

COMMUNITIES COMMITTEE

Wednesday 26 April 2006

Session 2

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CONTENTS

Wednesday 26 April 2006

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INTERESTS	3473
HOUSING CORPORATION (DELEGATION) ETC BILL	3474
SUBORDINATE LEGISLATION	3478
Building (Forms) (Scotland) Amendment Regulations 2006 (SSI 2006/163).....	3478
Register of Sasines (Methods of Operation) (Scotland) Regulations 2006 (SSI 2006/164)	3479
Scottish Charity Register (Transitional) Order 2006 (SSI 2006/188)	3479

COMMUNITIES COMMITTEE

†14th Meeting 2006, 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)
*John Home Robertson (East Lothian) (Lab)
*Tricia Marwick (Mid Scotland and Fife) (SNP)
*Mr Dave Petrie (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 GAVE EVIDENCE:

James Hynd (Communities Scotland)
Johann Lamont (Deputy Minister for Communities)

CLERK TO THE COMMITTEE

Steve Farrell

SENIOR ASSISTANT CLERK

Katy Orr

ASSISTANT CLERK

Catherine Fergusson

LOCATION

Committee Room 5

† 13th Meeting 2006, Session 2—held in private.

Scottish Parliament Communities Committee

Wednesday 26 April 2006

[THE CONVENER *opened the meeting at 09:31*]

Interests

The Convener (Karen Whitefield): I open the 14th meeting in 2006 of the Communities Committee and remind everyone that mobile phones should be turned off. I have received no apologies.

I welcome Dave Petrie to the committee and invite him to declare any interests that he might have.

Mr Dave Petrie (Highlands and Islands) (Con): The only interest that I think it appropriate to declare is that I am a former operations manager with Scottish Water, which might have some relevance to the committee's debates.

John Home Robertson (East Lothian) (Lab): Oh, it sure could.

The Convener: Thank you very much, Mr Petrie. I hope that you will find being on the committee interesting.

Mr Petrie: Thank you.

Housing Corporation (Delegation) etc Bill

09:32

The Convener: For this item of business, the committee is required to consider and report to Parliament on the legislative consent memorandum in respect of the Housing Corporation (Delegation) etc Bill. Members should have received a briefing note from the clerks and a memorandum from the Executive explaining the bill's background.

I welcome to the meeting the Deputy Minister for Communities, Johann Lamont, who is accompanied by James Hynd from Communities Scotland and James Shaw from the Scottish Executive. I invite the minister to make an opening statement.

The Deputy Minister for Communities (Johann Lamont): I am grateful for the opportunity to speak in support of the legislative consent motion in respect of the Housing Corporation (Delegation) etc Bill. As the convener has pointed out, we have provided members with a memorandum that sets out the background to the bill and highlights why, given the particular circumstances, we believe that the Westminster bill is the most effective way of making the necessary legislative change.

I will begin by briefly recapping the background to the bill. Around the turn of the year, it became apparent that the legislation governing the operation of the Housing Corporation in England was defective. Essentially, the existing legislation does not provide for the corporation's board to delegate decisions to officials. Since the 1960s, when the legislation setting up the corporation was passed, corporation officials acting in the board's name have taken many decisions. The validity of those decisions is now in doubt and, if uncorrected, the situation could have severe repercussions for the corporation's past, current and future funding and regulatory actions.

To correct the problem, the Office of the Deputy Prime Minister has introduced a very short bill to confer the power of delegation on the corporation and to provide retrospective cover for past decisions. The bill's retrospective element will have an impact on Scotland—and, indeed, on Wales.

The Housing Corporation ceased to operate in Scotland in 1989 when its functions transferred to Scottish Homes. Those functions have since passed to Scottish ministers to be exercised by Communities Scotland. We have established that, since 1989, the necessary powers of delegation

have existed and that, in any case, since 2001, the functions have rested with Scottish ministers. However, the question remains whether any decisions taken by the Housing Corporation in Scotland before 1989 might still be extant and so might be ultra vires.

As we have made clear in the memorandum, we consider any threat to be small and confined to two areas: first, the registration of housing associations by the Housing Corporation before 1989; and, secondly, the granting of consents by the corporation to Scottish housing associations upon which lending decisions were made.

Although we know that around 190 housing associations were registered before 1989, we cannot say for certain whether the registrations were executed properly. In other words, we do not know whether aspects of those registrations were delegated to officials and so fall foul of the defect in the legislation that the Westminster bill seeks to correct. Because the contemporary records are not available, we simply cannot give comfort to any housing association that might fall into that category.

On consents, when a housing association enters into a loan agreement, it usually offers the lender a security over assets. The granting of such securities requires consent from the regulator which, before 1989, was the Housing Corporation. Although it would be unusual for any pre-1989 loans not to have been subsequently refinanced, the absence of any records prevents us from giving a categorical assurance either to a concerned lender or to a housing association.

It is in all our interests to avoid raising any unnecessary anxiety in the Scottish housing sector. In England, there was very tangible evidence that lenders were considering putting deals with the social housing sector on hold until the issue was sorted out to their satisfaction. Although we do not face such issues in Scotland, the introduction of the Westminster bill had led to calls for the Scottish position to be put beyond doubt.

The Financial Services Authority has highlighted the risk that, because of the uncertain legal position in Scotland, banks that have lent money to Scottish housing associations could face a higher capital charge due to increased potential bad risk. In plain English, lenders might have to set aside additional balance-sheet provision to reflect loans that might not be properly secured.

The Council of Mortgage Lenders in Scotland has also indicated that its members are taking very seriously the issue that the Westminster bill seeks to address and has made it clear that this legislative opportunity to regularise pre-1989 activity in Scotland should be taken. Finally, the

Scottish Federation of Housing Associations has also asked for the Scottish position to be dealt with through the Westminster bill.

Given those calls from the sector and the need to move quickly to avoid any unnecessary anxiety, we feel that the LCM approach offers the quickest way of providing the reassurance that the sector demands for the historical position to be put beyond doubt.

We do not propose a legislative consent motion lightly, but the only other way of achieving the policy change would be to introduce primary legislation in the Scottish Parliament. We do not think that that is a practical or sensible option for such a small, uncontentious issue.

For those reasons, and after careful consideration, we believe that a legislative consent motion is the most appropriate and effective way of dealing with the issue. Although it is essentially historical and technical in nature, we need to sort it out if we are to maintain full confidence in the sector.

I hope that the committee supports our view. I am happy to deal with any questions that members might have.

Tricia Marwick (Mid Scotland and Fife) (SNP): What is the timescale for passing the legislation at Westminster?

Johann Lamont: Its passage is very current. I believe that the bill was debated yesterday.

James Hynd (Communities Scotland): The first reading of the bill took place in the House of Commons on 30 March and its second reading took place yesterday. Its timetable is fairly truncated. We expect a combined second reading and report stage to take place around the middle of the month and the bill's final passage to happen before the end of the current parliamentary session.

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): I am minded to support the Executive's request. However, I wonder whether the minister will expand on the implications of the situation for any housing association whose registration is challenged.

Johann Lamont: The fact that there is no evidence to establish absolutely that there is nothing wrong with any registration made before 1989 might have significant implications for the way in which housing associations that might be affected operate and manage their business. After all, registration is critical to how they carry out their functions.

I emphasise that what is proposed is very much a belt-and-braces approach, because the provisions that relate to Scotland are entirely

retrospective and are intended to deal with potential anxiety and noise in the system rather than to respond to evidence of a problem. I am confident that there were no faults in the registration process, but the matter has implications if there is anxiety and if housing associations have to put aside money because they might be deemed to be a bad risk—that is a lot of ifs. We want to ensure that there can be confidence in the sector. People who are involved in the sector are keen that the provisions be agreed to, because that will reassure everyone.

The Convener: Thank you for attending the meeting. I invite members to consider the issues that we want to include in our report to the Parliament on the legislative consent memorandum.

Tricia Marwick: We have no option but to agree to the memorandum and to the forthcoming legislative consent motion. Even if there is little risk that the social housing sector might be jeopardised by the fact that decisions were made by officials, we should ensure that there is confidence in the sector. Given that the Westminster Parliament is considering the Housing Corporation (Delegation) etc Bill and that the timetable for completing consideration of the bill is short, I see no reason not to agree to the LCM. Confidence in the sector should be our number 1 priority.

Scott Barrie (Dunfermline West) (Lab): I endorse what Tricia Marwick has said. The key point is that the proposals represent a belt-and-braces approach, as the minister said. The provisions might not be required, but it would be strange not to correct the anomaly. A legislative consent motion will give us the means to correct the matter, so we should support the approach.

The Convener: Are members content that we report to the Parliament to indicate our support for the LCM?

Members indicated agreement.

Subordinate Legislation

Building (Forms) (Scotland) Amendment Regulations 2006 (SSI 2006/163)

09:42

The Convener: Item 2 is consideration of three items of subordinate legislation. The Building (Forms) (Scotland) Amendment Regulations 2006 were laid on 22 March and are subject to the negative procedure. They provide for the substitution of the schedule to the Building (Forms) (Scotland) Regulations 2005 and set out the amended forms that are prescribed for the purposes of section 36 of the Building (Scotland) Act 2003. The substitution is being made to take account of the experiences of verifiers of the new system, in the light of which amendments were considered necessary to provide clarity for verifiers and applicants and to ensure consistent enforcement and administration of the new system. The committee made no recommendation when it considered the 2005 regulations. Do members want to comment on the instrument?

John Home Robertson: I am content to support the regulations, but I am conscious that they might add to an accumulation of bureaucratic clutter. The new schedule lists 16 prescribed forms, which cover important matters, but are separate forms for “Amendment to Building Warrant” and “Extension of Period of Validity of Building Warrant” necessary? Might a combined form be possible instead of separate forms for “Defective Building Notice” and “Dangerous Building Notice”? I hope that the Executive’s general principle is to try to keep such matters simple. I always worry when we add to the inventory of forms with which citizens have to cope.

The Convener: Would you be satisfied if the committee reported to the Parliament that we support the regulations and wrote separately to the Minister for Communities to express your concerns about excessive bureaucracy?

John Home Robertson: I would appreciate that, if the suggestion is agreeable to the committee.

The Convener: Do members agree to take the action that I suggested?

Members indicated agreement.

The Convener: The committee will make no recommendation on the regulations in its report to the Parliament. However, we will write to the minister to make the point that Mr Home Robertson has raised.

Register of Sasines (Methods of Operation) (Scotland) Regulations 2006 (SSI 2006/164)

09:48

Meeting suspended until 09:51 and thereafter continued in private until 12:23.

09:45

The Convener: We move on to the Register of Sasines (Methods of Operation) (Scotland) Regulations 2006, which were laid on 22 March and are subject to the negative procedure. The regulations make provisions for the recording of deeds that are presented for recording in the register of sasines, to facilitate a change in the medium in which the record volume is compiled from microfiche to digital images. The provisions are set out in the paper that the clerks have prepared. If members have no comments, are they content with the regulations?

Members *indicated agreement.*

The Convener: The committee will make no recommendation on the regulations in its report to the Parliament.

Scottish Charity Register (Transitional) Order 2006 (SSI 2006/188)

The Convener: The Scottish Charity Register (Transitional) Order 2006 was laid on 31 March and is subject to the negative procedure. The instrument makes transitional provisions for the purpose of the commencement of section 99 of the Charities and Trustee Investment (Scotland) Act 2005. The purpose of the order is to disapply section 3(3) of the 2005 act until 23 August 2007, which will give the Office of the Scottish Charity Regulator 18 months in which to obtain the information that is required for the Scottish charity register under section 3(3). If the order were not made, OSCR would be in breach of section 3(3) of the 2005 act and any charity that was not on the Scottish charity register when it came into being on 1 April would be unable to hold itself out as a charity in Scotland.

Are members content with the Executive's explanation for its failure to comply with the 21-day rule?

Members *indicated agreement.*

The Convener: Is the committee content with the order?

Members *indicated agreement.*

The Convener: The committee will make no recommendation on the order in its report to the Parliament.

Do members agree to report to the Parliament our decisions on the subordinate legislation that we have considered?

Members *indicated agreement.*

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