COMMUNITIES COMMITTEE

Wednesday 5 October 2005

Session 2

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COMMUNITIES COMMITTEE
24th Meeting 2005, Session 2

CONVENER

*Karen Whitefield (Airdrie and Shotts) (Lab)

DEPUTY CONVENER

*Euan Robson (Roxburgh and Berwickshire) (LD)

COMMITTEE MEMBERS

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

COMMITTEE SUBSTITUTES

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

*attended

THE FOLLOWING ALSO ATTENDED:

Johann Lamont (Deputy Minister for Communities)

CLERK TO THE COMMITTEE

Steve Farrell

SENIOR ASSISTANT CLERK

Katy Orr

ASSISTANT CLERK

Jenny Goldsmith

LOCATION

Committee Room 4

Scottish Parliament

Communities Committee

Wednesday 5 October 2005

[THE CONVENER *opened the meeting at 10:00*]

Subordinate Legislation

Housing (Scotland) Act 2001 (Transfer of Scottish Homes Property and Liabilities) Order 2005 (SSI 2005/439)

The Convener (Karen Whitefield): I call the meeting to order and open the 24th meeting in 2005 of the Communities Committee. As usual, I remind all those present that mobile phones should be switched off.

Item 1 is the Housing (Scotland) Act 2001 (Transfer of Scottish Homes Property and Liabilities) Order 2005 (SSI 2005/439), which was laid on 9 September and is subject to the negative procedure.

The purpose of the order is to complete the transfer of all outstanding assets and liabilities from Scottish Homes to the Scottish ministers, as described in part 4 of the Housing (Scotland) Act 2001. Once the instrument comes into force, the final accounts for Scottish Homes will be prepared and arrangements made to wind up its business by 31 December 2005. Members have been provided with a copy of the order and the explanatory note. Do members have any comments? If not, is the committee content with the order?

Members *indicated agreement*.

The Convener: The committee has indicated that it is content, so it will not make any recommendation in its report to the Parliament on the order. Do members agree that we report to the Parliament on our decision on the order?

Members *indicated agreement*.

Housing (Scotland) Bill: Stage 2

10:02

The Convener: Item 2 is the Housing (Scotland) Bill. This is day three of our consideration of the bill at stage 2. I welcome Johann Lamont, the Deputy Minister for Communities, to the committee. She is accompanied by Archie Stoddart of the bill team; David Rogers from the private sector housing team; Neil Ferguson from the Development Department; Edythe Murie from the office of the solicitor to the Scottish Executive; and Matthew Lynch, from the office of the Scottish parliamentary counsel. I am grateful to you for coming along this morning.

Section 95—Duty to have information about a house which is on the market

The Convener: Amendment 75, in the name of Mary Scanlon, is grouped with amendments 76 to 96.

Mary Scanlon (Highlands and Islands) (Con): In speaking to the amendments on the single seller survey, I predict that I will be as successful as almost every other member of this committee who has attempted to change the bill.

The single seller survey pilot began in July 2004. By November, the take-up was minimal, to say the least—a point that I raised with the Minister for Communities. The target of 2,000 surveys was changed to 1,200. It was certainly not on course, but there were still several months for the Executive to take action to ensure that a viable database of information and experience was available on which to base policy. It is incredible, therefore, that the Housing (Scotland) Bill was published five months later, with the aim of making single seller surveys mandatory, when the take-up was 74 surveys.

The decision came as a shock to members of the steering group, who were given no say in the final decision. However, we now have an evaluation of the single seller survey pilot, another five months after the bill was introduced, that seeks to make single seller surveys compulsory. The excellent piece of work by Arneil Johnston consultants states:

> "from the limited evaluation possible … Single Survey is not considered by sellers to improve the marketability of properties".

The report had nothing authoritative to say about the experiences of purchasers, it was inconclusive about the influence of the single seller survey on non-purchasers, and it stated that the single seller survey had an inconclusive impact on selling agents.

The report also concluded that

"the majority of surveyors … strongly believe that the Single Survey will not have a positive impact on improving the condition and energy efficiency of private sector housing in Scotland",

yet the whole rationale behind the single seller survey was that it would improve the fabric and energy efficiency of Scotland's houses.

Not only was the single seller survey pilot a failure, there was a failure in the consultation process when the steering group was not consulted on the decision to make the single survey mandatory. In the eyes of buyers, sellers, surveyors and selling agents, the single seller survey has been a failure and it has failed to encourage repairs and energy efficiency. Quite frankly, if there were a handbook on how not to legislate, the single seller survey would appear as an example in the leading chapter.

I move amendment 75.

The Convener: Do other members wish to speak to the amendment?

Christine Grahame (South of Scotland) (SNP): Regretfully, I support much of what Mary Scanlon has said. I support the single seller survey in principle, but the process and the practicalities of single surveys have unravelled before us. It is incumbent on the committee to ensure that the legislation is workable. It is as simple as that.

As Mary Scanlon mentioned, the prime mover for the single seller survey was the desire to improve the condition of Scotland's houses. On the evidence that I have heard, that will not necessarily happen. If a mandatory single seller survey finds something radically wrong with a property, the seller will not do anything about it because they are selling their house. Either the survey will simply impact on property values or people will get cosmetic work done.

Another issue is the extent to which surveyors will be responsible for their reports. As we heard in evidence, indemnity cover will not be required for surveyors because that would push up the cost of the single seller survey. There are a number of concerns surrounding that issue.

The single seller survey has been marketed to the public as a change that will get rid of the need for multiple surveys, but I am not convinced that it will have that effect. At the end of the day, notwithstanding the fact that the survey might contain a structural report, lenders might decide that they want another survey two and a half months later to establish the property's value. For that reason, I am not convinced that the single seller survey will get rid of the need for lenders such as building societies and banks to carry out additional surveys.

Another concern is the fact that a valuation will be included in the single seller survey. If a seller is required to have the survey carried out in January when they are about to put the property on the market, the value of the property could have gone up or down by February or March. My understanding is that, in England, the idea of having the valuation incorporated in the single seller survey was abandoned. Perhaps the minister can address that point.

Among the many issues that give me grave concern is the fact that so much of the detail will be in regulations. Both sections 101 and 102 begin:

"The Scottish Ministers may by regulations—".

The practicalities of the matter will be dealt with in regulations, which the committee will have no power to amend. Although the committee has the ability to consider regulations and comment on them, it cannot compel that regulations or other statutory instruments be amended.

I have huge concerns about how the single seller survey will operate. I put on record the fact that—whatever my party's position on the processes and practicalities—my personal point of view was that single seller surveys and the purchasers information pack seemed a good idea. However, after hearing the evidence, my concern is that it will not work. I suspect that we will still end up with a single seller survey, but I put my view on record because I am pretty sure that the proposal will unravel.

Scott Barrie (Dunfermline West) (Lab): People cannot have it both ways: they cannot agree with a proposal in principle but then disagree with it because of the impact it will have in practice.

Let us go back to why the single seller survey is right in principle and why we need to ensure it works. Requiring a single seller survey is the right thing to do because, over the years, we have had too many examples of people having to pay an awful lot of money for multiple surveys for which they ultimately have nothing to show except a lot of paperwork.

Also under the current system, many people fail to get a proper survey done, so existing defects do not come to light. People end up not knowing what they are taking on and so, when they become home owners, they do not take remedial action at an appropriate time unless the problem is pretty major and obvious. A single seller survey eradicates some of those defects in the current system. That is why it is right in principle.

It does not take a genius to work out why the pilot study has not been a roaring success. The

current process works well for too many people who are involved in it and they are being asked to do something that is not so lucrative for them. It does not work for those who are selling or buying homes, but it certainly works for professionals who are involved in the process. That is the problem.

Christine Grahame has raised real concerns, but we have to say that if we agree with the principle, we have to find a way of making it work in practice—rather than say that the principle we agree with must be wrong because we think that the proposal will not work in practice.

Tricia Marwick (Mid Scotland and Fife) (SNP): I agree with the single seller survey in principle and will not support Mary Scanlon's amendments. The proposal has been Scottish National Party policy for a number of years because, quite clearly, the current system does not work for those who are selling or buying houses. I am not unaware of the difficulties that the single seller survey might bring and I hope that, particularly in terms of regulations, the minister will continue to consider ways in which the proposal might be improved. However, that does not negate the fact that we need single seller surveys. For those reasons, I will not support the amendments.

Mr John Home Robertson (East Lothian) (Lab): The last thing I want to do at this time in the morning is fall out with Mary Scanlon, but I am afraid that I must say that her amendments seem to be wrecking amendments as they would remove an important principle from the bill. The concept of the single seller survey is valuable and important. As Scott Barrie said, it would raise awareness at the time of buying and selling a property of issues that people need to know about but which, all too often, they are not aware of, such as problems with dampness, structural difficulties, drainage problems and wiring problems, which could give rise to all sorts of difficulties further down the line.

Mary Scanlon said that surveyors oppose the proposal but, to paraphrase the immortal words of Mandy Rice-Davies, they would, wouldn't they? There is a lot of work for surveyors in multiple surveys, so I will not attach too much weight to that objection.

The proposal is the right thing to do but the minister needs to address the fact that it will work only with the proactive support of everyone who is involved in the process. I want the relevant sections to remain in the bill and will vote accordingly, but I still think that the Executive has a job of work to do to get all the parties involved to ensure that the proposal works properly. I am looking for an assurance from the minister that proactive work is being done in that regard.

Patrick Harvie (Glasgow) (Green): Scott Barrie is largely right. He seemed to suggest that one of the reasons the pilot was not entirely successful is that it was a pilot and that, to see the benefits of the proposal, it has to be introduced throughout the system and adopted by everyone.

If some people end up having to do an extra valuation but have the opportunity, over the next five years or so, to save a lot of money on the running costs of the property, I am kind of okay with that, especially given that, at the moment, a lot of people are doing far too many valuations. It would be interesting if we had before us some amendments that suggested that the scheme should come back to Parliament for appraisal in a few years' time, but I am not able to support an amendment to remove the scheme from the bill.

10:15

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): I agree entirely with the views that Scott Barrie expressed. It is important that we introduce the single seller survey. I speak from experience of representing people who relied on the first stage survey to buy property only to find, a few months down the road, that their property was hardly worth the paper on which their legal documents had been signed. The problems are costing the young families involved an awful lot of money, stress and concern. If a full survey such as the single seller survey had been the norm when those people were buying their properties, they would have known the full extent of the problems with their properties and they could have made realistic offers that were based on the work that required to be undertaken.

The bill allows the minister to come back with regulations on how the scheme will work, at which time she will set out the documents that require to be included in the information pack. Much of the information will have to be supplied by local authorities—I am thinking of building warrants, planning consents and so forth. Will councils be able to set the fees for that type of work at reasonable rates? If the minister is unable to provide an answer to the question today, perhaps she will come back to me at a later date.

The Convener: I invite the minister to respond to the points that have been raised.

The Deputy Minister for Communities (Johann Lamont): Thank you, convener. I thank Mary Scanlon for lodging the amendments in this group. They have given us the opportunity to have a further debate on the subject. There is no doubt about the committee's general position on the matter. The comments that members have made are really helpful.

Perhaps I can start by taking Mary Scanlon to task somewhat for her suggestion that the Executive has been entirely unmoveable on the bill. Apart from the fact that Scott Barrie—beside whom you are sitting, Mary—has managed to move a number of successful amendments, the evidence that there has been movement over time and that the Executive has lodged amendments to address the concerns of the committee is there for anyone who wants to look at it. I believe that that should be welcomed.

Although I do not agree with the position that Mary Scanlon has adopted in lodging the amendments in the group, they have given us the opportunity to bring the issues into sharp relief. I ask Mary Scanlon to consider her position on the house buying and selling process, which is that it is operating just fine at present and that it does not need to be changed in any way. From what Scott Barrie said, we can gather that that is not the case. The conclusion of the housing improvement task force and the consultation on the proposals for the bill was that the system needs to be changed. It is also, albeit that this is anecdotal, the experience of our families and others who have been caught up in this situation. It was also the conclusion of the committee in its stage 1 report.

The system cannot be right if most people make what may be the biggest purchase of their lives on the basis of sketchy information about the condition of the property they are buying. I think that I said previously that people sometimes seem to take more trouble deciding on which coat to buy than they do on the purchase of a house. If we are to solve the problem of disrepair in Scotland's housing stock, we need better market mechanisms to address the problem.

It is worth reminding ourselves of the objectives the housing improvement task force identified for the single survey. They are that better information on property condition for sellers and buyers will promote better repair and maintenance, reduce wasted expenditure on multiple surveys and discourage the setting of artificially low upset prices. The view of the Executive is that those objectives remain as important as ever and that the single survey is the way to achieve them. We intend the single survey to follow the model that was used during the pilot. It will contain information on the condition of the property and on its energy performance and accessibility. To achieve all the objectives the task force identified, it will also include a valuation.

I fully acknowledge that there is no perfect solution to the issues the task force identified. No system can be perfect, nor can it cover every eventuality. I believe that what we are proposing goes a long way to address the concerns of ordinary house buyers and sellers and to put in place a mechanism that will help to tackle disrepair and decline in our housing stock. It will provide prospective purchasers with much better information on the condition of houses and will make sellers aware of problems that ought to be rectified before a house is sold.

In asking the committee not to agree to this group of amendments, I will make five main points. First, as I have said, the Executive has not plucked the policy out of the air; it is the result of two years' research, deliberation and consultation by the task force, leading to its report in March 2003, and a great deal of work since then by the Executive and, crucially, by the professions involved to design and run the pilot scheme.

Secondly, the pilot scheme did not show that the single survey concept was flawed, but that the system would not work on a voluntary basis. There are simply insufficient incentives for many sellers to pay up front for a survey that will expose the condition of their houses to potential purchasers. In my view, that makes the case for the mandatory single survey. The task force recommended that the legislative approach be held in reserve.

Thirdly, like much of the rest of the bill, the provisions that we are debating now are intended to underpin a change in the culture of home ownership—in this case, in the way people approach the purchase of a house. As the committee has recognised, it is important that we work with stakeholders to get the detail of the single survey and purchasers information pack right so that consumers can have confidence in the schemes when they are launched. We have to take the time to do that and then we will need to ensure that all those involved, professionals and the public, are prepared adequately for the change. If the committee agrees to amendment 129, which is to be debated later this morning, the regulations will be subject to affirmative procedure as the committee has recommended, which will allow for thorough parliamentary scrutiny of the detail.

Fourthly, we must avoid over-prescription. Although we need to regulate for the basic framework, we must leave the market the space for competition to deliver extra value to the consumer through, for example, the provision of hidden defects insurance. We must also recognise that there is a trade-off between the detail and the cost of the survey. I believe that the balance for the piloted survey product was about right, but we will consider that further as we develop the mandatory scheme.

Fifthly, what we are proposing is not unique. Arrangements where the seller has to provide a survey already exist in countries such as Denmark and in some states in the United States. Compulsory home condition reports are to be

introduced in England and Wales, but the approach that we take in Scotland will of course be tailored to Scottish circumstances, going with the grain of the Scottish house-buying system.

I will now respond to some of the specific points that have been made. We should be clear that the decision to legislate was not within the remit of the steering group and nor should it be, because it is a political decision that ministers must take. I do not want to judge what stakeholders think generally, but the organisations represented on the stakeholder advisory group—the Royal Institution of Chartered Surveyors, the Scottish Consumer Council, the Law Society of Scotland, the National Association of Estate Agents and the Council of Mortgage Lenders—continue to work with us constructively to design the mandatory scheme as they did to set up the pilot project. We welcome their willingness to continue working with the Executive.

Good progress has been made in working out some of the principles of the scheme. In particular, consensus has been reached on the shelf-life of the report and stakeholders have provided useful input and professional advice on many of the other issues. A sub-group of stakeholders has also provided an interesting proposal about information beyond the single survey that might be made available to prospective purchasers.

I do not think that anybody suggested that the pilot was a great success. I do not know why there is a suggestion that the policy is predicated on the success of the pilot; people recognise that the pilot gave us useful information, but nobody is pretending that it is the driver for the policy. The drivers for the policy remain improving the information available to purchasers on property condition, addressing multiple valuations and addressing the setting of artificially low upset prices. I do not accept that the evaluation of the pilot was a damning report. Indeed, the Arneil Johnston report stated:

"In general the Single Survey was viewed as a good product providing useful information for potential purchasers."

I accept that there is an issue about valuation. The point that Patrick Harvie made about that is important. Ultimately it will be for the market to decide what mechanism would be most appropriate to deal with the circumstances of individual cases. Various mechanisms would be available to update the valuation of the property. An update of the information relating to property condition would probably be necessary only where there were significant issues that affected the value of the property, which has been accepted.

We have indicated that the regulations would be made through an affirmative order. Christine Grahame said that the committee cannot amend the regulations and therefore that is a bad thing, but the evidence is that the Scottish Executive has been willing to work with the committee, the professions and consumers on this.

Given that, together, we are exploring regulation and the difficult questions that have been highlighted, I cannot imagine circumstances in which the Executive would turn its face against suggestions for making the proposals work. We are committed to making the single survey work not only because we think it is theoretically a good idea but because of the realities in the daily experience of people who buy and sell homes. It is reasonable to say that the parliamentary process will support us in addressing the practicalities that Christine Grahame identified and getting the regulations right.

On cost, I hear what Cathie Craigie says. We need to explore the matter further. There is evidence that people might be concerned about the financial implications and I would prefer to come back to Cathie Craigie with further comment before we get to stage 3.

In line with the view that has generally been expressed by the committee, we can agree on the principle but we recognise that the devil is in the detail. I am content that the steering group is willing to work on that and I believe that the committee is willing to work on it too. On that basis, we can address the principle while recognising that there are practicalities to be ironed out.

The single survey approach addresses some of the key imperfections in the current process. Buyers and sellers will be better informed about the condition of the property and, in due course, they will regard the survey as an important and valuable part of the process rather than as a hurdle that has to be jumped over to secure a mortgage—which, to be frank, is how many of us will have regarded it. Some people have lived to tell the tale of the consequences of that approach. We recognise that it is difficult to change the culture but, with professionals and consumers, we should be committed to addressing that.

On that basis, I ask Mary Scanlon to withdraw amendment 75 and not to move amendments 76 to 96.

Mary Scanlon: I thank my colleagues for contributing to the debate, which has been helpful. The minister's response has also been helpful.

Christine Grahame asked to whom the surveyor will be responsible and answerable. That is a problem. If the seller pays for the survey, will the buyer automatically have a right to the information? Is the surveyor accountable and responsible to all the buyers as well as to the seller? That has not been made clear.

Christine Grahame said that the single survey does not replace the need for multiple surveys, but Scott Barrie seems to think that it will. In recent years there has been an enormous increase in the number of offers subject to survey. My daughter bought a house recently. I thought that such offers would put the buyer at a disadvantage, but it seems to be common practice. The market is beginning to correct itself.

John Home Robertson mentioned problems such as dampness, the need for rewiring and so on. I agree with his point and I commend him for his commitment to affordable housing.

Scott Barrie said that the single survey will improve the fabric, energy efficiency and state of repair of properties, but I refer him to the Arneil Johnston report, which states:

"it appears that generally sellers carry out only minor/general repairs or improvements and respondents indicated they would have done this regardless of the Single Survey".

I should also say something about the Royal Institution of Chartered Surveyors. In evidence to the committee it said that it would work positively with whatever system emerges. I do not know whether I made the point inaccurately, but the surveyors said that the survey would not have a positive impact on the condition and energy efficiency of property in the private sector. It is misleading to assume that surveyors just want to line their own pockets. That view came from quite a few people, but it is wrong. The RICS has taken a balanced, considered and measured approach that addresses the entire rationale for the changes.

The minister said that there has to be change. I agree. I may be a Conservative, but I do not believe that everything has to be conserved. We live in a world of change and I embrace change, but I embrace it only when proven research and evidence show it to be an improvement. I am not averse to change, but we must introduce change that we know will make an improvement and will be for the better.

Of course the decision to legislate is for ministers. I never implied in any shape or form that the steering group should make decisions on legislation. The Parliament has a good reputation for consulting; we have a good reputation for including individuals, groups, organisations and other interests in Scotland. It is a real slap in the face to get all these experts round the table to consult them, to liaise with them, to work in partnership with them and seek their advice only to announce that something will be compulsory without first discussing it with them. That is not how we should legislate in this Parliament. I therefore press amendment 75.

10:30

The Convener: The question is, that amendment 75 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Scanlon, Mary (Highlands and Islands) (Con)

AGAINST

Barrie, Scott (Dunfermline West) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Harvie, Patrick (Glasgow) (Green)
Home Robertson, Mr John (East Lothian) (Lab)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Whitefield, Karen (Airdrie and Shotts) (Lab)

ABSTENTIONS

Grahame, Christine (South of Scotland) (SNP)

The Convener: The result of the division is: For 1, Against 7, Abstentions 1.

Amendment 75 disagreed to.

Section 95 agreed to.

Section 96—Duty to provide information to potential buyer

Amendment 76 moved—[Mary Scanlon].

The Convener: The question is, that amendment 76 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Scanlon, Mary (Highlands and Islands) (Con)

AGAINST

Barrie, Scott (Dunfermline West) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Harvie, Patrick (Glasgow) (Green)
Home Robertson, Mr John (East Lothian) (Lab)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Whitefield, Karen (Airdrie and Shotts) (Lab)

ABSTENTIONS

Grahame, Christine (South of Scotland) (SNP)

The Convener: The result of the division is: For 1, Against 7, Abstentions 1.

Amendment 76 disagreed to.

Section 96 agreed to.

Section 97—Imposition of conditions on provision of information

Amendment 77 not moved.

Section 97 agreed to.

Section 98—Other duties of person acting as agent for seller

Amendment 78 not moved.

Section 98 agreed to.

Section 99—Acting as agent

Amendment 79 not moved.

Section 99 agreed to.

Section 100—Duty to ensure authenticity of documents held under section 95 or 98

Amendment 80 not moved.

Section 100 agreed to.

Section 101—Information to be held or provided to potential buyers

Amendment 81 not moved.

Section 101 agreed to.

Section 102—Exceptions from duty to have or provide information

Amendment 82 not moved.

Section 102 agreed to.

Section 103—Responsibility for marketing: general

Amendment 83 not moved.

Section 103 agreed to.

Section 104—Responsibility of person acting as agent

Amendment 84 not moved.

Section 104 agreed to.

Section 105—Responsibility of seller

Amendment 85 not moved.

Section 105 agreed to.

Section 106—Enforcement authorities

Amendment 86 not moved.

Section 106 agreed to.

Section 107—Power to require production of prescribed documents

Amendment 87 not moved.

Section 107 agreed to.

Section 108—Penalty charge notices

Amendment 88 not moved.

Section 108 agreed to.

Section 109—Offences relating to enforcement officers

Amendment 89 not moved.

Section 109 agreed to.

The Convener: We can all congratulate Mrs Scanlon on being thorough with her amendments.

Section 110—Information for tenants exercising right to purchase

The Convener: Amendment 135, in the name of the minister, is in a group on its own.

Johann Lamont: The issue of right-to-buy purchasers and the information provided to them has been discussed as the bill has progressed. We have put in place a specific provision in section 110 that allows ministers to prescribe the information to be made available to prospective right-to-buy purchasers. I believe that the approach to information that we have set out is the right one, but in any case the regulations will be the subject of further consideration by the Parliament and will be the subject of consultation.

Amendment 135 will allow ministers to prescribe information provided under section 110 that could be the subject of a charge. I believe that it is reasonable that there should be an ability to charge for information that is useful to the prospective buyer, particularly as the information will relate to the most important purchase that most people will ever make. If we do not have the potential to get a financial contribution from prospective buyers, the costs of improved information will have to be met elsewhere, which could impact on other services. I am sure that the committee will agree with this practical approach.

I move amendment 135.

Christine Grahame: Will you advise the committee whether we will see the regulations and other regulations before stage 3? So much hinges on what the regulations contain. When will they be presented to the committee?

Tricia Marwick: Will the minister give an undertaking to bring draft regulations before the committee so that members can consider them and give feedback before we get the regulations in their final form? As colleagues have said, it is impossible to change or amend regulations. There has been much concern about some of the issues that will be covered in regulations—not only in regulations under this section—so the minister should indicate to the committee that draft

regulations will be consulted on and will come before the committee.

Johann Lamont: If we are being honest, I would have to say that the regulations will not be available before stage 3. Much of the detail will go out to consultation with stakeholders, and it is important that the regulations are right. We are more than content that the draft regulations should be consulted on. That is how we will ensure that they are properly shaped and that they address the committee's concerns.

I emphasise that it is not in the interests of the Scottish Executive or anyone else to drive through legislation that does not deliver on our policy commitments. Therefore, we are certainly keen that the regulations do what we want them to do and that the eye of the committee, and of others, should inform and shape the regulations.

The Convener: On behalf of the committee, I welcome that commitment. The committee looks forward to the draft regulations coming before it. I am sure that all members of the committee will have something positive to contribute.

Amendment 135 agreed to.

The Convener: Amendment 11, in the name of the minister, is grouped with amendments 123 and 129.

Johann Lamont: Amendments 11, 123 and 129 will make nine of the orders and regulations that can be made under the bill subject to the affirmative resolution procedure.

Amendment 129 deals with seven types of regulations. First, we consider that regulations under two new sections—new section 70(2A) and subsection (1) of the proposed new section entitled, "Tenancy deposit schemes: regulatory framework", which will be created if amendment 40 is agreed to—should be subject to the affirmative resolution procedure. Section 70(2A) allows ministers by regulations to make further provision about the type of assistance that must be provided in connection with adaptations to make a house suitable for a disabled person's needs, where the house is a disabled person's only or main residence, including circumstances in which grant must be provided. That could make grant mandatory in certain circumstances and the political, personal and financial significance of that means that full parliamentary scrutiny is appropriate. The introduction of tenancy deposit schemes will be a significant step and, again, it is appropriate that the regulations setting out the conditions that a tenancy deposit scheme will have to meet and making further provision about such schemes should be the subject of full parliamentary scrutiny.

The next two types of regulation were recommended for affirmative resolution by the Subordinate Legislation Committee, all of whose recommendations we have accepted. Section 88(4) allows ministers to make regulations changing the definition of "designated lender", and making provisions on the terms that local authorities might impose on the payments that they make to such lenders. Since there is no restriction on how ministers may change the definition of "designated lender", and it is a power to amend the bill itself, it was felt that scrutiny of the power should be subject to the affirmative procedure.

Part 3 of the bill concerns the provision of information on the sale of a house. Regulations under section 102 will specify exemptions from duties relating to the possession and provision of prescribed documents when houses are marketed for sale. The Subordinate Legislation Committee considered that those regulations should be subject to affirmative resolution.

In its stage 1 report, the committee went further and recommended that all part 3 regulations should be subject to the affirmative resolution procedure so that they would be subject to thorough parliamentary scrutiny. Given that most of the detail will be set out in regulations, we accept that recommendation. The relevant provisions are in section 96(2), which allows ministers to make regulations specifying the period within which the person who is responsible for marketing a house must provide prescribed documents requested by a potential buyer; section 101(1), which gives ministers powers to make regulations specifying the prescribed documents; and section 108(4), which allows ministers to make regulations making further provision about penalty charge notices or other notices mentioned in schedule 3.

Amendment 11 deals with the final set of regulations relating to the provision of information. Section 110(3) gives ministers powers to prescribe information to be supplied to tenants of local authorities and registered social landlords who request a house valuation in connection with the right to purchase. Amendment 123 relates to orders under section 120(1) that describe types of HMO that might be exempted by a local authority from the requirement to be licensed. The power is intended to be used to allow a local authority to remove the burden of licensing where it is satisfied that the tenant is sufficiently protected by other means. The Subordinate Legislation Committee considered that that power should be subject to the affirmative resolution procedure since it will remove some HMOs from the protection of the licensing system under the bill.

I consider that all the powers to make regulations and orders should be subject to full parliamentary scrutiny by means of the affirmative resolution procedure.

I move amendment 11.

10:45

Christine Grahame: I am weaselling away at the regulations and drafts. Having accepted the minister's comment that we will not see the regulations before stage 3, even in draft form, I just want a timetable. If stage 3 takes place at the end of November, when will Parliament—in committee or plenary meetings—have sight of the regulations and be able to debate and analyse them? What is the timetable for producing the instruments in draft and in final form?

Johann Lamont: I have said that the regulations will not be produced before stage 3. A bill implementation timetable will be set over a period. It is not possible to provide that timetable now. It is fair to say that we will work at a pace that delivers the policy objectives while ensuring that the regulations also secure the policy objectives. The timetabling of instruments will also be a matter for negotiation with the committee. I cannot provide a specific timetable.

Amendment 11 agreed to.

Amendment 90 not moved.

Section 110, as amended, agreed to.

Section 111—Grants for development of proposals

Amendment 91 not moved.

Section 111 agreed to.

Section 112—Disapplication for houses not available with vacant possession

Amendment 92 not moved.

Section 112 agreed to.

Section 113—Application of Part to sub-divided buildings

Amendment 93 not moved.

Section 113 agreed to.

Section 114—Notification of breach of duty

Amendment 94 not moved.

Section 114 agreed to.

Section 115—Possession of documents

Amendment 95 not moved.

Section 115 agreed to.

Section 116—Meaning of "on the market", "sale" and related expressions

Amendment 96 not moved.

Mary Scanlon: That is the final one of my series of amendments.

Section 116 agreed to.

After section 116

The Convener: Amendment 39, in the name of the minister, is grouped with amendments 40, 40A, 41 and 42. I will put the question on amendment 40A before putting the question on amendment 40.

Johann Lamont: Amendment 39 is intended to give effect to the committee's recommendation about tenancy deposits. It provides for the Scottish ministers to have the power to prescribe arrangements for handling tenancy deposits. Ministers will consider a range of options, from the promotion of voluntary arrangements to the regulation of fully-fledged tenancy deposit schemes that hold deposits and include adjudication arrangements.

I will cover the detail of the amendments. Amendment 40 will allow the Scottish ministers to make regulations that specify the manner in which tenancy deposits must be handled. It will do that by providing that ministers can approve tenancy deposit schemes, which are defined as schemes for

"safeguarding tenancy deposits paid in connection with the occupation of any living accommodation."

Such an approval may be given only in accordance with regulations made by ministers and after publicising and consulting on a proposed scheme. The regulations, which will be subject to the affirmative parliamentary procedure, will set out the conditions that a tenancy deposit scheme must meet before it can be approved by ministers. Such conditions might include: the manner and circumstances in which deposits must be paid, held and repaid; sanctions for non-compliance; any dispute resolution mechanism; types of persons who may operate such schemes; any fees that might be payable; and the publicising of schemes.

The regulations may also allow ministers to fund or underwrite any scheme or dispute resolution mechanism. Ministers may draw up schemes themselves, or they may invite others to do so. There may be more than one scheme in any one area, or particular schemes for specific tenancy or occupancy arrangements. Ministers must also review each approved tenancy deposit scheme from time to time, and they can require the

revision of any scheme or the withdrawal of its approval.

Amendment 39 defines a "tenancy deposit" as any

"sum of money held as security"

for damage, cleaning costs and unpaid bills. It can also be for anything relating to the performance of the tenant's obligations under the lease, tenancy or occupancy agreement, or unpaid rent. The definition is constructed so as to catch tenancy deposits by any other name and to prevent unscrupulous landlords from calling them something else in order to sidestep the regulations.

The provision does not require that a tenancy deposit must be paid. Indeed, the regulation-making power is restricted in subsection (3)(a) of the new section that amendment 40 would introduce to prevent ministers from using the power to specify

"circumstances in which tenancy deposits must be paid".

We will consult on any regulations that we propose to make. Given that the affirmative resolution procedure will apply to them, they will be subject to the full scrutiny of the Parliament.

Any proposal for a tenancy deposit scheme or schemes—as I have said, there may be more than one—must be considered in the context of the number of other developments that are under way or that are proposed in the private rented sector. Landlord registration, HMO licensing and a letting code—if required—should go some way towards weeding out many of the remaining bad landlords. Even without tenancy deposit schemes, I would hope that the other arrangements that we are putting in place will mean that the number of incidents of tenancy deposits being unreasonably withheld will decline in future.

We remain committed to a vibrant private rented sector, which is still the tenure of choice for many people. Landlords should not be seen as the enemy of tenants. We must be sensitive to the potential impact of various developments in the private rented sector, either those that are proposed in the bill or those that are in progress under other initiatives, for example landlord registration, HMO licensing and the letting code.

In our consultation, we will consider a wide range of options for handling tenancy deposits. The impact of measures that are already in place for regulating the sector will be assessed, and it will be determined whether they are addressing the issue. There will also be consideration of whether voluntary arrangements could provide sufficient safeguards or whether there is a need for a statutory scheme.

There are a number of unresolved issues around how best to safeguard tenancy deposits. Amendment 40 gives general powers, but the detail of how they are to be applied will be the subject of detailed consultation. The amendment creates the framework, with the way forward being determined in a measured and considered way.

In its stage 1 report, the Communities Committee recommended

"that amendments to the Bill are brought forward at Stage 2 to give the Scottish Ministers the power to introduce such a scheme through regulations. The regulations should be introduced following consultation."

That is exactly what we intend to do. It is vital that we consult and assess the financial effectiveness and impact of the various options for safeguarding tenancy deposits on tenants, landlords and the marketplace. Whatever scheme is proposed, it must reflect the extent of the problem. We will not introduce any scheme whose cost we consider disproportionate. I cannot give any undertaking as to the type of scheme, if any, until we have fully researched all the options and consulted on the best way forward. We must make provision for all options in the bill.

Mr Robson's amendment 40A seeks to amend Executive amendment 40. I understand the concern to protect tenants' deposits; that is why we lodged our amendments. We are keen to determine the best route to take to ensure that that is done, and we will be consulting stakeholders fully on the various options for proceeding with that. The Executive amendments in this group already provide for sanctions on landlords who do not comply with any tenancy deposit scheme. It is not necessary to restate any such requirement in the bill. Although I agree with the sentiment of the first new paragraph proposed in Mr Robson's amendment, it is simply not required.

The second proposed new paragraph in amendment 40A attempts to ensure that the deposit remains the tenant's money at all times during the tenancy. A tenant is entitled to their money only at the end of the term; therefore, any proposal to safeguard tenancy deposits should focus on ensuring that funds are available at the end of the term to enable the prompt refund of a tenant's deposit when it is rightly due to them. The key point is that funds are available at the end of the term. Assessing whether any of the money was expended during the tenancy would be difficult and would require some form of verification process, which would be unnecessarily bureaucratic.

The Executive's amendments could make provisions on how a deposit is held, which would appear to address the issue behind the second paragraph proposed by amendment 40A. In any event, issues relating to how deposits are held will

be considered as part of the consultation on the options, and the extent to which such funds may be accessed by landlords and tenants can be explored further as part of that consultation.

Like Mr Robson, I am sympathetic to the protection of tenancy deposits, but I do not think that his amendment adds to the Executive's amendments. Therefore, I invite him not to move amendment 40A.

In conclusion, the Executive's amendments on tenancy deposits demonstrate that we are responding to concerns, and I ask members to support them.

I move amendment 39.

Euan Robson (Roxburgh and Berwickshire) (LD): The minister's remarks are immensely helpful and have put a number of important points on the record.

Amendment 40A is of a rather probing nature. I accept the minister's point about the second paragraph proposed in the amendment, which is probably far too restrictively drawn. As she said, the key point is that the money should be available at the end of the tenancy, which is obviously correct.

The purpose behind the first paragraph proposed in amendment 40A is to allow us to determine whether there is any point in stating in the bill that the received money should be

"dealt with in accordance with an approved scheme".

Obviously, that is implied in the Executive's amendments and the minister has made it clear that that should happen. In view of her remarks and because the second paragraph in the amendment is clearly defective, I will not move the amendment. Again, I express my appreciation of the work that has gone into delivering such an important part of the bill.

The Convener: You will be asked whether you want to move amendment 40A later, but I thank you for giving an early indication of your intentions.

Mr Home Robertson: I want to register my strong support for the principle of properly regulating tenancy deposits. It is reasonable to say that deposits should be payable to deal with bad tenancies, damaged property or property that has been left in such a bad state that it is necessary for the landlord to incur a cost in order to put things right, but there have been far too many reports of landlords or agents routinely retaining deposits in the knowledge that it will be far too difficult, expensive or complicated for the tenant to take legal action to recover their money. I hope that the regulations that the minister has in mind will address that matter and protect tenants who might be subject to such abuse. I strongly support what the minister has said.

Mary Scanlon: I accept what the minister said about consultation, of which there will be quite a bit in the light of the introduction of tenancy deposit schemes. However, I was wondering whether the measure was considered for inclusion in the bill as introduced. I first heard about such schemes when they were mentioned in the written submission from Citizens Advice Scotland at stage 1. Unfortunately, we spoke to that organisation quite late in our deliberations and did not have an opportunity to ask any of the other witnesses what they thought about the proposal. I ask the minister whether tenancy deposit schemes were considered and left out of the bill, or whether they were considered only when Citizens Advice Scotland suggested them. If we had been able to ask people about the proposal when they came to our meetings, that would certainly have helped our deliberations.

I listened closely to what the minister said, but I am not entirely clear about the basic reason for the tenancy deposit schemes. I would like to hear one or two examples of when a scheme would be necessary or appropriate. I picked up the comment about rooting out bad landlords. I thought that any bad landlord would be rooted out in the national registration scheme for private landlords and that, if they were not a fit and proper person, they would not be a landlord. I did not think that it would be necessary to have tenancy deposit schemes as well as the national registration scheme in order to root out bad landlords. I would like to hear some of the reasons for the proposal and some examples of when ministers would intervene.

11:00

Tricia Marwick: I welcome the minister's amendments. As John Home Robertson said, some, but not all, landlords use deposits as extra income; they refuse to return them to the tenant at the end of a tenancy. I am thinking in particular of students who may have short tenancies. They do not have the money to take landlords to court and will simply walk away. That has happened too often. Mary Scanlon is quite wrong to talk about all landlords. Good landlords will be perfectly happy with a scheme that will separate them from rip-off merchants.

When I first read the amendments, I thought that tenancy deposit schemes would help those who rent from the private rented sector and cannot afford to put down a deposit in the first place. That was my understanding: I believe that we need to assist those people. I would like the minister to come up with regulations to enable voluntary organisations and others to be part of a tenancy

deposit scheme to help to put up money for those who cannot afford to do so. That would be a useful addition. Perhaps the money could be held in reserve, thereby giving potential tenants the opportunity to rent from the private rented sector. There is more that we could do about tenancy deposits and I hope that the minister will consider that when we discuss the regulations.

In cases where a tenant has been renting for a long time—for four or five years, say—would it be possible for the deposit money to be held in a bank account and not given to the landlord so that, when the tenancy is up, the tenant can receive not only the deposit but the interest that it has gained over the four or five years of the tenancy? Perhaps we could discuss that possibility when we get to the regulations.

Patrick Harvie: Tricia Marwick makes some good points, particularly about interest on a deposit. If we accept that the money belongs to a tenant, clearly the interest should belong to them as well. I agree with her about the need to give assistance to people who have to come up with the money for deposits.

Even though the bill does not directly address those issues, I congratulate the Executive on introducing the schemes. I say in answer to Mary Scanlon's points that, when landlords insist on a significant and unnecessary delay in returning a deposit—and those who do that would surely not be deemed a fit and proper person—that can create considerable difficulty for people who are trying to get another tenancy or who want to pay their rent on time in the early days of a new tenancy. Therefore, a scheme that reinforces the fact that the deposit is the tenant's money and not income for the landlord would be extremely welcome.

Scott Barrie: I do not want to take up too much of the committee's time, but I want to put on record the fact that the Executive has produced the proposals that it said it would when we took evidence before we produced our stage 1 report. I welcome that and the commitment to consult further on the matter. On the point on which Mary Scanlon asked for clarification, the issue is not about rooting out bad landlords, but about redressing the balance between landlords and tenants. The measure will give tenants much more confidence that they will not have to pay an extra amount and that they will get their deposit back, because the money was always a deposit. Too often in the past, deposits have become just another part of the rent and people have not had the means to get the money back at the end of the tenancy, as Tricia Marwick said. That is the main point that needs to be remembered and why committee members were keen to have tenancy deposit schemes in the bill.

The Convener: To respond to Mary Scanlon's request for concrete examples, I was contacted by a constituent this week who would dearly love a deposit scheme to be in operation and who would benefit from it. The aim of the schemes will be to provide an open and transparent framework for the operation of tenancy deposits. As it stands, my constituent has no way of getting back the deposit that she paid to rent a property because her landlord claims that she left it in a damaged condition—she maintains that she did not, but he refuses to pay her deposit back to her.

The evidence that the committee heard from Citizens Advice Scotland and the Scottish Consumer Council was that the matter makes up a considerable amount of their workload. It is to be welcomed that the Scottish Executive wants to ensure that tenants who are disadvantaged and affected by unscrupulous behaviour are protected. However, that should not disadvantage good landlords who operate fairly and transparently. I welcome the Executive's commitments on the issue.

Johann Lamont: On the points that Mary Scanlon raised, the bill as introduced was based on improving property condition, but the issue that the amendments deal with was highlighted in the consultation "Maintaining Houses—Preserving Homes" and in evidence that the committee took. We were clear that the committee felt strongly about the issue and we wanted to respond. Mary Scanlon suggests that the registration scheme for private landlords could deal with the deposit issue, but given that she is not in favour of that scheme, her suggestion is a bit odd.

We need to root out bad landlords, although that is not to say that all landlords are bad. We also need to root out bad practice that landlords who generally provide a reasonable service have fallen into. We want to put down a marker to challenge the expectation that a deposit is, as Tricia Marwick said, basically extra income. Even if the registration scheme captured somebody who routinely did not return deposits and they were deemed not to be a fit and proper person, that would not get the money back for the person who was trying to move on to another tenancy. We seek to address that issue. The withholding of deposits can be a real issue for vulnerable households, students and particularly for foreign students. We want to ensure that the proposal for schemes is determined by the consultation that we carry out.

I note what Tricia Marwick said about supporting people to pay deposits. I visited a project in Glasgow that does good work to help and support people with securing tenancies. Part of the work is about funding deposits. The Executive has supported that in the past and we will consider the

matter actively. The issue of long tenancies was also raised. It would be difficult to make the measure retrospective, but we might consider doing that. For example, somebody could move into a tenancy deposit scheme after its establishment. We will certainly consider the issue of interest that the committee raised during the consultation and canvass views on it.

We must also consider to what extent a scheme should provide for adjudication and dispute resolution. Given that it was not the Executive's original intention to include the measure in the bill, it will be important to talk to a range of people, with the intention of making the schemes manageable, flexible and proportionate to the level of the problem.

Good landlords welcome registration. Our proposals will root out those who can no more be called landlords than they can fly in the air, because they regard what they do as a means of making money for themselves rather than as providing a service. Registration is part of the package that will secure the sector against criticism. I welcome the committee's support for the bill's proposals and for amendment 39.

Amendment 39 agreed to.

Amendment 40 moved—[Johann Lamont].

Amendment 40A not moved.

Amendment 40 agreed to.

Amendments 41 and 42 moved—[Johann Lamont]—and agreed to.

The Convener: Members will be pleased to know that that ends our consideration of amendments for day 3 of stage 2 of the Housing (Scotland) Bill. I thank the minister and her officials for attending the meeting. I inform members that all amendments from section 117 to the end of the bill, as well as for the long title, should be lodged with the clerks by 12 noon on Friday 21 October.

I suspend the meeting for five minutes to allow the minister and her officials to leave.

11:13

Meeting suspended.

11:22

On resuming—

Housing (Scotland) Act 2001 (Post-legislative Scrutiny)

The Convener: Item 3 on the agenda is the committee's approach to post-enactment scrutiny of the Housing (Scotland) Act 2001. The clerks circulated a paper over the weekend, which I hope members were able to consider. The paper reflects our discussion at the away day in New Lanark during the summer recess. However, this is probably the first time that the committee's new members have considered our commitments to work on post-enactment scrutiny of the 2001 act. I invite comments from members, particularly on whether they agree with the approach outlined in the briefing paper.

Tricia Marwick: The bullet point in paragraph 8 refers to

"Publication of next fuel poverty statement in 2005."

Is it known when that statement is likely to be made? If we are to consider matters in advance of the statement, I would like to take evidence on, for example, the effect of the recent increases in fuel prices, which might have a serious impact on the Government's targets. We must explore that issue further.

The Convener: Thank you, Mrs Marwick. My understanding is that the Executive has not indicated when it is likely to publish the fuel poverty statement. Several committee members have a proven track record of interest in that area. I remember that when the Social Justice Committee was considering the bill that became the 2001 act, you and I both lodged amendments on fuel poverty. Other committee members share our concerns about the issue and I am keen to flag it up in our future work programme. Do other members have views on what suggestions in the approach paper we should concentrate on?

Mary Scanlon: The paper recommends that the Scottish Parliament information centre produce a paper. Given the committee's workload, that seems an eminently sensible suggestion, which I support.

Euan Robson: I am content with the paper and its proposals, which are a sensible way of proceeding. I look forward to seeing how matters develop.

The Convener: That is fine. Further to this discussion, detailed approach papers will be submitted for the committee's approval in advance of meetings on the subjects that the paper outlines, but particularly on fuel poverty.

Before closing the meeting, I remind members that they should note in their diaries that the committee will meet on Saturday 29 October to consider our pre-legislative scrutiny work on the proposed planning bill. That will be a big event in the chamber. I hope that everybody, particularly the new committee members, has the date in their diaries. A briefing will be sent by e-mail to members during the recess. I hope that you all have a productive and enjoyable October recess.

Meeting closed at 11:27.

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