The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

Wednesday 22 September 2010

Session 3

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LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE
21st Meeting 2010, Session 3

CONVENER

*Duncan McNeil (Greenock and Inverclyde) (Lab)

DEPUTY CONVENER

*Bob Doris (Glasgow) (SNP)

COMMITTEE MEMBERS

*Patricia Ferguson (Glasgow Maryhill) (Lab)
*David McLetchie (Edinburgh Pentlands) (Con)
*Alasdair Morgan (South of Scotland) (SNP)
*Mary Mulligan (Linlithgow) (Lab)
*Jim Tolson (Dunfermline West) (LD)
*John Wilson (Central Scotland) (SNP)

COMMITTEE SUBSTITUTES

Brian Adam (Aberdeen North) (SNP)
*Malcolm Chisholm (Edinburgh North and Leith) (Lab)
Alex Johnstone (North East Scotland) (Con)
Alison McInnes (North East Scotland) (LD)

*attended

THE FOLLOWING GAVE EVIDENCE:

Alex Neil (Minister for Housing and Communities)
Simon Stockwell (Scottish Government Justice Directorate)
Stephen White (Scottish Government Housing and Regeneration Directorate)

CLERK TO THE COMMITTEE

Susan Duffy

LOCATION

Committee Room 4

Scottish Parliament

Local Government and Communities Committee

Wednesday 22 September 2010

[The Convener *opened the meeting at 10:00*]

Housing (Scotland) Bill: Stage 2

The Convener (Duncan McNeil): Good morning. Welcome to the 21st meeting in 2010 of the Local Government and Communities Committee. I remind members and the public to turn off all mobile phones and BlackBerrys.

Item 1 is day 1 of stage 2 consideration of the Housing (Scotland) Bill. I welcome Alex Neil, the Minister for Housing and Communities and, from the Scottish Government: William Fleming, branch head in the tenant priorities team; Linda Leslie, bill team leader in the tenant priorities team; Ian Shanks, assistant Scottish parliamentary counsel; and Gillian Turner, a principal legal officer.

Sections 1 and 2 agreed to.

Section 3—The Regulator's functions

The Convener: The first group of amendments is on social landlords and their contribution to, and promotion of, environmental wellbeing and regeneration. Amendment 128, in the name of Mary Mulligan, is grouped with amendments 130 and 134.

Mary Mulligan (Linlithgow) (Lab): The title of the group of amendments indicates that social landlords' contribution to and promotion of environmental wellbeing and regeneration are well recognised. Sometimes we do not recognise that role enough, but social landlords have been playing it for some time. Through my amendments, I seek to ensure that we recognise in legislation the wider role that social landlords play. The bill provides us with an opportunity to do that.

Amendment 128 seeks to ensure that the regulator, in performing its functions, recognises the role that social landlords play in environmental wellbeing and regeneration. Amendment 130 seeks to ensure that that role is included in the outcomes of the Scottish social housing charter, examples of which are suggested in section 32.

I move amendment 128.

Patricia Ferguson (Glasgow Maryhill) (Lab): It is my contention that the wider role of housing associations and the additional activities and services that they undertake in, and on behalf of, communities need to be recognised in legislation. I do not want to waste the committee's time by duplicating Mary Mulligan's arguments—we are singing from the same hymn sheet.

Alasdair Morgan (South of Scotland) (SNP): I am a bit puzzled about why it is necessary to include the provisions in legislation. Social landlords may have a wider role to play, but if we include that in the regulator's duty, as amendment 128 suggests, it will become one of the social landlord's duties that must be regulated. I am not sure that the case for that has been made. It is one thing to say that social landlords make a contribution, but it is a totally different thing to say that it should be a regulated activity.

Bob Doris (Glasgow) (SNP): I understand that the amendments seek to place a duty on the regulator to monitor, assess and report on social landlords' wider role activities, but I am concerned that that could have a knock-on effect by increasing the financial burden on the regulator. It could also be overly bureaucratic for the housing association movement to have to complete a tick-box exercise to enable it to be held to account on its wider role activities.

My understanding is that the housing charter that will be drawn up will set out the wider role and that at that time there will be an obligation on the regulator to come to a view on how well housing associations are performing wider role activities. As a result, it could be argued that amendment 128 is simply duplicating things, although I have every sympathy for what it is trying to achieve.

The Minister for Housing and Communities (Alex Neil): I share Mary Mulligan's assessment of the wider role activities that many social landlords perform and the significance and importance of what they achieve through them, and I agree that we need to recognise those achievements. However, I do not believe that widening the regulator's functions, as amendment 128 proposes, is the right means of ensuring such recognition.

The general functions in section 3 define the new regulator's principal purposes and are tightly focused to ensure that the new body concentrates its efforts on the core housing services that are provided by all social landlords. That tight focus is necessary if the regulator is to concentrate its efforts on driving forward improvements in the basic housing services that all tenants receive.

In its stage 1 report, the committee highlighted the importance of driving continuous improvement in the whole sector. In its response, the Government confirmed that it agreed, and it described the range of powers that will be available to the regulator in pushing for that improvement, including the publishing of reports

on performance and the setting of performance improvement targets. As introduced, section 3(1)(b) lays the foundation for that by requiring the regulator to monitor, assess, report and, if necessary, intervene in respect of social landlords' housing activities. That task is in itself large and challenging, but it is feasible because of its clear focus on the services that are provided by all landlords. If we were to widen it to include wider role activities, we would place the core task at risk and would—at the very least—dilute the regulator's effectiveness in driving forward the improvements in tenants' services that we all want.

In effect, we would, through amendment 128, require the regulator to give the same attention to the varied and wide-ranging activities that some, but not all, landlords undertake on a discretionary basis, as it must give to the core housing services that all landlords provide. That would be a mistake, because it would mean requiring the regulator to look at activities as diverse as running credit unions or child-care facilities. For example, the regulator would have to monitor, assess, report on and perhaps intervene in what a group of Inverclyde RSLs is doing through the Grand Central Savings initiative in that area, or try to regulate the Working Rite employability and training projects in which West Highland Housing Association and various other housing associations are involved. Although those activities are all extremely important and worth while, that does not mean that the regulator should be monitoring them, let alone intervening in them, particularly as they are monitored already through their individual grant-funding arrangements.

Finally, giving the regulator the permanent function of monitoring, assessing and reporting on landlords' wider role activities would place a greater burden on landlords because the matters on which they would have to be monitored, and therefore have to be reported on, would be wider than the bill provides for at present. I suspect that many landlords who undertake wider role activities would be concerned if such discretionary activities were to be subjected to the same weight of regulation as their core activities.

For those reasons, I believe that it would be a mistake to put the assessment of wider role activities on the same footing as the assessment of core housing services. Instead I commend the approach in section 32(1)(i), which provides that outcomes may include wider role activities and gives ministers flexibility in the light of stakeholder views to determine whether a charter should or should not provide for an outcome related to wider role activities. In coming to that view, ministers will be able to take account of the regulator's views on whether it would be able to monitor, assess and report on any outcome that they might propose. That is preferable to imposing an onerous permanent duty that will undermine the new regulator's ability to focus on what matters to all tenants. I am, however, happy to support Mary Mulligan's amendment 130, which develops and expands subsection (i).

Accordingly, I invite Mary Mulligan to withdraw amendment 128 and urge the committee to support amendment 130.

I am less concerned by the effect of amendment 134, which is in the name of Patricia Ferguson, because it is simply an enabling power. However, its purpose is provided for already by the general power that is set out in section 39(2)(c) for the regulator to report any information on the performance of social landlords. Consequently, the amendment is unnecessary. On that ground, I invite Patricia Ferguson not to move amendment 134.

Mary Mulligan: As the minister has indicated his acceptance of amendment 130, for which I thank him, I will keep my comments to amendment 128.

The issue is very simple and comes down to whether one feels that the additional roles that are played by social landlords are important or are side issues that do not need to be included as part of their business. I understand why the minister does not wish to place additional burdens on the regulator, but I invite the committee to consider the current system of soft-touch regulation, in which the regulator gets involved only when issues or concerns are raised. In any case, I do not quite agree with the minister: I do not think that amendment 128 would add to the regulator's burden unless he or she wished to examine certain problems.

Surely in looking at the role of social landlords the regulator will find it difficult to separate their core functions from the other jobs that they perform. Indeed, if you accept that social landlords play a comprehensive role, such a division is false. For that reason, I believe that the wider role activities should be included among the regulator's function; I will therefore press amendment 128.

Finally, I point out that if members have been convinced by the minister's comments and feel unable to support amendment 128, amendment 134 in the name of Patricia Ferguson would not place a statutory duty on the regulator to report but merely suggests it. Members might well feel that such a halfway house is more appropriate.

The Convener: The question is, that amendment 128 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Ferguson, Patricia (Glasgow Maryhill) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
Mulligan, Mary (Linlithgow) (Lab)

Against

Doris, Bob (Glasgow) (SNP)
McLetchie, David (Edinburgh Pentlands) (Con)
Morgan, Alasdair (South of Scotland) (SNP)
Wilson, John (Central Scotland) (SNP)

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

Amendment 128 disagreed to.

Section 3 agreed to.

Sections 4 to 7 agreed to.

Section 8—Disqualification and removal from office

10:15

The Convener: Amendment 1, in the name of the minister, is in a group on its own.

Alex Neil: I will be a bit more brief, convener, with what is essentially a technical amendment. Amendment 1 seeks to ensure that the board of the independent Scottish Housing Regulator is able to act in the interests of tenants and homeless people. As I consider that there would be a conflict of interests if a current employee of either a local authority or an RSL were able to serve on the board, the bill will disqualify such individuals from holding office. The same is true for current employees of local authorities that are no longer landlords but which continue to provide homelessness services. Amendment 1 is a technical amendment that will ensure that all current employees of RSLs and local authorities, including those that are no longer landlords, as well as local authority councillors and officers of RSLs, are disqualified from holding office in the Scottish Housing Regulator.

I move amendment 1.

Amendment 1 agreed to.

Section 8, as amended, agreed to.

Sections 9 to 13 agreed to.

Schedule 1 agreed to.

Sections 14 and 15 agreed to.

Section 16—Fees

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

Alex Neil: Section 16 will give the new Scottish Housing Regulator a power to charge fees. The power is based on one that ministers already have under the Housing (Scotland) Act 2001, and could be exercised only with the approval of ministers. Ministers have not used the power in the 2001 act to charge fees. Instead, they have preferred to fund the work of regulation from public expenditure. The Government has stressed its commitment to continue that approach when the new regulator is established.

However, in my discussions with tenant groups, they have expressed concern that subsequent Administrations might decide that landlords should be charged some or all of the costs of regulation and that, ultimately, those costs would have to be met by tenants through their rents. The Government appreciates those fears and wishes to allay them by removing the regulator's power to charge fees.

In addition, I believe that it is wrong in principle for a regulator to rely for part or all of its income on charging those whom it regulates.

Amendment 2 will achieve the objective that I have set out. I hope that tenants will support it and will welcome the certainty that it will give them on the issue. I believe that landlords will support it, too.

I move amendment 2.

David McLetchie (Edinburgh Pentlands) (Con): I thank the minister for his clarification. I am interested in the general principle that he enunciated, whereby regulators should not charge fees to those whom they regulate. I am afraid that I am not familiar with the work of every regulator that has been established by the Scottish Government, but from my limited knowledge of the Office of the Scottish Charity Regulator, I think that it charges the charities that it regulates.

Is the minister signalling a change of Government policy, whereby in the future the charging of all regulated persons by all regulators will be abolished? If that is not the case, would the minister like to tell us why although no fees are to be charged by a housing regulator, the Government apparently thinks that it is quite all right for other regulators for which it is responsible to continue to charge the people whom they regulate fees?

Mary Mulligan: I am much more positive and I think that the minister has taken the right decision. At stage 1, a number of concerns were raised about the fees section of the bill, so I am pleased that the minister has taken action to allay them. I support the principle that the housing regulator should continue to be publicly funded.

The Convener: I give the minister the opportunity to wind up and to respond to the issues that have been raised.

Alex Neil: I have two points to make. First, Mr McLetchie raises an interesting debate about the

general principle. I think that there are examples in the past of the independence of a regulator being called into question because of one of its sources of funding. The Financial Services Authority is probably the most recent example of that. However, that is a general debate for another day.

As far as the present debate is concerned, the second point is the more important of the two. It is that, despite the existence of the relevant power under the 2001 act, it has been made clear that neither ministers in the previous Administration nor ministers in the present Administration have had any intention of using it, so why retain a power that we have no intention of using?

Amendment 2 agreed to.

Sections 17 to 23 agreed to.

Section 24—Legislative registration criteria

The Convener: Amendment 3, in the name of the minister, is grouped with amendments 129, 4, 5 and 105. I point out that if amendment 3 is agreed to, I cannot call amendment 129.

Alex Neil: I lodged amendments 3, 4, 5 and 105 in response to concerns that were raised by this committee and the Subordinate Legislation Committee as well as by stakeholders such as the Glasgow and West of Scotland Forum of Housing Associations. I invite Patricia Ferguson not to move amendment 129.

Amendment 3 will remove the power, which was of such concern to this committee and to the Subordinate Legislation Committee, for ministers to prescribe the types of body that will be eligible to be a registered social landlord. It will bring into the bill the core objects and additional permissible purposes that a registered social landlord can have. In broad terms, those are the same as are currently in the Housing (Scotland) Act 2001. Ministers will be able to amend the additional purposes by order, but will not be able to amend the core objects.

In addition, amendment 3 makes it clear that any body that seeks registration must carry out its purposes, objects or powers in Scotland, so that the regulator is able to protect those assets and safeguard the interests of tenants. I thank the committee for its suggestions on how section 24 of the bill might be improved, and I recognise that the amendment will strengthen the legislation along the lines that have been suggested by the committee.

Amendment 4 is a technical amendment to the ministerial power in the bill in relation to bodies that are not registered societies—industrial and provident societies—or registered companies. The amendment is needed because of the proposed restructuring of section 24.

Amendment 5 requires ministers to consult specific stakeholders on a draft order under section 24(5); it makes provisions in respect of bodies other than registered societies or registered companies. The amendment will ensure that tenants' representatives, existing registered social landlords and lenders to the sector are able to comment on the provisions before any order is laid before Parliament.

Amendment 129 appears to be an alternative means of achieving what new section 24(1)(c), as proposed in amendment 3, is intended to achieve. I suggest that it does so in a less clear manner, in posing questions to which it does not provide answers. Amendment 3 is clear that a body that is seeking to be considered for registration should carry out its purposes and objects in Scotland. Amendment 129 requires that

"A body is principally concerned with Scottish housing"

and provides for ministers to determine what that means. It implies, but does not make clear, that that determination is to be on a case-by-case basis and appears to leave it to ministers to decide what constitutes owning housing mainly in Scotland or activities principally undertaken in Scotland. I suggest that that lack of clarity over the role of ministers and the criteria that they might have to apply is unsatisfactory and would lead to confusion among those contemplating applying to register as a social landlord. Accordingly, I invite Patricia Ferguson to withdraw amendment 129. I would be happy to discuss with her afterwards how we might produce an amendment at stage 3 that would address what I believe are our shared objectives.

I move amendment 3.

The Convener: I call Patricia Ferguson.

Patricia Ferguson: Thank you Presiding Officer—I am sorry, convener; I am giving you a title that you do not have.

The amendments that the Government has lodged to section 24 are welcome to me and to others with whom I have discussed the matter. Given the assurances that the minister has given today about future discussion and the possibility of further amendments to the bill, I am happy not to move amendment 129.

Amendment 3 agreed to.

Amendments 4 and 5 moved—[Alex Neil]—and agreed to.

Section 24, as amended, agreed to.

Sections 25 to 29 agreed to.

Section 30—Communication with other regulators

The Convener: Amendment 6, in the name of the minister, is grouped with amendments 40 to 45, 47 to 49, 51, 54 to 57, 61, 63, 65 to 67, 69, 106, 113, 115, 117, 118 and 121.

Alex Neil: The 27 amendments that are in the group with amendment 6 are technical amendments to replace the term

"industrial and provident society"

with the term "registered society", and to replace references to the Industrial and Provident Societies Act 1965 with references to the Co-operative and Community Benefit Societies and Credit Unions Act 1965. The changes are a consequence of the Co-operative and Community Benefit Societies and Credit Unions Act 2010. That act was passed at Westminster after our bill was introduced in January this year.

I move amendment 6.

Amendment 6 agreed to.

Amendment 7 moved—[Alex Neil]—and agreed to.

Section 30, as amended, agreed to.

Section 31—Scottish Social Housing Charter

The Convener: Amendment 8, in the name of the minister, is grouped with amendments 9, 10, 12, 15, 16, 20 to 22, 26, 29, 32, 34 and 119.

Alex Neil: Section 31 requires ministers to prepare a Scottish social housing charter that sets the outcomes that social landlords "should aim to achieve" in performing their housing activities. It defines an outcome as being either a standard or an objective which landlords "should aim to achieve".

I discussed the plans for a charter with my stakeholder sounding board on the bill. Members generally, and tenants in particular, welcomed the idea of a charter describing what landlords should be aiming to achieve. There was some uncertainty, however, over what we mean by an "outcome", and some concern that section 31 provides, in effect, for outcomes to be either standards or objectives—this is the talk of the steamie, convener.

Members of the group were keen that the legislation be as clear as possible on the intended meanings. They argued that a standard is different from an outcome, and that a landlord might achieve one but not the other. For example, a landlord might meet a standard for the physical condition of their stock by installing new windows, but leave tenants unhappy because the windows were hard to clean or unattractive or otherwise did not meet their reasonable requirements. In such a case, the outcome for the tenant would be poor, even though the standard had been met. I hope that the example illustrates that this is not just a semantic point. It is important that we get this right for tenants and that we provide clarity for the charter to set outcomes.

The Government wants the charter to encourage landlords to focus their efforts on the outcomes—or the end results—that they deliver for tenants, homeless people and other service users.

Amendment 8 seeks to clarify the position. It recognises that sometimes it might be necessary for the charter to set standards and provides that those can be set in their own right and that, where they are set, they are distinct and separate from outcomes. If accepted, it will give a clearer indication that ministers have the flexibility to set a mixture of standards and outcomes if consultation of stakeholders suggests that that is warranted.

Amendment 8 gives rise to a number of consequential amendments that are required to reflect the new approach elsewhere in section 31 and at sections 32, 35, 39, 42, 45, 52, 53, 54 and 150.

I move amendment 8.

10:30

Mary Mulligan: I think that the minister is correct in what he is proposing, even though it might seem fairly minor. However, the important thing for tenants will be the delivery of the outcomes that the legislation speaks of, so the monitoring and any means of redress will be equally important. I am sure that the minister will come on to that when we have further discussions about the introduction of the charter.

Amendment 8 agreed to.

Amendment 9 moved—[Alex Neil]—and agreed to.

Section 31, as amended, agreed to.

Section 32—Outcomes

Amendment 10 moved—[Alex Neil]—and agreed to.

Amendment 130 moved—[Mary Mulligan]—and agreed to.

The Convener: Amendment 11, in the name of the minister, is grouped with amendments 28 and 31.

Alex Neil: Amendment 11 provides for a possible charter outcome on tenant participation to encompass participation in a landlord's review of proposals for housing services, as well as their

formulation. Section 32 sets out examples of the kind of areas of activity that the charter might cover. Tenant participation is one of them.

Amendment 11 does not directly require landlords to involve tenants in reviewing policies or services but, by allowing for the charter to set a broader outcome around participation, it will help to strengthen the scope for tenant involvement in landlords' housing policy proposals.

Amendment 28 provides for social landlords to involve tenants and other service users in the preparation and validation information that is submitted to the Scottish Housing Regulator. The amendment responds to concerns raised at stage 1 by the committee—and by members of my stakeholder sounding board—about the shift from cyclical inspections to a more risk-based approach to regulation.

Tenants and their representative bodies and equalities and consumer organisations all expressed concern about the validity of a system that is based on landlords' self-assessment. I know that the committee shared that concern and agreed that self-assessment must be meaningful, robust and transparent, and that it must involve tenants.

The SHR's powers to obtain information from landlords will allow it to collect a range of information to monitor and assess performance against the charter. The amendment requires the SHR to publish guidance for landlords, setting out its expectations on service user involvement in collecting and reporting information. The SHR will be required to consult tenants and other stakeholders in preparing or revising guidance. Landlords must comply with the published guidance. If they fail to do so, they can expect the SHR to intervene.

I believe that this amendment will establish clear expectations on tenant involvement and put in place the right checks and balances for landlords when they present a picture of their performance.

Amendment 31 provides for social landlords to involve tenants and other service users in the preparation of performance improvement plans. It, too, responds to concerns that were expressed by members of my stakeholder sounding board and a number of other stakeholders at stage 1 about the shift from cyclical inspection to a more risk-based approach to regulation. As I have noted, the committee shared those concerns.

The bill gives the SHR the power to require a landlord to submit a performance improvement plan where it sees a need to drive up performance.

The amendment adds a power to require landlords to involve tenants, and other service users where appropriate, in developing their improvement plans. That will ensure that plans reflect the interests and views of tenants. I believe that the amendment will further strengthen the role of tenants and other service users in regulation, and reinforce the expectation that landlords will involve them in assessing and improving their own performance.

I move amendment 11.

Amendment 11 agreed to.

Amendment 12 moved—[Alex Neil]—and agreed to.

The Convener: Amendment 131, in the name of Patricia Ferguson, is grouped with amendments 132 and 133.

Patricia Ferguson: The purpose of amendment 131 is to recognise that housing associations and registered social landlords vary hugely in type and scale. That point was made in the stage 1 report on the bill, and the Government responded by saying that the regulation should be blind to the type of provider.

In fact, the bill already recognises housing associations as being different from local authority providers, for example. Many housing associations are very small organisations that have 10 or fewer members of staff. Amendment 131 and the two consequential amendments seek to recognise the sensitivity of that situation, to give the regulator the opportunity to categorise the organisations that it is to regulate and to give people a clearer idea of the scope and the scale of that regulation.

I move amendment 131.

Alex Neil: I have a number of concerns about amendment 131. It appears to confuse the role of ministers and the regulator in respect of setting standards and outcomes in the charter. The amendment suggests that that is a role for the regulator, and on that basis places duties on it to categorise social landlords and registered social landlords. In fact, section 32 provides for ministers to do the setting, so, in that sense alone, the amendment is unsatisfactory.

The amendment is also unsatisfactory in that it provides no reason or purpose for making a list of the required categorisations, whether that is done by ministers or the regulator. In that sense, a potentially time-consuming and cumbersome exercise would be required without there being any stated object or purpose of it.

In so far as the amendment might have a purpose, I infer that it is to provide for the regulator to perform its functions with some regard to the nature, size and circumstances of the social landlords that are to be subject to those functions. If that is the case, the duties that section 3(2)

places on the regulator—to be proportionate and targeted and to apply best regulatory practice—appear to achieve all that is required in that respect.

Amendment 132 is therefore unnecessary, and amendment 133 does not add anything, because it provides only for a performance report to contain the list of categories. Accordingly, I invite Patricia Ferguson to withdraw amendment 131 and not to move amendments 132 and 133.

Patricia Ferguson: I thank the minister for his contribution to the discussion, but it is important that we recognise the different types and size of housing association and registered social landlord in Scotland. I hoped that the minister might have been able to see the need for those aspects to be considered when the standards are being set. I still think that it is a job for the regulator to indicate that it takes those aspects seriously when it goes about its business—not with a view to having a different set of standards but to ensure that we have consistent standards that reflect the existence of those basic sensitive differences. On that basis, I shall press amendment 131.

The Convener: The question is, that amendment 131 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Ferguson, Patricia (Glasgow Maryhill) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
Mulligan, Mary (Linlithgow) (Lab)

Against

Doris, Bob (Glasgow) (SNP)
McLetchie, David (Edinburgh Pentlands) (Con)
Morgan, Alasdair (South of Scotland) (SNP)
Tolson, Jim (Dunfermline West) (LD)
Wilson, John (Central Scotland) (SNP)

The Convener: The result of the division is: For 3, Against 5, Abstentions 0.

Amendment 131 disagreed to.

Section 32, as amended, agreed to.

Section 33—Scottish Social Housing Charter: supplemental

The Convener: Amendment 122, in the name of Mary Mulligan, is grouped with amendments 123, 124, 28A and 126.

Mary Mulligan: The amendments in this group add to the various sections that require consultation on regulatory matters a requirement to consult homeless people or organisations that represent homeless people. Such consultation would be in addition to the consultation that the bill rightly specifies as involving tenants, social landlords, secured creditors and the Accounts Commission. I suggest that the omission of a reference to consulting homeless people is an oversight by those who have drafted the bill, given that protecting the interests of homeless people is clearly and properly identified as an objective for the regulator. The prevention and alleviation of homelessness is also listed as one of the possible outcomes for the Scottish social housing charter. My amendments would rectify that obvious anomaly by ensuring that homeless persons or the organisations that represent them are properly consulted in the implementation of the new regulatory framework that is set out in the bill.

I commend the amendments in this group to members.

I move amendment 122.

Alex Neil: I agree with Mary Mulligan about the need to include homeless persons and their representatives among those who should be consulted under sections 33 to 35 and 48, and in the new section to be inserted by amendment 28. Amendments 122 to 124, 126 and 28A provide for that and thereby strengthen and improve the bill. I welcome the amendments and I urge the committee to support them.

Mary Mulligan: I am grateful to the minister for his support.

Amendment 122 agreed to.

The Convener: Amendment 13, in the name of the minister, is in a group on its own.

Alex Neil: The Government is committed to involving equalities groups in the development of the Scottish social housing charter. It has invited the Scottish Disability Equality Forum and the Equality and Human Rights Commission to form part of the sounding board that it has established to inform the development of the charter. The Government accepts the principle of the forum's argument, and amendment 13 will ensure that the Equality and Human Rights Commission is a statutory consultee, alongside the other organisations that are cited at section 33(2).

I move amendment 13.

Amendment 13 agreed to.

Section 33, as amended, agreed to.

Section 34—Performance improvement targets

The Convener: Amendment 14, in the name of the minister, is grouped with amendments 17 to 19, 23, 27, 30, 33, 127 and 116.

Alex Neil: Amendment 14 is a technical amendment that clarifies that the performance improvement targets can cover any area of a social landlord's activity, as well as the level or

quality of housing services. That removes any doubt that performance improvement targets can cover the same kinds of activity as the social housing charter.

The other amendments in the group, apart from amendment 127, provide for the regulator to set financial management or governance targets for registered social landlords. Strong governance and financial management are vital to sustaining a flourishing RSL sector. Private lenders have told us that they value the assurance that robust regulation gives them, as is demonstrated in the favourable borrowing rates that RSLs enjoy.

The power to set improvement targets for RSLs' financial management and governance is similar to the section 34 power that allows the regulator to set performance improvement targets for housing activities. It complements the section 34 power and adds to the lower-level powers that are available to the regulator to address performance issues among RSLs.

The committee has rightly emphasised the need to drive continuous improvement in the sector, and I fully concur with its view. The amendments add to the range of regulatory tools that the regulator can use to promote improvement in the management of RSLs.

10:45

Amendment 127 relates to the regulator's powers to appoint a manager to assist an RSL with its financial and other affairs and is intended to adjust the test for the exercise of those powers. At present, the bill requires the regulator to prove, before appointing a manager, that there has been misconduct or mismanagement. That is less flexible than the equivalent power at section 71 of the Housing (Scotland) Act 2001, which allows ministers to appoint a manager when they consider it to be necessary or expedient. Amendment 127 would retain that position and allow the regulator to act quickly when it needs to protect tenants' interests or to secure the affairs of the RSL.

I do not propose to say any more, unless members see a need to explore the issues in more detail.

I move amendment 14.

Amendment 14 agreed to.

Amendment 123 moved—[Mary Mulligan]—and agreed to.

Section 34, as amended, agreed to.

Section 35—Guidance: housing activities

Amendments 15 and 16 moved—[Alex Neil]—and agreed to.

Amendment 124 moved—[Mary Mulligan]—and agreed to.

Section 35, as amended, agreed to.

Section 36 agreed to.

After section 36

Amendments 17 and 18 moved—[Alex Neil]—and agreed to.

Section 37 agreed to.

Section 38—Assessment of social landlords

Amendment 132 moved—[Patricia Ferguson].

The Convener: The question is, that amendment 132 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Ferguson, Patricia (Glasgow Maryhill) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
Mulligan, Mary (Linlithgow) (Lab)

Against

Doris, Bob (Glasgow) (SNP)
McLetchie, David (Edinburgh Pentlands) (Con)
Morgan, Alasdair (South of Scotland) (SNP)
Tolson, Jim (Dunfermline West) (LD)
Wilson, John (Central Scotland) (SNP)

The Convener: The result of the division is: For 3, Against 5, Abstentions 0.

Amendment 132 disagreed to.

Amendment 19 moved—[Alex Neil]—and agreed to.

Section 38, as amended, agreed to.

Section 39—Performance reports

Amendment 133 not moved.

Amendments 20 and 21 moved—[Alex Neil]—and agreed to.

Amendment 134 moved—[Patricia Ferguson].

The Convener: The question is, that amendment 134 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Ferguson, Patricia (Glasgow Maryhill) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
Mulligan, Mary (Linlithgow) (Lab)

Against

Doris, Bob (Glasgow) (SNP)
McLetchie, David (Edinburgh Pentlands) (Con)
Morgan, Alasdair (South of Scotland) (SNP)

Tolson, Jim (Dunfermline West) (LD)
Wilson, John (Central Scotland) (SNP)

The Convener: The result of the division is: For 3, Against 5, Abstentions 0.

Amendment 134 disagreed to.

Section 39, as amended, agreed to.

Sections 40 and 41 agreed to.

Section 42—Inquiries: survey powers

Amendments 22 and 23 moved—[Alex Neil]—and agreed to.

Section 42, as amended, agreed to.

Section 43 agreed to.

Section 44—Reports on inquiries

The Convener: Amendment 24, in the name of the minister, is grouped with amendments 25 and 125.

Alex Neil: Amendments 24, 25 and 125 relate to reports on inquiries by the regulator.

The regulator may prepare and publish a report on any inquiry that it carries out, and it must publish a statement that explains the types of inquiries on which it will publish—as opposed to simply preparing—a report.

Amendment 24 seeks to ensure that the regulator brings that statement to the attention of ministers, tenants, lenders and the Accounts Commission as well as social landlords. Amendment 25 requires the regulator to send to relevant registered tenants organisations copies only of those reports that it has published in accordance with its statement.

It is important that the regulator has the flexibility to carry out an inquiry without necessarily publishing a report—if, for example, publication would compromise commercial confidentiality, undermine the lenders' confidence or put tenants' interests at risk.

I have some reservations around amendment 125. It deprives the regulator of discretion when it prepares its code of practice, and instead imposes a duty to prepare the code with particular regard to homeless persons and those who are threatened with homelessness. I have two concerns about that.

First, changing the power to a duty would restrict the regulator's flexibility to prepare a code of practice in the light of prevailing circumstances and priorities. I am not sure that we would want to be so prescriptive in that regard.

Secondly, by casting the prescription so strongly in terms only of homeless persons, the duty would ignore tenants. If we are to impose a duty at all, it must be in respect of all persons whose interests the regulator is to safeguard and promote, including homeless persons, tenants and other users of housing services.

In the light of those concerns, I invite Mary Mulligan not to move amendment 125. If she and the committee believe that a duty rather than a power is required in that regard, I would be prepared to lodge an amendment at stage 3 that would provide for a prescription to be cast in terms of all those whose interests the regulator is to safeguard and promote.

I move amendment 24.

Mary Mulligan: The powers in part 4 that allow the regulator to collect information and conduct inquiries have clearly been designed to facilitate a change to a more risk-based and proportionate system of regulation that draws on self-evaluation and self-assessment. The committee's stage 1 report noted that that reflects a broader trend in the regulation of the public sector in Scotland, but endorsed the view of some stakeholders that self-assessment must be meaningful and robust.

Section 48 requires the regulator to issue a code of practice that sets out how it intends to make inquiries and use the other powers in part 4. That could be helpful in meeting legitimate concerns about an overreliance on self-assessment, but it says very little about the content of the code—it merely suggests that the code

"may, in particular, set out examples of situations"

in which the various powers in part 4 are to be used.

I have a particular concern about the regulation of homelessness services. Inspections have revealed a range of weaknesses in councils' homelessness services, particularly in the assessment of homelessness applications. For example, in the pathfinder inspections of five local authorities, which were published in 2005, two councils were given the lowest—D—grade and two others received a C grade. I am therefore looking for an assurance from the minister that he expects the code of practice to include full details of how the new powers will be used and, where clear weaknesses have been noted in previous inspections, that he will expect performance in those areas to be thoroughly assessed and, if necessary, inspections to be undertaken.

I take on board the comments that the minister has already made and look forward to his response to what I have said. I assure him that I do not seek at any stage to dilute the coverage for tenants as opposed to homeless people—it is clear that both are important; I merely seek to

ensure that the rights of homeless people are recognised as well.

Alex Neil: I am happy to give Mary Mulligan the assurances that she seeks and to discuss with her a better way of achieving things in the bill through an amendment at stage 3 rather than through amendment 125. For the reasons that I have outlined, her proposal is not the best way of doing things. If she accepts that, I would be more than happy to work with her and to lodge an appropriate amendment at stage 3.

Amendment 24 agreed to.

Amendment 25 moved—[Alex Neil]—and agreed to.

Section 44, as amended, agreed to.

Section 45—Information from tenants on significant performance failures

Amendments 26 and 27 moved—[Alex Neil]—and agreed to.

Section 45, as amended, agreed to.

Sections 46 and 47 agreed to.

After section 47

Amendment 28 moved—[Alex Neil].

Amendment 28A moved—[Mary Mulligan]—and agreed to.

Amendment 28, as amended, agreed to.

Section 48—Code of practice: inquiries

Amendment 125 not moved.

Amendment 126 moved—[Mary Mulligan]—and agreed to.

Section 48, as amended, agreed to.

Sections 49 to 51 agreed to.

11:00

Section 52—Performance improvement plans

Amendments 29 to 31 moved—[Alex Neil]—and agreed to.

Section 52, as amended, agreed to.

Section 53—Enforcement notices

Amendments 32 and 33 moved—[Alex Neil]—and agreed to.

Section 53, as amended, agreed to.

Section 54—Appointment of manager for housing activities

Amendment 34 moved—[Alex Neil]—and agreed to.

Section 54, as amended, agreed to.

Section 55—Appointment of manager for financial or other affairs

Amendment 127 moved—[Alex Neil]—and agreed to.

Section 55, as amended, agreed to.

Sections 56 to 61 agreed to.

Section 62—Appointment of new officers

The Convener: Amendment 36, in the name of the minister, is grouped with amendments 37 and 120.

Alex Neil: Amendment 36 adds to the bill a power that section 70A of the Public Services Reform (Scotland) Act 2010 gives to the Scottish ministers in respect of charitable RSLs. The power is useful for non-charitable RSLs, which could find themselves in the situation of having insufficient officers on their board and unable to act unless the regulator intervened.

Amendments 37 and 120 provide the regulator with the power to require an RSL to take out indemnity insurance for someone whom the regulator has appointed to the RSL's board, to minimise the possibility of such a person being personally liable for the RSL's debts. Such a situation could arise if an RSL were at risk of insolvency. There is the potential for governing body members to be held personally liable if an organisation is accused of trading while insolvent.

I propose to say no more about the amendments, but I am happy to provide further details if members wish.

I move amendment 36.

Amendment 36 agreed to.

Amendment 37 moved—[Alex Neil]—and agreed to.

Section 62, as amended, agreed to.

Section 63 agreed to.

Section 64—Transfer of assets following inquiries

The Convener: Amendment 38, in the name of the minister, is grouped with amendment 135.

Alex Neil: Amendment 38 provides an alternative test for the regulator to use as a basis for directing the transfer of an RSL's assets to

another RSL. The amendment gives the regulator the option of transferring assets where there has not been misconduct but there are concerns about the viability of the organisation or the standard of its services. It will allow the regulator to act quickly where it needs to protect social housing assets if, for example, an RSL is in danger of collapse.

Whether the transfer is because of misconduct or mismanagement or on grounds of viability, the regulator must be satisfied that it would improve the management of the assets. This safeguard provides an additional check on the SHR's use of its powers and responds to concerns raised by the Glasgow and west of Scotland forum of housing associations that the provision gives the regulator significant powers.

Amendment 135, in the name of Patricia Ferguson, raises a number of issues. First, there is the point of principle. Parts 1 to 10 of the bill establish the new regulator as a body that operates independently of ministers. That intention is made clear by the provisions in section 6 that prohibit ministers from directing how the regulator performs its functions. Amendment 135 is completely at odds with that principle, which is sound and should not be undermined by making some of the regulator's functions subject to direct ministerial approval.

Secondly, the amendment would create practical problems arising from the fact that the bill provides for ministers to transfer to the new body staff who are currently engaged in the work of regulation. Consequently, and quite deliberately, the new body will through its staff possess the knowledge and expertise necessary to come to informed judgments on all aspects of regulation, including whether a transfer of assets from one RSL to another would be necessary in the interests of tenants.

Given that no comparable expertise or knowledge is available to ministers, I do not see what would be gained by providing for ministers to second-guess the regulator. Indeed, I would go further and say that the need for ministerial approval would lengthen and add uncertainty to the process at what could be a critical time for an RSL. The risk of delay and uncertainty would neither be in tenants' interests nor be welcomed by the private lenders whose support for the sector is of growing importance in the current difficult public expenditure climate. I therefore invite Patricia Ferguson not to move amendment 135.

I move amendment 38.

Patricia Ferguson: Under the Housing (Scotland) Act 2001, a directed transfer of assets must be preceded by an inquiry conducted independently of the regulator. The bill removes that particular requirement. I do not have a problem with that, but the move gives the regulator sole responsibility for carrying out the inquiry and deciding that the ultimate sanction of a directed transfer of assets should be applied. I take the minister's point about the way in which we want the regulator to work, but we are not interfering with the regulator's functions. Instead, we are seeking to ensure that the ultimate sanction is subject to the greatest possible scrutiny.

As a result, I believe that checks and balances in the form of ministerial approval are needed. It is the position under English legislation and there are parallels in Scotland, where ministers—instead of the Accounts Commission, which examines such issues—-can exercise statutory action against local authorities. With regard to uncertainties that might arise over timing, a housing association would have to be in grave difficulties for the regulator to move so quickly to transfer assets. I do not think that the issue should be handled in that way.

For those reasons, I will move amendment 135 at the appropriate time.

Alex Neil: Patricia Ferguson is right to say that a similar provision exists south of the border, but that is not to say that it benefits tenants or the others who are required to be looked after by the regulator.

I reiterate that the proposal will not only undermine the principle of independence but involve a not so timeous process in what might be fairly urgent circumstances. I therefore urge the committee not to agree to amendment 135.

Amendment 38 agreed to.

Amendment 135 moved—[Patricia Ferguson].

The Convener: The question is, that amendment 135 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Ferguson, Patricia (Glasgow Maryhill) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
Mulligan, Mary (Linlithgow) (Lab)

Against

Doris, Bob (Glasgow) (SNP)
McLetchie, David (Edinburgh Pentlands) (Con)
Morgan, Alasdair (South of Scotland) (SNP)
Tolson, Jim (Dunfermline West) (LD)
Wilson, John (Central Scotland) (SNP)

The Convener: The result of the division is: For 3, Against 5, Abstentions 0.

Amendment 135 disagreed to.

The Convener: Amendment 39, in the name of the minister, is grouped with amendments 68, 93 and 108 to 111.

Alex Neil: I will speak first to amendment 39, which deals with the regulation of charitable registered social landlords.

Of the 210 RSLs in Scotland, 154 have charitable status, which allows them to benefit from significant tax breaks, which I hope will continue. It also means that they are subject to regulation by the Office of the Scottish Charity Regulator as well as by the Scottish Housing Regulator.

Under charities law, the charitable assets that are held by a body that is registered as a charity must continue to be used for charitable purposes if they are transferred from that body. Amendment 39 will require the SHR to consult OSCR about the transfer of assets from a charitable RSL, to ensure that those assets continue to be used for the same or a similar charitable purpose. Amendment 68 will also require the SHR to consult the charities regulator before transferring the charitable assets of an RSL that was a charity. I regard that as a sensible approach to ensuring that the interests of both regulators are satisfied.

The other amendments in the group also deal with charitable RSLs. The transfer of ministers' powers to the modernised independent Scottish Housing Regulator will, in effect, mean that it could operate powers of inquiry under the charities legislation—at present, those powers are delegated to ministers—as well as its own powers of inquiry under part 4 of the bill. That would be overly burdensome and complex and could lead to the regulator being subject to challenge in the courts, for example for using powers under the housing legislation rather than the charities legislation, which, in turn, could prevent it from taking swift action to safeguard the interests of tenants. That situation is unhelpful, and I know that RSLs are concerned about the burden of regulation. That is why I asked Professor Russel Griggs and the regulatory review group to look into the area.

Amendments 108 to 111 are technical amendments to remove the duplicate powers of the SHR under the charities legislation. They provide that the SHR and the charities regulator should regulate for their own purposes using their own powers. Given the nature of the two regulatory bodies, there is a need for close working between them. Amendment 93 will require the housing and charities regulators to exchange information, co-ordinate activities and prevent unnecessary duplication in relation to any inquiries that they carry out in respect of charitable RSLs. They will have to agree and publish a memorandum of understanding that sets out how they will work together.

I know that the two regulators already work well together, but it is important for the sector that there is clarity about their respective powers and how they will be used. The proposed provisions will formalise the existing strong working relationship between the two bodies.

I move amendment 39.

Amendment 39 agreed to.

Section 64, as amended, agreed to.

The Convener: Thank you. That concludes day 1 of stage 2 of the Housing (Scotland) Bill. At next week's meeting, the committee will consider amendments up to the end of section 131.

Subordinate Legislation

Public Appointments and Public Bodies etc (Scotland) Act 2003 (Treatment of Office or Body as Specified Authority) (No 2) Order 2010 (Draft)

11:15

The Convener: The committee will take oral evidence from the minister and his officials on the draft order. I ask the minister to make some brief opening remarks.

Alex Neil: The Government is committed to the first round of appointments to the board of the new Scottish Housing Regulator being made under the scrutiny of the Office of the Commissioner for Public Appointments in Scotland. The order will provide for that to happen, by allowing the commissioner to appoint an independent assessor who will scrutinise the exercise from the initial planning to the final recommendations. The assessor will be a member of the selection panel, which will be chaired by a senior civil servant in the Scottish Government.

I have brought forward the order now to ensure that we can undertake the process in full accordance with the commissioner's code of practice and conclude it in time for board members to take up their appointments on 1 April 2011, which is the target date for vesting the new body. In publicising the appointments, I will make it clear that they are subject to the Housing (Scotland) Bill being enacted.

Given the other business before the committee today, I will not say any more at present, but I will of course be happy to answer questions.

The Convener: There are no questions for the minister, so I invite him to move motion S3M-6947.

Motion moved,

That the Local Government and Communities Committee recommends that the draft Public Appointments and Public Bodies etc. (Scotland) Act 2003 (Treatment of Office of Body as Specified Authority) (No.2) Order 2010 be approved.—[*Alex Neil.*]

Motion agreed to.

The Convener: I thank the minister and his officials for their attendance and the evidence that they have provided this morning.

11:16

Meeting suspended.

11:20

On resuming—

Property Factors (Scotland) Bill: Stage 1

The Convener: Agenda item 4 is to take oral evidence on the bill. I welcome the witnesses. Joining the minister is Stephen White, head of consumers in private housing, and Simon Stockwell from family and property law in the civil law division of the Scottish Government. The minister has an opportunity to make some brief introductory remarks.

Alex Neil: Thank you very much, convener. In the interests of time, I will make my remarks very brief. We have outlined our position in the submission and it is clear that we support the aims and principles of the bill. We have worked and will continue to work closely with Patricia Ferguson as the sponsor of the bill to identify the improvements that we believe will be necessary to make it as effective as possible in achieving its objectives. We have already identified to the committee a number of areas in which we believe there is some room for improvement. We have discussed those areas with Patricia Ferguson and I think that we have agreed a way forward.

I am also keen to say that we are happy to share any additional material and research that is made available to us with Patricia Ferguson as the bill's sponsor, and with the committee.

The Convener: Thank you, minister. Are there any questions for the minister?

Jim Tolson (Dunfermline West) (LD): Among the key points that have been highlighted to the committee in evidence is that about the model that is sometimes used, particularly by Greenbelt and some other factoring companies, on land maintenance and maintenance of individual properties. Should the particular difficulties that have been highlighted with the land maintenance model—or Greenbelt model—be addressed in the bill, or is that beyond the bill's scope at the moment?

Alex Neil: We have had this conversation with Patricia Ferguson. If we take Greenbelt as a classic example, the bill covers a lot of Greenbelt's activities, but when such a company owns the land and manages it, the bill is at its weakest. Some issues remain to be addressed in the bill or consequently because it will put some companies in a different situation. The legal point is quite technical, so I will ask Simon Stockwell to expand on what I have just said.

Simon Stockwell (Scottish Government Justice Directorate): As the minister said, and as the committee picked up at its previous meeting, one of the major issues is that Greenbelt generally owns, manages and maintains the land. When we start thinking about issues such as the switching of land maintenance companies, or the switching of companies generally, that makes it more complicated. If Greenbelt continues to have responsibilities for the ownership and insurance of the land, that goes above and beyond the responsibilities that it might have to the homeowners who live nearby. The issue is quite challenging and Greenbelt itself would say that if a move was made to dismiss or replace it as a land maintenance company, agreement would also have to be reached about the ownership of the land.

Jim Tolson: Greenbelt's chief executive gave evidence to the committee a few weeks ago, during which he questioned Greenbelt's role under the bill. He feels that, in some ways, the bill does not cover Greenbelt. Does the minister have a view on that?

Alex Neil: There is no doubt in our minds that the property maintenance and factoring activities of Greenbelt are covered. There is no doubt about that whatsoever.

John Wilson (Central Scotland) (SNP): At last week's evidence session, it was alleged that Greenbelt gets title to ownership for a nominal charge by developers. Whether the bill would cover any future transfer of land based on the fee for which Greenbelt took on responsibility for it and whether the land could be transferred back to the residents in the area was raised. I know that this might diverge slightly from the bill, but the more important issue that was raised last week is whether that type of ownership, by companies such as Greenbelt, is a method of land banking—whether developers are securing, by transferring land to companies such as Greenbelt, possible future use of land and effectively denying development opportunities and the wider community benefit of community ownership of land. That was particularly relevant to some of the examples that we were provided with last week.

Alex Neil: John Wilson raises two valid points. The first, in relation to changes of ownership, is not really within the scope of the bill and therefore would need to be treated as an entirely separate subject.

The second concerns land banking. There are obviously concerns. In last week's debate in Parliament about housing, a member—I think it was a Labour member; I think it was Rhoda Grant—called for penalties for withholding development land for social housing. Land management and so on affects a number of departmental portfolios. My main concern is the availability of land for social housing. We have recently introduced a number of changes, but I think that there is an issue about some developers or landowners making land available for social housing. However, that is also outwith the scope of the bill. John Wilson is right to raise the matter as an issue of concern for a housing minister, but it is for another day rather than for this discussion.

Alasdair Morgan: One issue that came up at last week's meeting—it has been partly addressed by Mr Stockwell—is the minister's power, in extremis, to deregister someone who is on the register. I want to address two types of case. The first is a case such as Greenbelt, when it owns the land. If we get to the stage of wanting to remove a company from the register, which removes it from the register entirely—not only in relation to one area where it acts in this way but throughout Scotland; it is all or nothing—it is clear that relationships have totally broken down. In those circumstances, it is difficult to see a happy arrangement to buy the land from the company arising. It is also difficult to see where the funds to buy the land would come from. So what, exactly, happens? The company is operating the land, which is not necessarily amenity land—it may be land that is necessary to sustain a sustainable urban drainage system—and it has an obligation to maintain that land, but by deregistering it you would remove its only source of income. It strikes me that in such a situation you, as a minister, would probably not want to remove a company from the register—and that you never would. So is the power just a paper tiger?

Alex Neil: That is one of the issues that we have raised with Patricia Ferguson, as the member in charge of the bill, and it is one that we think the committee has to spend some time on, because there is a great deal of concern about the consequences—direct and unintended—of deregistration. For example, if you deregister a local authority, which is quite possible under the bill, what happens? There is no answer. We have had internal discussions in the Government and there is no easy answer to the question, "What would happen?" One of the areas of the bill that needs further thought is what happens after deregistration.

Mr Morgan is right to say—it is inevitable—that if the bill does not make clear what would happen after deregistration and which additional powers and resources may be available to deal with the situation, ministers in any Administration may be reluctant to use that power. In that sense, it could be self-defeating. As we have discussed with Patricia Ferguson, it is an area in which a great deal of further thought and consideration is needed.

11:30

Alasdair Morgan: The second case involves what might happen if you want to deregister a more general and traditional property factor that may be factoring a variety of properties.

Two dangers arise. First, the tenants in some of the properties may be very happy with their factors—it may be that just one or two tenants have a problem. If you deregister the factor, you would do so for all the properties and all the tenants. Even if you were to assume that all, or the vast majority, of the tenants wanted that particular factor out, the agreement of all the tenants in a particular block may be required to take on a new property factor. I do not know whether that would be the case or not; I suppose it would depend on the terms of the tenants' leases or agreements, but that has not been made clear to us.

Secondly, if you deregistered the current factor and the tenants subsequently could not reach agreement about employing a new factor, but some of them still wanted one, would that be a problem? The tenants would clearly be able to go it alone, which happens in Edinburgh anyway to a large extent, but is that an issue that needs further consideration?

Alex Neil: It is a potential issue, and it comes under the category of unintended consequences of deregistration. In the longer term there is a need for new legislation. Whoever wins the election next year should consider that with a view to making it much easier for people to switch factors.

The situation that Mr Morgan describes is fairly common. I am currently dealing with a constituency case in North Lanarkshire that relates to a factor that operates across the United Kingdom. Some groups of residents are extremely happy with that factor, but there is one particular project where the tenants are not happy at all. If the factor were deregistered under the bill as it is currently drafted, the tenants who are happy would suffer as well, as they—as well as the ones who are not happy—would lose their factor.

More thought is needed on whether we can deregister a factor in relation to particular properties, or deregister the company in total. More important, we need to consider the consequences of deregistration. One danger is that people end up with no factor at all because they cannot agree on who the successor factor should be. There are no easy answers, but that issue must be addressed and other options must be made available if the bill is to be effective.

David McLetchie: I have some questions about the cost of the registration scheme. This morning, as members will recall, we heard in relation to the housing regulator about the Neil doctrine, which is that the regulated should never pay fees to the regulator. Can we take it that a further example of that doctrine will be that none of the factors to be registered will be required by the Scottish ministers to pay any fee to the ministers to contribute to the cost of maintaining the register?

Alex Neil: That will be for the Parliament to decide, but there is a practical issue with regard to the registration fee. The Convention of Scottish Local Authorities has not formally submitted evidence to the committee so far, but I know that a number of local authorities and RSLs believe that they should not have to pay a fee. If you take those organisations out of the equation, the fees for those that are left—the private sector factors—would be extremely high in relative terms. As we have noted in the policy memorandum, about 200 factors operate in Scotland. I think I am right in saying that more than 100 of those are in the local authority or RSL sector.

The Glasgow Housing Association factors 26,500 properties. Of the others, 44 private factors have registered under the voluntary accreditation or have declared an intention to do so. The bill intends to catch what I call the rogue factors.

There is an issue around the fees. If we exclude local authorities and housing associations, the knock-on impact is that the fees on the remainder will be very high.

David McLetchie: Indeed, but the principle behind my question is not about excluding one category of fee payer or another; it is about the doctrine that you enunciated earlier, which is that no one should pay a fee. In other words, is the Scottish Government happy with the proposition that the costs of running the registration scheme for the Scottish ministers should be borne entirely from the Scottish budget and not require a contribution from any registered person?

Alex Neil: Without undermining the Neil doctrine, I point out that that already happens in parallel with the landlord registration scheme, whereby the landlords pay a registration fee. I am not suggesting that the Neil doctrine can be universally applied at this stage.

David McLetchie: Yes, but the landlord registration scheme is run by the local authority; I am talking about a scheme that, according to the bill, will be run by the Scottish ministers. Is that not correct?

Alex Neil: Yes, that is correct.

David McLetchie: So you are free to apply your doctrine if you so choose.

Alex Neil: The other practical problem is that we must consider our priorities and, given the public spending cuts that are coming from London, there will be very little money left to subsidise any

additional schemes other than the ones that we are already funding.

David McLetchie: Indeed, and that makes one wonder why you moved amendment 2 to the Housing (Scotland) Bill earlier this morning. Never mind—the logic of it escapes me, but no doubt it never escapes you, minister.

Let us move on to the funding of dispute resolution. Can we clarify who is funding all that? Is the Scottish Government content with the proposition that the costs of dispute resolution that arise from the mechanisms that the bill proposes should be wholly funded by the Scottish Government, or does the Government take the view that those who bring disputes to the homeowner housing committees should pay some kind of fee, as at least a contribution towards the costs of running the dispute system?

Alex Neil: In the Property Factors (Scotland) Bill as it stands, it would be paid for by the Government. I have discussed this with Tricia Ferguson, too. There is a wider issue about how disputes are handled in the whole housing sector. Recommendations were made last year for the establishment of a dedicated court to deal with housing matters. There is also the operation of the private rented housing panel to consider—and a number of other procedures relating to evictions and so on.

I am not dodging your question. Irrespective of what happens with the Property Factors (Scotland) Bill, there is a need to streamline dispute procedures in the housing sector to make them more cost effective, probably fairer in some respects, and more efficient, with a quicker response than can be the case under some of the current arrangements. In my own view, there is a need in any case to consider reform of dispute procedures.

As the bill stands, the Scottish Government would meet the cost of disputes. That is one area on which we seek the committee's comments in its stage 1 report. Whether the cost estimates are sufficiently robust is another.

David McLetchie: If, in its report, the committee accepts that part of the bill as it stands and it lays the cost of the dispute mechanism on the Government, would the Government accept that proposition?

Alex Neil: At the moment we have no intention to amend those provisions.

David McLetchie: So that is a yes.

Alex Neil: The committee is at a very early stage in taking evidence on the bill. We know that some dispute procedures can be expensive. Once we have heard all the evidence, we will need to be sure that we are not picking up a blank cheque.

David McLetchie: Are you content with the costs that the promoter of the bill has estimated for running such a scheme?

Alex Neil: We have no problems with any aspect of that at the moment.

David McLetchie: That is fine.

I have a couple of questions about switching, which is not covered in the bill, but which many of us think is pertinent to achieving higher standards and giving more rights to property owners and tenants. As I understand it, we have some legislation in the Tenements (Scotland) Act 2004 and the Title Conditions (Scotland) Act 2003 that facilitates switching, but there is no comprehensive provision. It is debatable whether the Title Conditions (Scotland) Act 2003 is applicable in switching situations and, as I understand the Tenements (Scotland) Act 2004, it basically provides a default mechanism when there is no provision in the title deeds. Is it not the case that we require some kind of comprehensive legislation that facilitates switching—whether or not there is something in the title deeds—and, if necessary, overrides the current provisions, which do not facilitate consumer choice?

Alex Neil: As I said, I am attracted to that proposition, because competition in the sector would be a good safeguard for the people who are the end users and who have to pay the factors. If it was relatively easy to switch factor, that would be a real incentive for factors to take complaints seriously. I am not saying that that is the total solution and I still think that the main provisions in the bill are valuable, but the ability to switch factor fairly easily could be a powerful tool for the consumer.

David McLetchie: What are we waiting for? Why do we not have switching provisions in the bill? Why have we not had them in some of the extensive pieces of housing legislation that the Government has introduced? The issue is not exactly new.

Alex Neil: No, it is not new—and it was not new when the member's party was in power or when previous Administrations were in power. The issue is not within the scope of the bill. Obviously, the question has to be put to the promoter. As I have already said, the time has come for us to consider legislation in the area. If we can get a consensus in the Parliament on that after the election, that would be extremely helpful. The ability to switch a factor easily would be a useful reform measure that would be extremely beneficial to the consumer.

The Convener: I have a couple of bids for supplementary questions on switching—one from Bob Doris and one from Patricia Ferguson.

Bob Doris: People must be able to make an informed choice if they want to switch from one company to another, whether it be their energy supplier or whatever. Last week, we heard that many owner-occupiers have to do a lot of Miss Marple work to figure out what percentages they pay in management fees to factors. Whether we do this in the bill, the forthcoming private housing bill or future proposed legislation in the next session of Parliament, there is a strong need for standardisation of the bills that factors issue to their customers so that people can see easily and clearly where the charges are and what they are. They should be benchmarked against the industry standard; they will be meaningless unless people can compare suppliers. If we want competition, surely that is essential.

11:45

Alex Neil: Absolutely. If we had a bill to facilitate switching, I presume that it would need to address many of those issues. However, when we start talking about charging we can go into the realms of consumer protection legislation, which is not a devolved matter. We must be careful, because we must work within the competences of the Parliament.

In our submissions to and discussions with the UK Government on housing matters, I have pointed out that although there are many things that we would like to do in housing legislation, we run into difficulty when we get into the grey area of what is devolved and not devolved with regard to consumer protection issues. Let me give you a very good example. Last year, I had to go before the Equal Opportunities Committee to explain how, if one wished to make adaptations for a disabled person, it could be done under housing legislation if there were agreement between the occupiers in the tenement, if there were an overarching landlord or whatever, but how, if no such thing existed, the matter was reserved. These are some of the difficulties that we are working with, particularly with issues surrounding factors, some of which touch on consumer protection legislation.

Bob Doris: This is not a cheeky supplementary, convener, but I would like to clarify whether the minister is saying that the Parliament might not have the power to standardise billing from factoring companies.

Alex Neil: Some specifics with regard to charging could be open in that respect. However, I think that with the bill's code of conduct provisions we can legitimately and within the Parliament's powers build in certain requirements. I have made it clear in my discussions with Patricia Ferguson that the code that was published under the proposed voluntary scheme would be acceptable as the code that the bill would provide for in law. That would allow for financial transparency.

The Convener: It is time, I think, to switch to Patricia Ferguson.

Patricia Ferguson: On the switching of factors, which is a problem for many people, has the minister given any thought to the fact that often the problem is not that there is no mechanism for switching but that people do not comply with it? Often there is a lack of involvement by owner occupiers, or the people in the properties might be an absentee landlord's tenants. No matter what criteria are used, it might always be very difficult for those who stay and have an interest in a property to effect change.

Alex Neil: Absolutely. As I said in response to Mr McLetchie, the issue is not covered in this bill, and indeed has not been tackled by any Government, because of the complexities of dealing with it effectively, some of which you have just highlighted.

Mary Mulligan: As a quick supplementary to Alasdair Morgan's questions on deregistration, I wonder whether, given that they would be responsible for registration or deregistration, ministers would be amenable to the proposal that they suggest alternative factors to cover temporarily while the residents got themselves organised and found a replacement. After all, deregistration could leave people without the services that they require, particularly if we are talking about a lift in a block of flats, a SUDS pond in a development or something else that you would not want to neglect for any period of time.

Alex Neil: I would really have to think about that, because such a move might have implications. My initial reaction is that the local authority or similar body would need to take the default position on an interim basis. It would be difficult for ministers just to impose a new factor on residents without first going through a fairly complicated tendering procedure. It could, in fact, complicate things a lot.

Of course, if we were to decide that the local authority was the right organisation to take on this particular role, we would have a real problem if an authority itself had been deregistered. Your proposal raises a whole host of issues that require a great deal more thought and research before I can give a definitive reply.

Mary Mulligan: I gave the example off the top of my head, so I am happy for you to think about the issue in more detail. What happens in the interim period after deregistration is clearly an issue.

My substantive question is on issues that residents have raised with us concerning their

knowledge of factors. You have referred to the code of conduct. A number of residents have told me that they did not know that when they bought their property they were entering into a relationship with a factor, and that they were not conscious of the responsibilities that that involved. The issue affects both new-build flats and whole new estates. Does the bill address it sufficiently?

Alex Neil: The bill tries to deal with the issue. I should have thought that home reports would mention such arrangements, because they should include all financial obligations relating to the property. We will look at the issue to see whether we can do more. The UK consumer code for home builders includes such provisions, but it is a voluntary code. I will look into whether factoring arrangements are covered in Scottish home reports, and, if they are not, whether we should ensure that they are. That is a reasonable suggestion.

Mary Mulligan: That would be really helpful. I have been approached by residents who were in their property for three years before they discovered that they had a factor. They have back bills to pay, but they do not know whether the work was done in the first place. The issue has been raised in the Parliament, in a debate to which Mr Ewing replied. Some way of ensuring that residents are aware of their rights and obligations is important in developing the relationship with factors that we want to see established.

Alex Neil: Like burdens, such rights and obligations are normally set out in the title deeds. If I were buying a flat, I would ask whether there was a factor, but some people may never have lived in a flat before and may not be aware of that dimension. The issue is worth pursuing, so that we can see whether more provision needs to be made in home reports.

Malcolm Chisholm (Edinburgh North and Leith) (Lab): I am sorry that I missed the first two or three minutes of the discussion. The minister will understand that I am here only for this item—I am not a member of the committee. Can you confirm that you agree that a statutory register is needed? If so, what relationship do you envisage between the register and the work that has been done on the voluntary accreditation scheme? That is the more interesting question.

Alex Neil: I hope that they will be complementary. I have discussed the matter with Patricia Ferguson, the bill's sponsor. She will correct me if I am wrong, but it appears that the code that was drafted as part of the original proposed voluntary accreditation scheme will fit the bill—literally—as the code that the bill will implement. That is a good example of the interaction between the two.

Malcolm Chisholm: Can you provide an update on the accreditation scheme? Is work on it still under way, or are you waiting to see what happens to the bill to advance it?

Alex Neil: Where the scheme eventually goes depends on what happens to the bill. We will not spend more money on it until we get clarification on the progress of the bill.

Malcolm Chisholm: Do you accept that the scheme that has been developed could be translated into a code? Some witnesses have said that the bill would require only minimum standards whereas the code is supposed to set desirable standards. I do not accept the distinction, but I seek confirmation that you think that the two could serve the same purpose.

Alex Neil: The industry itself has been heavily involved in preparing the code, so it would at the very least be a good starting point for the code that is provided for in the bill.

Malcolm Chisholm: Okay. That is positive.

What kind of dispute resolution mechanism was proposed when you were thinking about the voluntary accreditation scheme? How did dispute resolution figure in that?

Alex Neil: I accept that dispute resolution is another difficult issue. Our preference is some kind of ombudsman system. As a result of our discussion with Patricia Ferguson last week, we have looked at how various ombudsman systems operate. I am happy to share that research with the committee. There is quite a large number of ombudsman systems in the private and public sectors, and our view is that it is probably easier and simpler to have an ombudsman system than to have complex machinery for settling disputes.

Malcolm Chisholm: Would there be a new ombudsman, or are you talking about an existing ombudsman?

Alex Neil: That would need to be decided. Our alternative suggestion of resolving disputes through an ombudsman has not been accepted. We are continuing to research in co-operation with Patricia Ferguson to find out whether there is a practical way of doing things.

Malcolm Chisholm: You refer to a complicated system being proposed in the bill, but do you accept that the private rented housing panel has been a successful mechanism and that what has been proposed is based on it?

Alex Neil: Yes, but the bill would quite substantially widen its remit, of course. As I said earlier—I do not know whether Malcolm Chisholm was in the room when I said this—we need to reform how we settle disputes right across the housing sector. Whether we are talking about

factoring, landlords, private rental issues, evictions or antisocial behaviour going to the sheriff court, it would be much easier if we took a more streamlined approach to settling disputes right across the sector.

Malcolm Chisholm: That may well be true, although it may be difficult to come up with that within the timescale for the bill.

Alex Neil: I am not suggesting that.

Malcolm Chisholm: We have to decide something for the bill. Does not research indicate that the private rented housing panel has been very successful?

Alex Neil: I think that you referred to research at last week's meeting. We were not aware of that research. We researched to find out whether there has been research and found out that there is none. I do not know who you quoted last week.

Malcolm Chisholm: I did not refer to that last week.

Alex Neil: Somebody did.

Malcolm Chisholm: Somebody else might have done. However, I shall try to send the research to you.

The Convener: I do not want to interrupt, but—

Malcolm Chisholm: I am nearly finished, convener. I know that you will not let me come back if I go on for too long.

Obviously, switching has become a major issue. I will throw in my tuppenceworth. I have already consulted many of my constituents about switching. They support the bill, but the switching issue has come up. My impression is that the majority of them simply want to take the responsibility themselves. I am not sure what the problem with that is. If they were notified that their factor was going to be deregistered within a certain timescale, it is not clear to me why they could not appoint somebody else.

Alex Neil: It depends on issues that Patricia Ferguson raised earlier relating to the legal complexities involved and on agreement being reached, which is not always possible.

Malcolm Chisholm: Okay. I will not pursue the matter at the moment, but I do not think that the obstacles are insuperable, let me put it that way.

Alex Neil: Perhaps people in Edinburgh are a lot friendlier than people in other parts of the country. However, as Patricia Ferguson has said, such situations are much more complex than one might believe.

The Convener: We have all had the opportunity to ask questions, but Alasdair Morgan, David McLetchie and Mary Mulligan want to ask more. Questions should be brief.

Alasdair Morgan: Obviously, a voluntary code of conduct can have in it whatever the volunteers want to sign up to, but, given what the minister said earlier about the limitations of devolved power, would that place any restrictions on what could be put in a code of conduct for property factors that ministers would lay down under the bill? Could you put pretty much anything that you wanted to into that?

Alex Neil: The code of conduct would, of course, be dealt with under the affirmative resolution procedure in the Parliament, so it would have to be within the Parliament's devolved responsibilities. I was specifically talking about issues that Bob Doris touched on in his question about charges and various other aspects of consumer protection. We would need to be sure that any primary or secondary legislation that we proposed was within the Parliament's remit.

Alasdair Morgan: Do you have a copy of the draft code of conduct?

Stephen White (Scottish Government Housing and Regeneration Directorate): We will ensure that the committee has the code of conduct developed for the voluntary accreditation scheme. A consultation on that has just ended, so we will be able to update it soon.

The Convener: That would be helpful.

12:00

David McLetchie: Minister, I think that I heard you say in response to an earlier question that you would look at the contents of home reports and the information that is provided on factoring services. I invite you to undertake a wider review of the operation of home reports with a view to ridding people in Scotland of such an expensive, superfluous and wholly unnecessary burden on the smooth operation of the Scottish housing market. That would be met with wide acclaim and would prove that you are your own man and not one to follow sheepishly in the steps of the previous Scottish Executive.

The Convener: Given that that question has nothing to do with the business that is before us, I ask the minister to resist the temptation to answer it. However, if he really wants to do so, he should remember that we expect to finish by around half past 12. He could pick up the discussion with Mr McLetchie over lunch if he wishes to.

Alex Neil: We have completed a review of home reports. The conclusions of that review may not be to Mr McLetchie's liking, but we will publish them in the not-too-distant future.

The Convener: I am sure that he will scrutinise them with interest, minister.

Mary Mulligan: I have a brief supplementary question about Malcolm Chisholm's suggestion relating to residents introducing their own scheme. Residents groups have frequently suggested that local authorities should pick up the responsibility for ground maintenance in particular. Do you have any comments to make on that?

Alex Neil: I doubt that local authorities would agree to that, given the current situation. We have had informal discussions with COSLA. It is a pity that COSLA has not yet come forward with its views, as it is clear that the opinions of local authorities as the strategic housing authorities and authorities that are often involved in factoring would be extremely helpful. The committee may want to invite COSLA to give oral evidence, as issues that we have discussed will have a direct impact on local authorities' work.

The Convener: As there are no more questions, I thank the minister and the witnesses for their time and the evidence that has been provided.

Agenda item 5 will be taken in private.

12:02

Meeting continued in private until 12:21.

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