but there are no provisions on giving notices in the main part of the bill, except for section 25(3). For example, section 5 of the bill includes provision for notices that are not covered by rule 8 of the TMS.

Amendment 84 is the main amendment in the group. It inserts provisions into the bill on the sending of notices. Amendment 46 removes section 25(3), which is now superseded. Amendments 13, 14 and 15 are drafting amendments that make the terminology consistent. As I believe that amendment 13 was made at your suggestion, convener, I am sure that the committee will be pleased to support it.

I move amendment 13.

14:45

The Convener: I am grateful to the minister, but I wish that my recollection was slightly purer than it is.

Amendment 13 agreed to.

Amendments 14 and 15 moved—[Mrs Mary Mulligan]—and agreed to.

Amendment 88 not moved.

Amendments 16 and 17 moved—[Mrs Mary Mulligan]—and agreed to.

The Convener: Amendment 18, in the name of the minister, is grouped with amendments 19 to 27 and 72 to 75.

Mrs Mulligan: Amendments 18, 19 and 20 exclude from the £200 threshold in rule 3.3 of the TMS any sum of money that has been placed in a maintenance account. Rule 3 provides some safeguards for owners who have to pay deposits on repair or maintenance. Rule 3.3 provides that the money will be placed in a maintenance account. Rule 3.3(b) contains a £200 limit so as to ensure that owners do not have to risk handing over more than £200 in any year without the protection of the money being placed in a maintenance account.

However, rule 3.3(b) may kick in when a small sum—perhaps that which is required for stair cleaning—pushes the total amount over the £200 limit. The previous sums that have been demanded in that year may already be held in a maintenance account. In that case, the only sum at risk would be the small amount that is being demanded, which would result in unnecessary complications for the owners. The amendments in the group exclude from the £200 threshold any sums that have been placed in a maintenance account.

Amendment 72 is a consequential amendment that ensures consistency in the Title Conditions (Scotland) Act 2003. Members will be pleased to note that amendments 21, 22, 73 and 74 were lodged as a direct response to the committee's suggestion in its stage 1 report that there should be a refund date for deposited funds.

Rule 3.4(f) provides that an owner who has deposited funds in a maintenance account following a scheme decision to undertake maintenance may demand repayment of the sums deposited if maintenance is not commenced by the 14th day after the date that was proposed for commencement of the work.

Following evidence from witnesses, the committee expressed concerns in its report about the 14-day rule. It said that the rule could result in funds that had been collected having to be repaid even though there were good reasons for the commencement of the work being delayed. The committee suggested that the sums deposited should become payable only after a refund date, which would be chosen by the owners and specified in the notice, had been set. The refund date would be the date after which the money would become repayable.

Although we believe that the idea is sensible, we also think that there should be a default position in case the refund date is overlooked when the arrangements for the repair are made. As we feel that the refund date should be an optional rather than mandatory requirement for the notice, amendment 21 seeks to provide that the notice to be given under rule 3.3 may specify a date on which the sums deposited will be repayable to the depositors if maintenance has not been commenced by that date. If the notice does not state a refund date, the deposited sums will be repayable as under the current provisions, except that, under the terms of amendment 22, the period will be extended to 28 days. Owners will therefore be able to request repayment if the work does not commence before the refund date or within 28 days of the proposed date of commencement.

Amendments 73 and 74 seek to make similar amendments to equivalent provisions in section 29 of the Title Conditions (Scotland) Act 2003. Amendments 23 to 26 and 75 seek to make it clear that the person who has deposited the money will be able to recover it even if he or she has sold the flat. In rule 3.4(h), the money is stated as being repayable to the depositor and amendments 23 to 25 seek to make the same change to rule 3.4(f). Amendment 26 seeks to make the terminology used in rule 3.4(h) consistent by changing the references to "owner" to "depositor", "depositors" or "person" depending on the sense of the clause. Amendment 75 seeks to make a similar change to section 29 of the 2003 act.

I turn finally to amendment 27. Rule 3.1(f) of the tenement management scheme permits scheme decisions by owners

"to determine that an owner is not required to pay a share of … scheme costs".

This rule is intended to protect an owner who for whatever reason is genuinely unable to pay the requisite share of scheme costs. However, if the majority of flats in a tenement were owned by one owner, that person or body could use rule 3.1(f) to exempt themselves from payment. As the bill stands, it would even be possible for a majority of individual owners to place the whole liability for a scheme cost on the minority. To prevent that potential abuse—which I am sure was spotted by everyone—we have lodged amendment 27, which seeks to provide that the vote or votes of an owner should not be counted where that person or body votes to excuse themselves from payment under rule 3.1(f).

I move amendment 18.

The Convener: Thank you, minister. Do other members wish to speak?

I have never known the committee to be so mute. We are perhaps struggling slightly with some of the drafting semantics of the amendments. However, I think that members would want me to express appreciation of the notice that has been taken of our slight concern about the arrangements for recovering moneys that have been paid over. Amendment 21 deals with the matter very satisfactorily.

Maureen Macmillan (Highlands and Islands) (Lab): The use of the term "refund date" makes things clearer.

The Convener: I am grateful to you, minister. The amendments bring considerable clarity and fairness to the matter.

Amendment 18 agreed to.

Amendments 19 to 30 moved—[Mrs Mary Mulligan]—and agreed to.

The Convener: I am accumulating reams of very satisfactorily scored-out paper, which seems most encouraging.

Amendment 31, in the name of the minister, is grouped with amendments 32 to 36.

Mrs Mulligan: Amendments 34 and 35 deal with the cost of common insurance, where the title deeds provide for common insurance but do not apportion the cost. They provide that the cost will be shared equally among the owners. Amendment 31 adds the cost of calculating the floor area of the various flats to the list of scheme costs in rule 4.1, and amendment 36 provides that the cost of measurement of floor area should be paid for equally by all the owners.

Amendments 32 and 33 are technical, but they have the effect of simplifying both the content of rule 4.3 and the apportionment of the cost of roof repairs. As the bill stands, if the title deeds are silent as to the ownership of the roof, the part above the close would, under section 3(1)(a), become the common property of the owners of flats with access through the close. That would mean that only those owners would have to maintain the roof above the close, whereas all the owners, including owners of the main-door flats, would have to maintain the other parts of the roof. That would make the apportionment of the cost of roof repairs unnecessarily complicated. The amendments ensure that, in the absence of title provision, all the owners of the tenement will be responsible for the maintenance and repair of the roof, including the part of the roof that is above the close.

I move amendment 31.

Amendment 31 agreed to.

Amendments 32 to 36 moved—[Mrs Mary Mulligan]—and agreed to.

The Convener: Amendment 37, in the name of the minister, is grouped with amendment 46.

Mrs Mulligan: Amendments 37 and 46 are technical amendments that deal with the general matter of when liability for scheme costs arises. As members will be aware, owners in tenements can take decisions under the TMS and under the general provisions of the bill. However, depending on the circumstances and on the comprehensiveness of the titles, they can also take decisions under the burdens in their title deeds. Our view is that, however the decisions are taken, there should be one set of rules to determine when liability for costs arises. That is the purpose of amendments 37 and 46.

Amendment 37 removes rules 4.7 and 4.8 from the TMS. Amendment 46 inserts a new provision into the bill before section 11. That determines when an owner's liability for certain costs arises, and will apply whether that liability arises by virtue of the TMS, the bill or the tenement burdens.

I move amendment 37.

Amendment 37 agreed to.

The Convener: Amendment 38, in the name of the minister, is in a group on its own.

Mrs Mulligan: Amendment 38 simply removes rule 5.1 from the TMS, because it is redundant. It does not add anything to the provisions of section 24(5), which is identical in effect. It provides for liability where two or more persons own a flat in common.

I move amendment 38.

Amendment 38 agreed to.

Amendment 39 moved—[Mrs Mary Mulligan]—and agreed to.

15:00

The Convener: Amendment 40, in the name of the minister, is in a group on its own.

Mrs Mulligan: Rule 5.2(b)(ii) refers to owners who cannot be contacted. Amendment 40 makes it clear that it is not enough only to allege that an owner cannot be contacted and that it is therefore not possible to get from him or her their share of costs. An effort must be made to identify and locate them, and that effort must reasonable. The amendment will change the wording so that it is similar to section 93(2)(a) of the Title Conditions (Scotland) Act 2003, which relates to persons

"who cannot, by reasonable inquiry, be identified or found".

I move amendment 40.

Amendment 40 agreed to.

Amendments 41 and 42 moved—[Mrs Mary Mulligan]—and agreed to.

Schedule, as amended, agreed to.

Section 5—Application to sheriff for annulment of certain decisions

The Convener: Amendment 43, in the name of the minister, is grouped with amendments 44 and 45.

Mrs Mulligan: Members may recall that the development management scheme could not form part of the Title Conditions (Scotland) Act 2003, as the proposed owners association in the scheme was a business association and, as such, was reserved in terms of the Scotland Act 1998. Therefore, the scheme will be set out in the development management scheme order that is to be made under section 104 of the Scotland Act 1998. It is hoped that that order will be progressed as soon as the final form of the Tenements (Scotland) Bill is known.

Amendments 44 and 45 make it clear that the provisions of section 6 on application to the sheriff to resolve certain tenement disputes are not intended to apply to tenements where the development management scheme has been applied. That is consistent with the approach of section 5. It is intended that the development management scheme order that is to be made at Westminster in consequence of the 2003 act will make equivalent provisions to both section 5 and section 6.

Amendment 43 makes it clear that when owners apply to the courts and the courts are considering the best interests of the owners, they must consider the interests of the owners as a whole.

I move amendment 43.

The Convener: For the avoidance of doubt, I presume that you mean that owners should be taken as a total, integral group.

Mrs Mulligan: Yes.

Amendment 43 agreed to.

Section 5, as amended, agreed to.

Section 6—Application to sheriff for order resolving certain disputes

Amendments 44 and 45 moved—[Mrs Mary Mulligan]—and agreed to.

Section 6, as amended, agreed to.

The Convener: Not much sound is coming from one side of the room. Are you all still with us in the remoter branches?

Nicola Sturgeon (Glasgow) (SNP): We are riveted.

Sections 7 to 10 agreed to.

Before section 11

Amendment 46 moved—[Mrs Mary Mulligan]—and agreed to.

Section 11—Liability of owner and successors for certain costs

The Convener: This is where it gets really complicated—I have to move an amendment in my own name. Amendment 89, in my name, is grouped with amendments 90, 91 and 94.

Members will recall that a part of the bill that occasioned some concern was the provision in section 11 that a purchaser could find himself or

herself liable for repair costs that had been the liability of the seller. Committee members had certain reservations about that.

Nicola Sturgeon has lodged a similar amendment to amendment 89. I ask members to bear in mind the fact that the amendments cannot both be agreed to. The difference between our positions is that I remain unhappy at the prospect of any hapless purchaser, having undergone the undoubted expense of purchasing a property, finding himself or herself confronted with a bill. Nicola Sturgeon's amendment 90 seeks to ensure that such a purchaser would be protected from the liability only if it was more than £500. In other words, a liability of less than £500 would pass to the purchaser.

It seems to me that the liability is properly the legal responsibility of the seller and that the seller and the seller's co-proprietors will have benefited from whatever the works were. Somehow or other, that should be sorted out. That is why amendment 89 attempts to alter section 11 to protect the purchaser but also to ensure that a mechanism—in the form of a notice—exists to make clear that the amount that has been incurred and which the seller still owes is known about. References are made to the form of notice in proposed subsection (2B).

Although amendment 89 is rather technical, its purpose is to try to ensure that no purchaser of a new property in a tenement situation finds himself or herself saddled with an expense that, even if it were under £500, could be onerous. I want to try to remove that liability from the purchaser and ensure that it is properly dealt with by the seller or the co-proprietors and that protection is afforded by the registering of a notice against the seller's title.

I move amendment 89.

Nicola Sturgeon: This was the most controversial aspect of the bill at stage 1, so it is appropriate that we take some time over it.

The bill will change a fundamental principle of property law. Under current law, the responsibility for payment of repair costs is personal to the seller of the property; it does not transmit to a purchaser. The bill seeks to change that. While the repairs would remain the responsibility of the seller, when the property is sold, the purchaser would become jointly and severally responsible for payment. In effect, that turns the seller's personal obligation into a real obligation that can transmit against the property to the purchaser. Of course, the purchaser will have a right of relief against the seller, but that will be meaningful only if the seller can be found and if he has the funds to meet the liability.

During the debate on our stage 1 report, it was said that various measures can be taken to trace the seller. Specific reference was made to section 70 of the Title Conditions (Scotland) Act 2003. However, the duty to disclose information that is contained in that section carries no enforcement sanctions, so it does not offer much comfort to a purchaser who might find themselves in that position. In reality, other owners in a tenement would find it much easier to seek to make the purchaser liable than they would find it, in some circumstances, to find the seller and enforce the obligation against the seller.

I appreciate that one of the objectives of the housing improvement task force was the maintenance and improvement of the housing stock, and I accept absolutely that that is the right aim and that the Tenements (Scotland) Bill should reflect that. The inability to recover costs under the present law operates as a disincentive to instruct repairs; I accept that. On the other hand, I have deep misgivings about a system in which a purchaser can find themselves facing a bill of which they were completely unaware. That offends some of the basic principles of Scots property law, including the openness and publicity that underpins it.

My amendments seek to strike a balance between those two competing public policy principles—the importance of being able to recover costs on the one hand and, on the other hand, the need to ensure that when someone buys a property, they do so with their eyes wide open. The proposed solution is first to limit the operation of section 11 to sums of £500 or less of outstanding costs. That is £500 per flat, so in a tenement block of eight, the total would be £4,000. Most repair bills are comparatively modest, but when the sum that is outstanding exceeds that limit, my amendments propose that a notice be recorded against the property to warn of the outstanding costs. The cost of a search of the registers direct service for a property is £4 plus VAT, and the cost of registering a notice is £25 plus VAT. Costs are involved, but they are not prohibitive and they would allow a purchaser to be clear about the liabilities that they were taking on when they were buying a property.

The style of notice that is proposed by amendment 90 borrows from the style of notices of payment of repair grants and improvement grants that were use by local authorities in the 1970s and 1980s. Those notices were registered in the property registers without much difficulty and without over-burdening the Registers of Scotland. I propose that they could be used by a factor or any other owner in the block. A purchaser would then be warned and would be able to make further inquiry. The system would allow the purchaser to

pay off the amount by deducting it from the sale price or by requiring the seller to do that.

The forms are pretty simple; they could be completed without legal advice, so I do not think that they would place a huge burden on the other owners or a factor. The fact that there is a cost element will act to ensure that the procedure will be used only when it is economically viable; higher-value repair costs will trigger the procedure.

Amendments 90, 91 and 94 seek to strike a balance between what the bill is trying to achieve and ensuring that purchasers have protection. I hope that the minister and the committee will consider them favourably.

Mike Pringle (Edinburgh South) (LD): Would amendment 90 mean that, if the cost against a flat was more than £500, it would be excluded from the requirement that it be registered?

Nicola Sturgeon: Sorry?

15:15

Mike Pringle: For example, if a bill of £100,000 was outstanding against eight flats, would that need to be registered? If a group of flats in a tenement—normally, there are eight or 10 flats—had an outstanding common repair notice with a total cost of £100,000, how would those flats be affected by amendment 90?

Nicola Sturgeon: If the outstanding bill against the flat that was being sold was for less than £500, the joint and several liability provision would kick in regardless of any notice that might be registered in the property registers. However, if the outstanding bill was for more than £500, the purchaser's liability would kick in only if the purchaser had been given notice of that liability through the registration procedure.

The Convener: Under amendment 90, would the purchaser still be liable if the outstanding bill was for less than £500?

Nicola Sturgeon: Yes.

The Convener: Would the protection that would be afforded by amendment 90 apply only to purchasers who found themselves facing a share that was in excess of £500? Would such purchasers be covered by the registration procedure?

Nicola Sturgeon: Yes.

Maureen Macmillan: All committee members were concerned about the issue. Incoming purchasers should not be liable for a debt of which they had no knowledge because the seller from whom they bought the flat failed to disclose it.

Mike Pringle: For most of us, section 11 exercised us more than any other. In our stage 1 report, we stated:

"The Committee is of the view that this provision, as it stands, is very unfair to the purchaser."

If I remember rightly, the word "very" was inserted at my request, which the committee was glad to accept. I am pleased that that word was inserted. We need to consider the issue seriously, because the provision as it stands is very unfair. Several times during my years as a councillor, people came to me desperate because they had bought a flat and found themselves facing a serious liability.

When we took evidence on the bill, we heard from one lawyer who had been about to buy a flat in Glasgow for £24,000. The selling solicitor and the seller were being very obstructive about providing information, and the lawyer discovered only days before settlement that there was an outstanding bill of £22,000 on the property. If he had not found out about that bill, the buyer would have suddenly found himself liable for an additional £22,000 on a £24,000 flat. That is wrong.

I think that Nicola Sturgeon's amendments would address that problem.

The Convener: Let me clarify that amendments 89 and 90 are similar but not identical; it is important that committee members understand that. I will not put words into Nicola Sturgeon's mouth but, as I understand it, the protection for the purchaser that would be provided by her amendment 90 would kick in only for sums in excess of £500.

Nicola Sturgeon: The effect of amendment 90 would be to limit the joint and several liability in two ways. As it stands, the bill will make owners and sellers jointly and severally liable. Amendment 90 would mean that they would be so liable only if the amount concerned was under £500 or if a notice had been registered in the property registers.

The thinking behind the £500 limit is that the procedure should not be necessary for trivial amounts of money; it recognises that large sums are the big problem. At the best of times—never mind during the current situation with property prices—people stretch themselves to the limit to buy property. If purchasers find that they are faced with an enormous additional bill of not just a couple of hundred pounds but a couple of thousand pounds, that can have catastrophic consequences for individuals. My amendments recognise the difference in those sorts of values.

There is a difference between amendments 89 and 90, but I should point out that amendment 91,

which would provide the form of the notice, could apply to either amendment.

The Convener: I think that that is the intention of the drafting, and I see that the clerks are confirming that it is. It is helpful to distinguish between amendments 89 and 90. The difference is not straightforward but technical, and I think that Nicola Sturgeon has explained where her amendment 90 differs from my amendment 89. Amendment 89 would take the liability of any purchaser out of the equation and, by putting information in the property register, provide a mechanism to ensure that other owners, and the seller, would know what was going on.

Mrs Mulligan: I am aware of the strength of the concerns that members expressed during stage 1. I hope that members will bear with me as I respond to comments that were made then and to comments that have been made this afternoon.

When a major repair has been carried out on a tenement, or is being contemplated by the owners, and one of the flats is then sold, we should ask who is in the best position to protect himself or herself against the possibility that the seller may abscond without paying his or her share of the cost. Our view is that the purchaser of the flat is in the best position to protect himself. His solicitor will be in negotiation with the seller's solicitor over the conclusion of missives, and he also has the option of retaining part of the purchase price. He will usually have had the property surveyed, and even a valuation report should pick up major repairs that need to be done or, indeed, those that have been recently completed.

By contrast, the other owners in a tenement may be unaware that a flat is being sold. The sale may have been completed and the previous owner may have moved out before they realise that a share of the cost of the repair work is unpaid. The liability for paying that share could fall on the other owners rather than on the new owner of the flat. The new owner will benefit from the work having been done, but will bear no responsibility for the share that applies to the flat that he now owns and occupies.

The best protection for owners will be to collect money in advance. Rule 3.2 of the tenement management scheme enables the owners to collect money in advance of carrying out repair work. That is also a protection for the incoming purchaser, as the seller should already have deposited money into the maintenance account.

As I said, I acknowledge members' concerns and have listened to their contributions. However, if there is to be protection for incoming purchasers, it will need to be carefully balanced against the need to protect the existing owners. It will also need to avoid discouraging the maintenance of property. The protection should be proportionate to the scale of the potential problem.

Amendment 89, in the name of the convener, would remove section 11(2). That subsection imposes several liability on a seller and an incoming owner, but the amendment does not replace that liability. The notice procedure that is proposed in the amendment's new section 11(2) is therefore unnecessary, as liability will not transfer to the incoming owner. Amendment 89 would also provide for the discharge of the proposed notices after five years. I suggest that that is too long a period. In the vast majority of cases, the work in question will have been done and paid for long before five years have passed.

Amendment 90, in the name of Nicola Sturgeon, proposes that the existing provisions of section 11 should remain when the costs do not exceed £500 for the burden that properties share. However, the amendment proposes that, when the costs exceed that limit, a notice in the form specified in the schedule that is proposed by amendment 91 would have to be registered or recorded in order for the burden to transfer to the incoming owner. The Executive believes that £500 is too low a threshold for a notice procedure. The notice provision should be regarded as a safety net to deal with unusual cases. The procedure should not be used regularly, and it should seek to protect purchasers only against large liabilities.

It seems that the schedule that is proposed by amendment 91 would cover only those cases in which repair work had been done but the bill was unpaid. That is a possibility and is perhaps the easiest example of a risk to a purchaser, but section 11 covers all scheme costs, including those that have not yet been incurred. A purchaser is therefore liable for costs that arise from a scheme decision that was made before he bought his property, even if notice had been given to the seller. The proposed notice provision would mean that although a purchaser, as a successor, was bound by a scheme decision, he would not be bound to pay for it in some cases.

The buyer's primary protection against a large and unexpected repair bill is a full and proper survey of the property, which will show up the issues that need to be dealt with. Nicola Sturgeon said that registering a liability should be a straightforward procedure. I caution members and ask them to reflect on what we would be asking the Registers of Scotland to do. That organisation would have the burden of ensuring that such notices were registered, so we must be clear that it can carry that burden satisfactorily. As that has not been discussed with the organisation, the issue would need to be resolved.

I hear members' concerns, but I ask Annabel Goldie to consider withdrawing amendment 89

and Nicola Sturgeon to consider not moving amendments 90, 91 and 94. As I said, the amendments contain several details that would make them unacceptable, even if the committee has, in the past, had some sympathy with the principle behind the amendments.

The Convener: As I explained, amendments 89 and 90 cannot both be supported, so I propose to wind up on amendment 89, then to ask Nicola Sturgeon to wind up on her amendments before we vote. Members should have the benefit of hearing both wind-up speeches before they reach a view.

I will deal with three points from the minister's response. I noticed the emphasis that you placed on a purchaser's knowledge, which concerns me. In many genuine circumstances, a purchaser will not and cannot have that knowledge. Mr Pringle gave an example that was certainly an exceptional situation, but it was a graphic illustration of what can happen.

An anomaly seems to exist. If the provision is intended to provide a potential financial burden that will fall on the purchaser of a flat, it is anomalous that such a provision will not apply to the purchaser of a semi-detached house or a bungalow. My question is about the general principle. Why should the bill impose on the purchaser of a flat a liability that does not accompany other types of property purchase?

You mentioned the reference to five years. The significance of that period is that a normal debt would prescribe in law after five years and would no longer be recoverable, so that would be a sensible limit to place on the currency of any notice. If the matter had not been dealt with after five years, the liability would discharge.

From my judgment and experience, I remain concerned that a purchaser could be confronted with a liability about which they could genuinely know nothing and could not have had any reliable means of finding out. It is wrong to pass laws that would pass on someone else's responsibility to a purchaser.

Nicola Sturgeon: I will comment on some of the minister's points. Her first point was that purchasers are in the best position to protect themselves, but in the circumstances that we are dealing with, that is manifestly not the case, because the purchasers have no means of protecting themselves. They can ask factors for information, but in many cases—especially in Edinburgh—no factor has been appointed.

A purchaser could ask a seller, but they would have to rely completely on a seller's honesty. When large sums of money are involved, unscrupulous sellers will have a disincentive to tell the truth. That is a fact of life.

A solicitor who acted for a purchaser in such circumstances would fulfil his or her professional duty simply by asking a factor or seller. There would be no claim against the solicitor if it later transpired that large sums were outstanding, because the solicitor—just like the person for whom they are acting—cannot conduct searches to find out the information, because there are no searches that would reliably inform a purchaser. We cannot expect purchasers to protect themselves without giving them the means to do so, and those are lacking at the moment.

15:30

The second point that was made that merits comment is that other owners in a tenement would not necessarily know that a flat was being sold. That is a fair comment. However, the other owners would not have to know that a flat is being sold, because the amendments, taken together with the other provisions, would act to allow another owner or a factor to register a notice whenever a sum of more than £500 is outstanding. A flat would not have to be on the market or to be sold for a notice to be triggered.

Fundamentally, the amendments are about protecting other owners, as well as the purchaser. Under the current law, other owners have no rights against a purchaser—they have rights only against an owner. The amendments retain the objective of the bill, which is to give rights to owners against the purchaser, as well as the seller. Those rights would be limited to cases either in which the sum outstanding was less than £500 or in which the purchaser had been given due notice that the amount was outstanding. In my view, that is fairly equitable. In cases where sums are large—more than £500—it is in the interests of the owner to ensure that the purchaser knows about them. With the amendments, other owners would be in a better position than they are in at the moment, because they would have some right of action against purchasers, albeit a limited one.

The point was made that the figure of £500 is too low. That is simply a matter of opinion—we could argue the point. For me, the important issue is the principle. That is why I will press the amendments. If the minister thinks that the figure of £500 is too low, I am sure that we can debate other amendments at stage 3 that would change it. I would be open to debating the matter, but the principle is too important for me not to press it.

I do not think that the provision would overburden the registers. I made the point that it conforms to the model for repairs, grants and so on that local authorities used to use, which I am not aware placed huge pressure on the registers. The facility would not be overused. I stand by my comment that the majority of repair bills are for

modest sums. The provision is designed to protect people where large sums of money are involved. It is a fundamental principle of property law in Scotland that real burdens appear on the registers, so that people can enter transactions with their eyes open. If the bill is not amended along the lines that I have suggested, that principle will be jeopardised and purchasers will be put at risk. We will also have missed an opportunity to give owners better protection than they currently have.

Mrs Mulligan: I want to clarify a point that was made about the difference between the responsibilities of people in a tenement and those of people who buy a semi-detached house. My advice is that there is no difference, but we will clarify the point at a later stage.

I recognise the committee's concerns on this issue and the unfairness that is seen to affect a purchaser when they take on a burden of which they are not aware. However, we must balance that concern against the fact that, at the end of the day, someone has to pay the bill. At the moment, the other owners are left with that responsibility. If they do not assume it, the work does not take place. Nicola Sturgeon has already accepted that one consequence of the current situation is that work is delayed because no one wants to commit themselves to carrying out repairs when a house is in the process of being sold.

I still have concerns about overburdening the Keeper of the Registers of Scotland, who now has responsibilities that they did not have in the 1970s and 1980s. We need to bear that in mind. If we decided that this proposal was the most satisfactory way in which to proceed, we would need to consider the issue of overburdening before agreeing to it.

At the end of the day, as I said in my opening comments, the best way to protect a purchaser is through a full and thorough survey, as that will show up the obligations that might arise. We must balance that with the few cases in which that does not happen. From the debates that we had at stage 1, we recognise that the issue is particularly complicated. The implications of the amendments have not necessarily been taken into account, and I want to take more time to consider the matter.

The Convener: Fair enough. Nicola Sturgeon wants to comment, but technically our debate concluded with the minister's response. Is your point one of clarification?

Nicola Sturgeon: I have two brief points of clarification. First, no survey will show up outstanding repair costs—that is the basic problem.

Mrs Mulligan: A survey would show up the need for repairs.

Nicola Sturgeon: That is not the point. It is one thing for a purchaser to go into a transaction knowing that the flat needs to be repaired, but it is completely different for them to go into a transaction not knowing that the property has been repaired and that the repair has not been paid for, and a survey will not show up the latter.

My second point of clarification is that I agree that somebody has to pay. The amendments are not about letting the purchaser off the hook—they retain the right of the owner to take action against the purchaser. All that they say is that before an owner can take such action—when the costs exceed £500—the liability has to have been out in the open so that the purchaser is aware of it. The procedure for that is not onerous but pretty simple, and it allows us to strike the balance that we have talked about.

The Convener: I was going to clarify that very point. In section 11, we are talking specifically about costs—not about anticipated expense or outstanding repairs but, presumably, about repairs that have been done but for which the seller has not paid. That is an important distinction. A surveyor might look at a flat that has been extensively treated for dry rot and woodworm. When he goes in, all that he finds is that the flat has been freshly painted and is beautifully furnished. It would be extremely difficult for him to know what on earth has been going on; people might just have redecorated. If a surveyor is asked, as he examines a flat, to express an opinion about whether a seller owes money for repairs that have been carried out but not paid for, he is being asked to take on a different task. That is an important point of clarification in relation to the phrasing of section 11.

Mrs Mulligan: In a full survey, a reasonable surveyor should be able to identify where work has been carried out. I recognise the point that Nicola Sturgeon makes; the cost of work that needs to be carried out might not be quantified. However, that shows up the difficulty with the amendments that have been lodged, because they might not clarify the position. That is why we need to step back and think further.

The Convener: I am anxious to make progress. We have had a debate and there has been a full contribution of views. I realise that there is no unanimity of opinion on the matter and I accept that the minister does not feel ready to accept the amendments. I appreciate her position but, in the interest of clarity, we need to press forward and let the committee come to its conclusions on the amendments.

I press my amendment 89. The question is, that amendment 89 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Goldie, Miss Annabel (West of Scotland) (Con)

AGAINST

Baillie, Jackie (Dumbarton) (Lab)
Fox, Colin (Lothians) (SSP)
Macmillan, Maureen (Highlands and Islands) (Lab)
Pringle, Mike (Edinburgh South) (LD)
Sturgeon, Nicola (Glasgow) (SNP)
Whitefield, Karen (Airdrie and Shotts) (Lab)

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

Amendment 89 disagreed to.

Amendment 90 moved—[Nicola Sturgeon].

The Convener: The question is, that amendment 90 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Fox, Colin (Lothians) (SSP)
Pringle, Mike (Edinburgh South) (LD)
Sturgeon, Nicola (Glasgow) (SNP)

AGAINST

Baillie, Jackie (Dumbarton) (Lab)
Goldie, Miss Annabel (West of Scotland) (Con)
Macmillan, Maureen (Highlands and Islands) (Lab)
Whitefield, Karen (Airdrie and Shotts) (Lab)

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

Amendment 90 disagreed to.

The Convener: Amendment 47 is in a group on its own.

Mrs Mulligan: Amendment 47 seeks to change the definition of "relevant costs" in section 11(4), so that it covers liabilities that arise for scheme costs whether they arise under the provisions of the title deeds or under the rules of the TMS.

I move amendment 47.

Amendment 47 agreed to.

Section 11, as amended, agreed to.

The Convener: I propose to take a short break of five minutes. I ask members to be back promptly at 10 to 4.

15:42

Meeting suspended.

15:51

On resuming—

After section 11

The Convener: Amendment 48, in the name of the minister, is in a group on its own.

Mrs Mulligan: Under certain provisions in the bill and some of the rules of the tenement management scheme, an owner might seek to recover costs or a share of costs from another owner. For example, under section 10, an owner is entitled to carry out work and to recover a share of the cost of maintenance as if the maintenance had been carried out under the terms of the management scheme for that tenement. Under the tenement management scheme, an owner might also seek to recover sums that might have arisen from the operation of rules 4, 5 and 6. At present, those costs can be recovered by owners, but not by former owners. As it does not seem to be fair that an owner should lose the right to recover costs on selling the flat, amendment 48 seeks to allow former owners to retain the right to recover those costs.

I know that members have been interested in the general question of where liability falls between the seller and purchaser—we have just had a debate on the matter—but that general principle seems to differ from the more detailed matters that amendment 48 deals with. I hope that members' uncertainty about the general issue will not prevent them from supporting the amendment.

I move amendment 48.

Amendment 48 agreed to.

After schedule

Amendment 91 not moved.

Sections 12 and 13 agreed to.

Section 14—Access for maintenance purposes

The Convener: Amendment 49, in the name of the minister, is grouped with amendments 50 to 55.

Mrs Mulligan: Amendments 49, 50, 51, 53 and 54 are drafting amendments that will not change the effect of any provisions but will simply clarify some terminology.

On amendment 52, section 14(6) provides that the right of access to parts of a tenement that are individually owned as set out in section 14 may also be exercised by another person—most commonly, a tradesperson—who is authorised in writing by an owner or owners association. Under section 14(7), if an authorised person causes damage to any part of the tenement, the owner or owners association who gave the authorisation will

be severally liable with the authorised person for any damage that has been caused, but the owner or owners association will have a right of relief against the authorised person. If, however, the person was not authorised in writing, he or she would not qualify as an authorised person and there would be no several liability or right of relief. It therefore seems to be sensible to remove the requirement that the person be authorised in writing, which seems in any case to be overly bureaucratic.

Amendment 55 will tighten up the access provision and clarify a couple of points. An authorised tradesperson taking access might not be liable under the law of damage for all interference caused to the property. If, for example, floorboards or carpets are pulled up for some operation under a floor, it would be a question of contract whether the tradesperson would have to relay them. The owner of the flat might still be left with work or expense to put his flat back to its former state, but as the bill stands no one would be liable. Amendment 55 will place a duty on the owner, or owners association that gained access to the flat, to ensure that the flat is restored to no worse a condition than its previous state. The amendment will also make it absolutely clear that the owners on whose behalf the access is exercised have a statutory duty to reinstate. It would, of course, still be possible for them to pursue any person who had entered the flat on their behalf, such as a tradesman, if he or she had caused damage. If there is a failure to comply with the duty of reinstatement, the owner of the part of the tenement through which access has been gained will be able to carry out the work to restore that part to its former condition. They may then recover the cost of doing so from the relevant owner or owners' association.

I move amendment 49.

Amendment 49 agreed to.

Amendments 50 to 55 moved—[Mrs Mary Mulligan]—and agreed to.

Section 14, as amended, agreed to.

After section 14

The Convener: Amendment 92, in the name of Sarah Boyack, is in a group on its own.

Sarah Boyack: Amendment 92 concerns an issue that I raised at the stage 1 debate, which arises from the experience of many people in my constituency of being unable to find or contact owners and, therefore, of being unable to progress works. That is an experience that I have had, too.

The objective of amendment 92 is to require owners who do not reside in the tenement building to provide their addresses so that the other owners in the tenement can carry out common repairs. Cathie Craigie has lodged an amendment to the Antisocial Behaviour etc (Scotland) Bill, which will be considered in two days' time, and I fully support that amendment, which aims to ensure that private landlords are required to register so that they can be found. However, that will not deal with absent landlords who have not formally rented out their flats but are simply not there. I am concerned that the amendment to the Antisocial Behaviour etc (Scotland) Bill, which I will support, will not necessarily address the problem that has been identified in respect of the Tenements (Scotland) Bill.

I would like to know whether the minister is prepared to support amendment 92, which would ensure that people cannot escape their responsibilities. The problem at the moment is that, by being silent and by being unprepared to sign up to agreements that enable works to go ahead, people can escape their obligations. The result can be that building work does not go ahead because other residents are not prepared to risk being left with a bill to pay on behalf of somebody who is not prepared to engage in discussion or to sign up for works to progress. That can lead to years of inactivity when no maintenance whatsoever takes place.

In Edinburgh, the default position has historically been the use of a statutory notice. Where owners cannot be found, the issuing of a statutory notice by the council means that responsibility is removed from existing owners because the council then pursues the absent person. As I read the bill, it will be up to individual owners to chase absent owners and to try to find out who they are, which will lead to lengthy delays and to the position that we have at the moment in parts of Scotland other than Edinburgh. It will mean that works just will not happen. Unless the minister is able to demonstrate that there is an alternative way in which that objective could be met, I will be keen for the committee to agree to amendment 92.

16:00

I do not know whether the minister is considering the provision of guidance to co-owners on whether they should identify the times at which they are away from their property. If someone is going to be away for any length of time and a leak should occur, it is only common sense for owners to consider that somebody else in the building might want to access their flat.

However, given that we are not talking about a statutory requirement on owners, the issue is one that needs to be addressed. It should be part of a culture in which people are responsible and in which they ensure that they are in touch with other owners. There will always be a small number of

people who will try to avoid that responsibility, so the purpose of amendment 92 is to prevent them from escaping their responsibilities. I hope that the minister will be able either to support the amendment or to tell me how the objective of the amendment can be met.

I move amendment 92.

Mike Pringle: I was somewhat surprised to discover the unique nature of the City of Edinburgh District Council Order Confirmation Act 1991—I think Joyce Lugton will remember the discussion on the subject the first time she came to give evidence. Sarah Boyack may not know about that.

Sarah Boyack: That act is unique.

Mike Pringle: The act gives some rights in Edinburgh for the council to take over and undertake statutory repairs, which does not happen elsewhere. When I read amendment 92, I had a great deal of sympathy with it.

Maureen Macmillan: Amendment 92 says that the resident must provide the address of their main residence. To whom does Sarah Boyack envisage co-owners would provide the information? Would it be to the other flat owners or the local authority?

Sarah Boyack: That question is why I suggested that the Executive might want to consider issuing guidance. Two issues are involved: the duty to provide the information; and the way in which the information is provided, which could be done in different ways. The solution that Cathie Craigie identified in her amendments to the Antisocial Behaviour etc (Scotland) Bill—a formal register of private landlords—might not be the way we have to go on this. If there was an owners association, however, the situation would be straightforward.

If a management scheme was in place, one could also expect that owners would have signed up formally to the scheme and that they would be listed as part of it. To be honest, I am seeking the advice of the minister as to how best to do things.

Mrs Mulligan: I have certain sympathies with Sarah Boyack's proposals in amendment 92. However, if a flat is not owned by a private individual as their place of residence, amendment 92 could give rise to difficulties. We should keep in mind the fact that the bill covers shops and other commercial, as well as domestic, premises.

For someone to have to give their contact details to their neighbours might turn those neighbours unwittingly—and, I am sure, unwillingly—into data controllers under the Data Protection Act 1998. The difficulty is that the names and addresses of individuals constitute personal data for the purposes of that act. Unless the data are

"processed by an individual only for the purposes of that individual's personal, family or household affairs",

to hold and make use of those data would attract the provisions of the act. Sarah Boyack recognises that that is one of the practical difficulties that could arise from amendment 92. It would mean that individuals could make limited use of the contact details that were given to them by absent neighbours: they could use the details only if they were used in respect of their own household affairs.

However, where a flat is owned by someone other than a private individual—by a trust or business, for example—the holding of such information could have considerable consequences for the holder. Such persons would have to register with the information commissioner, pay the requisite fee and give details of the use to which they would put the information. They would be required to use the data only in accordance with the data protection principles that are set out in schedule 1 of the Data Protection Act 1998.

We cannot therefore accept an amendment that would have such disproportionate and onerous consequences. When introducing any requirement under the law, we have to remember how it would be enforced. The normal process of civil enforcement is through the courts, but in this case—I do not wish to appear flippant—if an owner of a tenement flat refused to give a contact address, how could the courts enforce the matter if they could not trace the person?

As I said, we need to be aware of the practicalities of law enforcement before agreeing to suggestions such as are set out in amendment 92. However, Sarah Boyack has acknowledged that some of her anxieties might be taken into account with proposals under the Antisocial Behaviour etc (Scotland) Bill for a nationwide register of landlords. Much of the difficulty in tenements with absentee owners is caused where flats have been rented out; the register should enable other owners to trace absentee landlords not only when there is antisocial behaviour on the part of tenants, but when landlords do not co-operate on common repairs. However, I appreciate the point that Sarah Boyack made about the matter being not just about landlords, but about people who own properties but who are not present in them and are not contactable.

I do not feel that amendment 92 addresses all the problems that might be thrown up by it. I therefore ask Sarah Boyack to agree to withdraw amendment 92 while we consider how we can deal with the practical issues and address the concerns that she has expressed.

Sarah Boyack: I am a bit disappointed by the minister's response. In the initial policy

memorandum to the bill, the Executive made it clear that it was considering how the proposal to provide a duty to give a contact address would infringe on privacy and data protection legislation, and that it would say later how it proposed to proceed. I would have liked to see a bit more about that by stage 2.

I will seek to withdraw amendment 92. However, I would like the Executive to lodge an amendment on the matter before the stage 3 debate because I think that I have identified a loophole. There are parents who rent out flats who cannot be got hold of. The example that Mary Mulligan gave of a court not being able to find somebody makes me think that the issue needs to be taken on board. It has taken four years for me to be able to go ahead with repairs to my flat precisely because we had the names of owners but could not get their addresses because the property companies that were letting out their flats refused to give us up-to-date contact details. It is a live issue and we need to address it. I am prepared to withdraw the amendment on the understanding that either the minister will lodge an amendment on the matter before stage 3, or I will.

The Convener: Is the committee agreed that amendment 92 can be withdrawn?

Jackie Baillie (Dumbarton) (Lab): I have one point to make. One would assume that amendments to introduce a register of private landlords would encounter similar problems relating to data protection, the information commissioner and so on. The Executive appears to have overcome the problems in relation to such amendments to the Antisocial Behaviour etc (Scotland) Bill, so I would have thought that those problems would not constitute an argument against amendment 92.

The Convener: I will regard that only as a comment, as I am seeking the committee's agreement that the amendment be withdrawn.

Amendment 92, by agreement, withdrawn.

The Convener: I am sure that the minister will note Sarah Boyack's comments.

Section 15—Obligation of owner to insure

The Convener: Amendment 93, in my name, is grouped with amendments 56 to 58.

Amendment 93 concerns insurance arrangements in section 15. I applaud the

"duty of each owner to effect and keep in force a contract of insurance against the prescribed risks for the reinstatement value of that owner's flat and any part of the tenement building attaching to that flat as a pertinent."

That is a wise precaution. However, section 15(2) seeks to make mandatory the insurance of a tenement by a common policy if that is what the original title deeds provided for. In many cases there may technically be a common policy in existence. It may be an old policy that has long been superseded by the individual insurance arrangements of the flats' proprietors. It is slightly unfortunate that, if that situation exists, subsection (2) would seem to preclude the right of individual proprietors with adequate existing individual insurance arrangements to have those arrangements. The effect of subsection (2) would be to compel them to have a common insurance policy.

The effect of amendment 93 would be to say at the end of section 15(2) that the contract of insurance shall be

"both a common policy and a policy for each flat, provided the cumulative cover provided for the building by all the policies covers the reinstatement value of the building".

It seems to me that the amendment would acknowledge an existing practical situation.

I move amendment 93.

Mrs Mulligan: This group of amendments relates to the bill's provisions on insurance. I will deal first with amendments 56, 57 and 58 in my name. Section 15 of the bill provides that there will be compulsory insurance of all flats in a tenement. That is because tenement owners are particularly vulnerable to the physical conditions of neighbouring flats. Essentially, a flat owner is not adequately insured unless his neighbours are also insured. Section 15 will therefore oblige the owners of all flats in a tenement to insure their flats and to do so at reinstatement value.

Section 15(5) deals with enforcement of the obligation. It will give individual owners the right to request to see the insurance policies of other owners in a tenement. Owners will also have a right to see evidence of payment of premiums on other owners' insurance policies. However, there might be practical difficulties in relation to the production of an insurance policy for inspection. A flat might, for example, be insured through a lender's block policy. In such circumstances, the owner might have only a schedule of cover in his possession, rather than the policy. Amendment 56 will amend the obligation on owners so that they have simply to produce evidence of the existence of the policy and of payment of premiums. Amendments 57 and 58 are consequential on amendment 56.

Until Annabel Goldie spoke to amendment 93, I was unclear as to how it arose. During the stage 1 debate, I felt that the convener was under the impression that the bill would impose common policies in at least some circumstances, which is not the case. The bill will simply impose a requirement to insure to reinstatement value. Section 15(2) deals with cases in which a common

policy is imposed by the title deeds and provides that, in those cases, the common policy must be to reinstatement value.

The convener might be concerned about a situation in which some tenements have a common policy to cover the common parts of the tenement, but individual owners have policies to cover their own flats. The bill will not interfere with such arrangements, although all the policies together will in the future have to provide insurance to reinstatement value. If that is the issue, I hope that the convener will feel reassured and be able to withdraw her amendment.

On the other hand, if the convener is referring to a situation in which people have a common policy for the whole tenement, but which is restricted to a certain value or certain risks, and individual owners choose to top up the cover with individual policies, I suggest that the matter will be more complicated. In such a case, I am not sure how an insurance company would deal with a claim if, for example, the whole tenement burned down. I am sure, however, that a mixture of cover and company for each property would be a highly complex arrangement.

In short, I am not clear what it is intended amendment 93 should achieve and I am not sure that I can recommend that we accept it at this stage. I am willing to consider the amendment, but I want to discuss its implications further, particularly with the insurance sector in order to see what its view of the arrangements might be.

I therefore hope that Annabel Goldie will feel able to seek to withdraw amendment 93 and allow further discussion to take place on how we might arrive at a satisfactory conclusion.

16:15

The Convener: In practice, the situation in many tenemental properties—certainly in the west of Scotland, although the situation might be different in Edinburgh—is that, when providing for the construction of a tenement, the old title deeds almost invariably provided for a common policy. However, with the passage of time, the common policy tended not to be kept up to date in a realistic sense. It might have covered the entire tenement, but it was usually for an unrealistically small amount of money. In many cases, particularly with the entrance into the property market of heritable creditors—mortgage lenders—it was absolutely insisted on that individual policies be taken out for the security subject, by which I mean the flat that was bought with a loan. Therefore, it is common to find—notwithstanding the original title provisions requiring a common policy—that individual proprietors have, usually under pressure from their lenders, taken out individual insurance to cover their flats.

Under section 15(1), there will be an obligation to ensure that adequate arrangements exist in total for the whole building. The rest of the section will enable proprietors to check that that is the case. My concern relates to the fact that, if there are eight proprietors with perfectly good assurances, each of whom can require sight of the others' insurance cover—in line with the sensible provisions in section 15—the effect of section 15(2) seems to be not that they may update their common policy, but that their individual arrangements would be precluded. That is what I understand by the section's saying that, where the title provides for a common policy,

"the contract of insurance … shall be a common policy of insurance."

If the minister will concede that that is a point that she would like to explore further, I will be happy to withdraw amendment 93.

Mrs Mulligan: Absolutely. You have made your point well and I believe that it is something that we should clarify further and return to at stage 3.

The Convener: In that case, I seek leave to withdraw my amendment.

Amendment 93, by agreement, withdrawn.

Amendments 56 to 58 moved—[Mrs Mary Mulligan]—and agreed to.

Section 15, as amended, agreed to.

Section 16—Demolition of tenement building not to affect ownership

The Convener: Amendment 59, in the name of the minister, is grouped with amendments 60 to 70.

Mrs Mulligan: The bill makes provision for the sale of abandoned tenements and for the sale of the land on which a demolished tenement stood. The Executive believes that more detailed provision is required in order to protect the interests of the owners. Amendments 60 and 69 make it clear in section 18(3) that the owner of a former flat in a demolished or abandoned tenement will have to apply to the sheriff for the power to sell the site or building and amendment 70 provides a procedure for that. The selling owner will be required to pay the other owners their share of the proceeds. If another owner is not traceable, the funds will be lodged with the sheriff court. The sum payable to each owner will normally be an equal share of the gross proceeds of the sale less an equal share of the expenses incurred by the seller. An owner will receive the share less the cost of discharging any security that the owner might have outstanding over his former flat.

Amendments 61 and 63 are consequential on amendment 64 and amendment 62 provides that, if the proceeds are not to be divided equally, there must be available evidence of the varying floor areas of the flats or former flats.

Amendment 67 will remove section 19 from the bill, which deals with cases in which a tenement building has been demolished and the site has been sold but an outstanding security remains over one or more of the flats. We propose to drop section 19 because, under the new procedures, any heritable securities will be automatically discharged.

Amendment 68 addresses concerns that were expressed in evidence before the committee regarding the use of the phrase "return to" in section 20. It was argued that a new owner or tenant might decide to occupy a flat, but would therefore not be returning and therefore could not prevent a sale. We accept that those words can simply be deleted from the section.

The purpose of amendment 59 is to clarify the position as to who owns what after demolition. Amendments 65 and 66 will extend the provisions of section 18 relating to the sale of demolished tenements to include land that afforded access to the tenement before it was demolished.

Section 16 provides that demolition of a tenement will not alone change ownership of the parts of a tenement. Section 3(4) provides a default rule that allocates ownership of pertinents according to the service test. The question arises whether there is any right of ownership in the pertinents once the building is demolished and the pertinents no longer serve the tenement. That would matter for pertinents such as the path, close and fire escape. In particular, ownership of the path will be important, because it provides access to the site. As members are aware, the value of the site could be seriously reduced if there are doubts over access to it.

Amendment 66 provides that references to the site will also include any pertinents that provided access to the building immediately prior to its demolition. Amendment 65 is a consequential amendment.

I move amendment 59.

Amendment 59 agreed to.

Section 16, as amended, agreed to.

Section 17 agreed to.

Section 18—Use and disposal of site where tenement building demolished

Amendments 60 to 66 moved—[Mrs Mary Mulligan]—and agreed to.

Section 18, as amended, agreed to.

Section 19—Effect of demolition and sale on certain undischarged securities

Amendment 67 moved—[Mrs Mary Mulligan]—and agreed to.

Section 20—Sale of abandoned tenement building

Amendments 68 and 69 moved—[Mrs Mary Mulligan]—and agreed to.

Section 20, as amended, agreed to.

After schedule

Amendment 70 moved—[Mrs Mary Mulligan]—and agreed to.

Section 21 agreed to.

Section 22—Amendments of Title Conditions (Scotland) Act 2003

Amendment 94 not moved.

The Convener: Amendment 71, in the name of the minister, is grouped with amendment 82.

Mrs Mulligan: Amendment 82 provides that, for the purposes of calculating floor area under the bill, internal walls and partitions are to be included. The measurement of the floor area of flats in a tenement is important, as it may determine how costs are apportioned under rule 4 of the tenement management scheme when the title deeds do not set out how costs should be divided. It is also relevant to the provisions on demolition.

Amendment 82 will change the calculation of floor area to clarify that the area occupied by internal walls and partitions is to be measured for the purposes of calculating floor areas. I know that the committee was intrigued when it received evidence that no two surveyors would reach the same result when measuring a flat. I hope that amendment 82 will make the calculation easier and address the committee's concerns.

Amendment 71 is a technical amendment that will ensure that there is consistency between the bill and the Title Conditions (Scotland) Act 2003.

I move amendment 71.

Amendment 71 agreed to.

Amendments 72 to 76 moved—[Mrs Mary Mulligan]—and agreed to.

The Convener: Amendment 77, in the name of the minister, is grouped with amendments 78 and 79.

Mrs Mulligan: Amendments 77 and 78 are technical amendments to the Title Conditions (Scotland) Act 2003.

Amendment 79 makes it clear that, when the courts are considering the best interests of the owners, they must consider the interests of the owners as a whole. It also makes technical changes to subsections (1) and (2) of section 33 of the Title Conditions (Scotland) Act 2003, which relate to community burdens, to ensure that section 33(2) will apply even where a constitutive deed may both allow specified owners to grant a variation or discharge and authorise managers to grant variations or discharges.

Amendment 79 also amends section 35(1) of the Title Conditions (Scotland) Act 2003, which provides that variation and discharge of community burdens by owners of adjacent units is available only

"where no such provision as is mentioned in section 33(1)(a) … is made".

The Executive believes that both methods of variation and discharge should be available. In other words, it should be possible for adjacent owners to vary or discharge community burdens by using section 35 or by using provisions in title deeds if they exist.

Finally, the last subsection in amendment 79 changes the definition of "tenement" in section 122 of the 2003 act to bring it into line with the definition in the bill. It will also remove the definition of "flat", which will then be construed by reference to the bill.

I move amendment 77.

Amendment 77 agreed to.

The Convener: Amendments 78 and 79 were both debated previously and I—[*Interruption*.] I ask people to watch their noise levels outwith the business of the committee meeting. It is difficult to hear contributions from members and the minister.

Amendments 78 and 79 moved—[Mrs Mary Mulligan]—and agreed to.

Section 22, as amended, agreed to.

Sections 23 and 24 agreed to.

Section 25—Interpretation

16:30

The Convener: Amendment 80, in the name of the minister, is grouped with amendment 81.

Mrs Mulligan: Amendments 80 and 81 clarify some of the terms that are explained in section 25. The definition of "flat" in the bill, when read with the definition of a tenement, results in circularity. A flat is any premises in a tenement and a tenement is a building comprising flats. Amendment 80 removes that circularity and makes it clear that, for the purposes of the bill, a flat may be premises that comprise more than one storey and need not be used for residential purposes.

Amendment 81 defines the term "management scheme", as it is not apparent from the bill what that term covers. In particular, it is not obvious that it includes the regime provided in the tenement burdens and a mixture of that regime and the tenement management scheme. The definition of "management scheme" that amendment 81 proposes includes the development management scheme, the tenement management scheme alone, the burdens in the title deeds alone and a mixture of the burdens and the tenement management scheme.

I move amendment 80.

Amendment 80 agreed to.

Amendments 81 to 83 moved—[Mrs Mary Mulligan].

The Convener: Does anyone object to a single question being put on amendments 81 to 83?

Members: No.

The Convener: I see that this obedience and compliance has everything to do with the end being in sight. Does any member object to a single question—sorry, I have already asked that. I am getting weary. Battle fatigue is setting in. The question is, that amendments 81 to 83 be agreed to.

Amendments 81 to 83 agreed to.

Section 25, as amended, agreed to.

After section 25

Amendment 84 moved—[Mrs Mary Mulligan]—and agreed to.

Sections 26 to 29 agreed to.

Long title agreed to.

The Convener: I can impart the joyous news that that concludes stage 2 consideration of the Tenements (Scotland) Bill. I thank members for their attendance and co-operation. In particular, I thank the minister and her team for their presence this afternoon. We have got through the bill in slightly swifter order than we had anticipated.

Prisoner Escort and Court Custody Services Contract

16:34

The Convener: Item 2 on the agenda concerns prisoner escort and court custody services and in particular the contract. We considered the matter at our previous meeting, when we took evidence from Reliance and the Scottish Prison Service. The committee requires to consider what further action to take, if any.

I inform members that, following our previous meeting, we have received an undertaking from the chief executive of the SPS to forward to us details of who served on what was called the project management group. The clerks inform me that we are still awaiting that information.

I am also aware that the Minister for Justice has asked the Association of Chief Police Officers in Scotland to supply a report on how the contract services are operating. I understand that that report should be available in mid-July. I provide that information as background to the committee before it considers the matter further. I invite comment from members.

Karen Whitefield (Airdrie and Shotts) (Lab): Last week's evidence-taking session on Reliance and court custody services threw up more questions than it answered, especially about the operation of the SPS. I would be reluctant for the committee to decide to take no further action on the matter. I would like it to remain on our agenda, so that we can reflect on it further and take further evidence, if necessary. Before we take any final decisions, I would like us to consider the response of ACPOS to the Scottish Executive and to reflect on the Auditor General for Scotland's report on the Reliance contract. Although at present we may not want to invite the SPS to give further evidence, once we have re-examined the evidence that it gave last week, along with the findings of ACPOS and the Auditor General, we may want to consider doing so.

Nicola Sturgeon: The SPS agreed to respond to us on a couple of issues and we must wait for that response. We must also consider the reports of ACPOS and the Auditor General. I would be happy to keep the issue in abeyance and to return to it when that information appears. Eventually, we will want to publish a report, but it would be premature for us to do so now.

Mike Pringle: The SPS agreed to provide what appeared on the surface to be simple information, so I am somewhat disappointed that we have not received a response from it within a week. If we have not received one by next Tuesday, I will be even more disappointed. The service was required merely to provide some names, which is a fairly simple thing to do.

Colin Fox (Lothians) (SSP): Last week, we had the sense that there is more to come on the issue. Our inquiries to the minister have been vindicated by the two cases that have come to light, which were perhaps inevitable. My feeling about the way in which Reliance was running the contract was that there was reluctance to make a further mistake by releasing prisoners erroneously. There are now two cases of prisoners having been held erroneously. The public demand that the committee should continue to monitor the issue. I look forward to receiving the reply from ACPOS in July. We should keep a watching brief on the matter.

Jackie Baillie: I agree absolutely that we should continue to monitor the matter, as I think that there is substantive information to come. I do not want to lose sight of the fact that two separate strands are emerging. The first relates to the Reliance contract and everything that surrounded that. The second, which requires a little more consideration, is the question of governance, relationships between the SPS and the minister and the role of the SPS board. After all, devolution was supposed to make governance more transparent, not less so. It would be useful for us to return to that issue and I am sure that we will do so.

Maureen Macmillan: When we discussed our forward work plan, I said that I would like us to hold an inquiry into the SPS. That is a big task and we may need to consider it as one for next year.

The Convener: Those comments are helpful. I want the committee to be clear about the specific action that it resolves to take in relation to the matter before us—the prisoner escort and court custody services contract. From what members are saying, I detect that it would be premature for us to conclude our consideration of the matter at the moment. Members want to hear further from the SPS and to have the benefit of what ACPOS has to say in July. On that basis, we should place the matter on the agenda for our first meeting after the summer recess. I hope that by then the information that we are awaiting will be available and that we will be able to circulate it to members. Members may want to make further decisions about where we go from there.

Members *indicated agreement*.

The Convener: I thank members for their attendance at this afternoon's meeting. It has been a long, hot afternoon, but we have done a great deal of work. I am grateful to members for their forbearance.

Meeting closed at 16:40.

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