



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

Wednesday 19 January 2011

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CONTENTS

	Col.
SUBORDINATE LEGISLATION	3953
Non-Domestic Rates (Levying) (Scotland) (No 3) Regulations 2010 (SSI 2010/441)	3953
PROPERTY FACTORS (SCOTLAND) BILL: STAGE 2	3972

LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

2nd Meeting 2011, Session 3

CONVENER

*Duncan McNeil (Greenock and Inverclyde) (Lab)

DEPUTY CONVENER

*Bob Doris (Glasgow) (SNP)

COMMITTEE MEMBERS

*Patricia Ferguson (Glasgow Maryhill) (Lab)

*Alex Johnstone (North East Scotland) (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)

Alison McInnes (North East Scotland) (LD)

David McLetchie (Edinburgh Pentlands) (Con)

*attended

THE FOLLOWING ALSO ATTENDED:

Alex Neil (Minister for Housing and Communities)

THE FOLLOWING GAVE EVIDENCE:

Colin Borland (Federation of Small Businesses)

Tom Ironside (British Retail Consortium)

Fiona Moriarty (Scottish Retail Consortium)

CLERK TO THE COMMITTEE

Susan Duffy

LOCATION

Committee Room 6

Scottish Parliament

Local Government and Communities Committee

Wednesday 19 January 2011

[The Convener opened the meeting at 09:59]

Subordinate Legislation

Non-Domestic Rates (Levying) (Scotland) (No 3) Regulations 2010 (SSI 2010/441)

The Convener (Duncan McNeil): Good morning, and welcome to the second meeting in 2011 of the Local Government and Communities Committee. As I usually do at this point, I ask members, as well as members of the public, to turn off all mobile phones and BlackBerrys.

Under agenda item 1, we will take evidence on the Non-Domestic Rates (Levying) (Scotland) (No 3) Regulations 2010. I welcome the witnesses who have joined us this morning. Colin Borland is public affairs manager for Scotland at the Federation of Small Businesses; Fiona Moriarty is the director of the Scottish Retail Consortium; and Tom Ironside is director of business and regulation at the British Retail Consortium. If the witnesses are in agreement, we will go straight to questions from the committee and proceed on that basis.

I invite members to question the witnesses.

10:00

Alex Johnstone (North East Scotland) (Con): I see that the floor is mine, so I will go for it. I am a new member of the committee—the rest of them are throwing me in at the deep end.

The Scottish Parliament and Government have been at great pains to ensure that the small retailer has been held up against larger competition. A number of measures have been taken to achieve that. Does the panel believe that it is the right thing to defend the interests of small retailers against large retailers? Has the proposal that is before us had any role to play in that?

Fiona Moriarty (Scottish Retail Consortium): We have had serious concerns about the Scottish Government's presentation of this policy to the Parliament and beyond. It has been confusing and misleading. The proposal has been presented as an out-of-town supermarket tax to support town centres and small businesses. Before we go any further, we would like to clear up a few things. I will also cover the point about small business support.

The policy will clearly have an impact on all types of retailers in all locations, including many well-known high street names—not just supermarkets. It will impact on town centre and city centre retailers, and the moneys that are raised will disappear into local government funds rather than being ring fenced for town centres. The levy will not give us a level playing field between large and small premises, as has been claimed by the Scottish Government.

The majority of small retail businesses receive the small business bonus, and we very strongly support that policy. All our large retailers contribute to that via the large business supplement.

Colin Borland (Federation of Small Businesses): That is absolutely right—as Fiona Moriarty has said, the small business bonus has made a real difference to those members who receive it, and we should never lose sight of that. However, about half of those of our members who pay business rates cite them as a major barrier to the continued success and viability of their business.

Turning to specific sectors, the licensed trade pays about 8 per cent of its turnover in business rates, whereas the figures from the Scottish Government, which were produced in support of the regulations, suggest that the figure is about 2 per cent for the largest retailers.

I take the point about needing to be careful about the unintended consequences of such measures, but the publicly available figures and statistics indicate that about 86 per cent of the levy that would be raised under the proposal would come from the big four. If we include B&Q, that figure rises to about 92 per cent. Therefore, I would need to be convinced about the idea that the measure will effectively be an attack on our city centres.

Tom Ironside (British Retail Consortium): The interests of large and small retailers are closely entwined. Large town centre retailers act as anchor stores, which footfall-draw customers into urban shopping areas. They act as a magnet for people from a broad geographical area, and they drive footfall among the small and medium-sized retailers that are located alongside them. In such situations, it is vital that the viability of large town centre retailing is not undermined.

Alex Johnstone: You all seem to accept that there is a need to ensure that small retailers are competitive against large ones. Do you think that the measures before us have a genuine role to play in achieving that objective, or would a further entrenchment of and better funding for the existing policy do that more effectively?

Fiona Moriarty: It is clear that the funds raised will disappear into local government funds. If the policy had been presented or managed differently, and if there was a guarantee that the £30 million could be ring fenced for town centre or city centre development, for support for small retailers or for the retail mix, our position might be somewhat different. However, there is no guarantee, and I repeat that the money will disappear into local government funds rather than being channelled back into supporting small businesses.

A really important point is that we already fund the small business bonus scheme, which we feel is important.

Tom Ironside made the important point that, to have vibrant town centres, we need a mix of retailers—large, medium and small. Any town or city centre manager throughout Scotland will say that they want a mix of all three types of retailers.

Colin Borland: I agree with the Scottish Retail Consortium that the proposal is not the complete answer. We have to consider what the money is to be used for. I accept that we do not have a system of hypothecation in the truest sense in Scotland to allow us to ring fence the money. However, we made the point in our written evidence that, once the immediate pressing economic situation has eased, we would like the money to be invested in rebuilding our town and city centres.

Alex Johnstone: Do you agree with the suggestion that the measure is basically a revenue-raising one that can be of only marginal benefit to smaller businesses?

Colin Borland: There is also a question about fairness and proportionality and whether we agree with a system of progressive taxation whereby those at the top pay a higher rate than those at the bottom. Fiona Moriarty makes the point that, to an extent, we have that with the large premises supplement, which is 0.7p on properties with a rateable value over £35k. That raises about £37 million. The notional cost of the small business bonus scheme—without going into the details of why this is not the complete figure—is about £117 million for this year and for next year it is projected to be £128 million, so it is not the total answer.

Small businesses are still struggling because they pay a greater percentage of their turnover in rates than the largest retailers pay. The issue is not simply about raising revenue; it is about levelling the playing field somewhat and making it easier for small businesses to compete. If the net effect is, as I have read in the press, that it becomes less attractive to build large out-of-town retail stores and more attractive to invest in smaller developments in town and city centres, that will not be the worst outcome for our town centres or for the economy as a whole.

Fiona Moriarty: It will be a serious outcome when there are large vacant units in our towns and city centres across Scotland that will not be filled because doing so is not economically viable. Town and city centre managers, and others who know a lot more about the viability of town centres and how properties are let and leased, are seriously concerned. New stores that have a rateable value over £750,000 will be harder to shift and existing larger footprint stores that become vacant will be hard to shift, too. There will then be gap sites in some of our key cities and towns, which is a worry because there will be a spiral of decline.

The Convener: Do you see the measure as a threat to jobs and investment? You seemed to say that, if the take of £30 million was ring fenced and was genuinely used to support businesses, you would be more amenable to the proposal. I am just trying to get clarity on whether the issue is how the £30 million would be used, or whether you feel that the take is bad in the first place because it will have a detrimental impact on jobs and future investment decisions.

Fiona Moriarty: Our basic position is clear: we feel that the measure is unfair, unjust and inequitable and that it targets one part of one sector, which will be one of the key sectors in driving investment growth and opportunities across Scotland in the next few years. If you were to push me to give our fallback position and to say whether we would support the proposal if the money was ring fenced, in that situation, we would probably be less vocal in our opposition, although we would not support the proposal. At least there could be some justification, because the money would be put back into our town centres and, of course, my members—mid-tier and small members—would benefit from that. However, to be clear to the committee, our absolute position is that we feel that the proposal is unfair and unjust and that it targets one sector to penalise us in many ways.

The Convener: Would it be more acceptable to you if the levy was spread over a greater number of people or businesses and if the Cabinet Secretary for Finance and Sustainable Growth assured you that the money would be targeted at supporting businesses and services that local government provides to businesses, as he said in his statement on 9 December?

Fiona Moriarty: We would understand the rationale better. None of us wants to pay more business rates and certainly no business of any type wants to pay more business rates in the current economic climate, when margins are tight. I keep asking myself, and in group discussions our members keep asking me, why the Scottish Government has targeted one sector and why it has not looked at other successful and profitable

sectors, such as oil and gas, other utilities and whisky. I leave the question open for other people to answer.

The Convener: The cabinet secretary will give evidence to the committee next week. What discussions have you had with him on the range of other options? What has he said about all that?

Fiona Moriarty: It has been well documented that we met the cabinet secretary last Thursday, after we called for an emergency meeting of the retail forum—that is the standing group that we have with the cabinet secretary and Mr Lochhead—to deal with a range of issues to do with some of our larger members. Mr Swinney presented his arguments and we presented ours, but we probably did not move on much. Our feeling is that it is not the sector's job to come up with solutions to budgetary shortfalls; it is our job to present the reasons why it is inappropriate to target the tax on our sector.

The Convener: Is the cabinet secretary aware that you would be less vocal in your opposition and more understanding if the burden was being distributed more fairly? Is he aware of that position?

Fiona Moriarty: He cannot have failed to be aware of it, because I have been quoted on it in the press and our members have put it forward. Let me clarify that we feel that the tax is unfair—full stop. It would be marginally more palatable if the money was ring fenced and could be seen to be going to some other area, but our fundamental position is that the tax is unfair and should not be targeted at one part of one sector in the Scottish economy.

Tom Ironside: We said in evidence to the Scotland Bill Committee that we are not opposed to additional revenue-raising powers, but it is vital that powers are used responsibly and equitably. The way in which the current business rates proposals have come forward does not satisfy those criteria.

Colin Borland: Tom Ironside and the SRC made a good point about whether it is valid to target retail. I refer to what I said to Mr Johnstone about fairness and proportionality. The issue is pronounced in the retail sector, but it might well be that similar unfairness pertains in other sectors. If that is the case, by all means let us investigate. As I said, the new approach is not a complete answer or the be-all and end-all. The business rates system in Scotland is incredibly complicated and there is an awful lot wrong with it, which we could be fixing. However, this is a step along the road, and retail seems to be a good place to start.

Jim Tolson (Dunfermline West) (LD): I am grateful to the panel members for their written

submissions. The FSB said of the proposed supplement:

“this move is another step along the road to a fairer system ... and we believe there is scope to look at the question of proportionality in the round.”

Will you elaborate on that, Mr Borland? The small business bonus scheme helps many of your members, as you said. We want small businesses in our town centres to survive and prosper, but there is no need to strangle the larger businesses, because if paying the supplement means that their businesses are not viable and they pull out there will be an effect on the smaller businesses that make up your membership. Is not the Scottish National Party blocking investment in town centres and bringing uncertainty to our towns and cities?

10:15

Colin Borland: You are right—the small business bonus has made a huge difference to those who receive it—but as I said earlier the most recent figures from our members show that, for those who pay them, rates remain a significant barrier to their business success.

I am sorry—what was the second part of your question?

Jim Tolson: It was about whether the introduction of this Scottish statutory instrument will not only strangle larger businesses but have an inverse disproportionate effect on smaller business.

Colin Borland: I am not entirely sure. Some of the FSB's research into the impact of the creation of large new supermarkets on areas shows a rise in the amount of vacant floor space and a drop in trade for local businesses.

Perhaps I can refer briefly to two parliamentary questions, S3W-18136 by David Whitton and S2W-21075 by Nanette Milne, both of which asked about the number of independent retailers in Scotland since 1998. The number of independent greengrocers, for example, has gone from 1,160 in 1998 to 400 in 2008, while the number of butchers has decreased from 1,300 to 755. The question is whether investment in out-of-town shopping centres is actually good for business—or indeed good for local small business.

Jim Tolson: We can all quote various figures but it is quite clear that this so-called Princes Street levy will hit not only out-of-town supermarkets but many large retailers in our towns and city centres and damage their viability. If this SSI goes forward, they might either pull out or not bring forward planned investment, which of course would also have an impact on your members.

Colin Borland: I am perfectly willing to be corrected, but I have not yet heard anyone say

that they will pull out of Scotland as a result of this legislation and I remain to be convinced that anyone would genuinely abandon a profitable expansion programme. If the net result is that it is less attractive to build a large out-of-town retail park and more attractive to invest in a town centre, that will not be the end of the world for small businesses or, indeed, the Scottish economy.

Jim Tolson: I am grateful for those comments, but I am a bit surprised by them. I genuinely feel that if we support this SSI there is a likelihood that many of your members will be hit, along with the big retailers.

However, let us move on. In written evidence, the Scottish Retail Consortium said in relation to the proposal:

“a number of SRC members have highlighted the need to more fully understand its legal implications.”

Is the SRC suggesting that the proposed large retail supplement is not a legal measure and, if so, on what grounds?

Fiona Moriarty: As you would expect, we have to pursue and examine all options. In any case, the regulations are subject to due parliamentary process, which means that we have 40 days before they become law, and until then we will concentrate on feeding into that.

We have taken initial soundings on state aid issues but we will not progress those until we are clear about the outcome of the parliamentary procedure. However, if the convener considers it appropriate, we will be more than happy to share with members through the clerks any further details as and when we get them.

The Convener: Thank you.

Bob Doris (Glasgow) (SNP): Having listened with interest so far, I get a sense that the larger retailers are overegging the argument. Let me quantify some of the figures: the levy will affect an estimated 225 stores, more than 90 per cent of which will be the large four supermarkets and B&Q. That leaves only a couple of dozen others.

I want to consider the impact that the levy will have on the current operating business of those large four supermarkets, plus some city centre retailers. I do not see House of Fraser, for example, pulling out of Glasgow because of the levy—that is not credible. I understand and accept that those businesses do not want to pay more money in taxes, but to suggest that they would not endure is frankly ridiculous. For Tesco, just over one and a half hours of trading across Scotland would pay for the levy; for Asda, it would be three and a half hours; for Morrisons, just over two hours; and for Sainsbury's, just one hour. Do you really think that one hour of trading will impact on a company's current market?

Fiona Moriarty: I will take that question, Mr Doris, and start with your last point first. It is important to understand the difference between turnover and profit; that is an important distinction. We need to remember that this is a tax on individual stores, which means that it will impact on the viability of those stores. We must put it in that context, whether an individual store is located in a city centre, a town centre, on the edge of town or out of town.

It is unhelpful to keep focusing the debate on supermarkets. You would expect me to say that, but I genuinely believe it. It moves us away from the basic principle that this is a targeted unfair tax on one part of one sector, with no clear rationale, no business regulatory impact assessment, no prior consultation and a whole raft of unintended consequences that I am sure we will discuss as today's session progresses.

I am more than happy to talk about the profitability and viability of stores if you want to do that, but to keep focusing on the supermarkets, and to use statistics that are frankly unhelpful in terms of trying to compare turnover with profit, does not help us to understand the situation or give it any clarity.

Tom Ironside: To augment that, it is important to emphasise that property costs are the second-largest line after employment costs on an individual company's profit and loss sheet. Any uplift in property costs is clearly a serious matter for the companies concerned, and they will consider a store's viability on that basis.

Business rates are a very significant component within that property cost, and some companies are anticipating uplifts in their business rates bills of between 30 and 35 per cent on a given store.

I do not want to trade statistics back and forth, but I will put some more flesh on the bones. In Glasgow city centre, for example, 42 retail premises will be affected by the proposed levy, and 28 of those are not the big four supermarkets. The levy will not be targeted in the way that is being presented.

The Convener: Does Mr Borland wish to add anything?

Colin Borland: No, the others are best placed to comment.

Bob Doris: I agree that it is unhelpful to your argument for me to give statistics on how many hours of trading it would take to raise the money to pay for the levy. It is unhelpful for me to point out the basic stats that more than 90 per cent of the 225 affected stores will be the large supermarkets or B&Q.

I will take on directly your point about other city centre stores that may be affected. My point is that

overall, more than 90 per cent of the stores that are affected are not those stores. You seem to be focusing your argument on one area.

I would like to consider how the levy impacts on cities. There seems to be a misunderstanding that cities only have a city centre. The city centres in Glasgow, Edinburgh and Aberdeen are valuable, but there are other town centres in Glasgow, for example, such as Springburn, Maryhill and Victoria Road. Small businesses in those areas are up against large supermarkets, whether it is the shops on Springburn Way against the St Rollox Tesco, or the Maryhill shops against the Maryhill Tesco. To say that the levy will impact only on the large prestige retailers oversimplifies the dynamics in cities. I suspect that those stores can afford the levy, and that they will endure.

Another aspect of the argument against the levy has been the impact on expansion; the issue of jobs has been raised, too. Do you have any statistics on what happens when a large retailer such as a Tesco, a B&Q or a Sainsbury's opens in a town? Do you have any stats on how many jobs are lost in other businesses that are put out of business because those large stores have opened?

Fiona Moriarty: We would be more than happy to share that information. A plethora of research has been done over the past five or six years on what happens when a new store of any size or type—food or non-food—opens in an area. It shows a picture in which some businesses could be struggling, but many businesses are opening on the back of the footfall that is generated by a new store. We need to move beyond just retail businesses; any new store of whatever size, and irrespective of whether it is food or non-food, has a plethora of services and industry supporting it in terms of construction and logistics. It is therefore a complicated mix and supply chain.

We keep focusing on the supermarkets—I take on board Mr Doris's point about oversimplifying the issue—but we need to be clear about the current economic climate within which retailers are operating. Focusing on supermarkets and their profits takes us away from the real situation in Scotland, namely that retail is having a pretty tough time. Retail has had a tough 12 months and we anticipate that the next 12 to 18 months will be some of the worst in recent times. More worrying to me, operating here in Scotland, is the fact that Scotland has traded considerably below the rest of the United Kingdom for most of the past 18 months. That is a worry and a concern.

We track consumer confidence through a range of different surveys and we find that it is considerably lower in Scotland than in other parts of the UK. Again, that is a big worry as we head through 2011, with possible future job cuts across

the public sector. Not all is rosy in the garden and retailers are experiencing some very challenging times in the high street.

Tom Ironside: Another important point is that retailers have finite investment budgets. They operate in a range of different territories, of which Scotland is one and England is another, as are Wales and Northern Ireland. The proposed changes to business rates affecting large properties would make the rates in Scotland the least competitive of anywhere in the UK. Clearly, that will be a factor when companies consider their investment programmes.

Colin Borland: I refer you to the FSB report, which we referenced in our written submission, on the effect of new supermarkets; I referred to that in my answer to Mr Tolson. The report points out that when a new supermarket opens, the impact on existing businesses in the area is significant, with a decline in business and an increase in vacant floor space. Allied to the information in the written answers that I quoted earlier, which shows a decline in the number of small and independent retailers in Scotland, that shows that the rise in shopping at out-of-town superstores has not been a complete success for small and independent retailers.

Bob Doris: That is all I wanted to quantify. With due respect to the witnesses, I moved away from the issue of supermarkets' operating profits and spoke about large retailers in general. The expansion of large retailers is not a cost-free option—when they expand and develop, small retailers can be pushed out of business and there may be an overall employment loss rather than an overall employment gain.

I note that the FSB has tried to produce statistics around that, and I am slightly disappointed that the Scottish Retail Consortium and the British Retail Consortium do not have any statistics on that. When you come to the committee and say that the regulations could put jobs at risk because you will be unable to expand and grow, I expect you to have evidence to quantify that. It would be useful to the committee if you had an evidence base in that regard. Clearly, there is an evidence base to show that when large retailers expand, there can be job losses.

Tom Ironside: We can put a bit more flesh on the bones in that regard, which you might find helpful. The retail sector has a different distribution of employment between large employers and small and medium-sized employers compared with other sectors. Typically, around two thirds of employment in other sectors derives from SMEs, but for retail it is the other way round. The top third of companies in the retail sector in terms of size provide employment for around two thirds of the total population employed within the sector. So,

large retailers really are the engine of employment growth.

Bob Doris: I look forward to the figures.

10:30

Mary Mulligan (Linlithgow) (Lab): When the measure was first announced, there was some confusion about whom it would impact on and what its aim was. The Scottish Retail Consortium's briefing refers to the lack of

"a detailed Business and Regulatory Impact Assessment".

What significance might such an assessment have added to the discussion that we are having today?

Fiona Moriarty: It would have put everything into context. As you know, it is Government policy, or best practice, for a full BRIA to be carried out for any new piece of legislation. Having such an assessment in this case would have moved us away from the soundbites and misinformation and would have allowed us to have a clear and thorough debate about the facts from day one. We have written to the regulatory review group to ask whether a BRIA can be undertaken. I stress that it is a major issue for us that a BRIA was not undertaken at the earliest opportunity. The fact that the regulations are time bound adds an extra dimension to the situation.

Colin Borland: The regulatory review group has received a request to look at the issue. The Federation of Small Businesses is a member of that group, so I do not want to say anything that will prejudice how the issue is approached.

Leaving aside the rights and wrongs of the issue, I think that it is fair to say that this is not a stellar example of regulation. However, it is by no means the most egregious example. It will apply to 200-odd businesses but, at the end of last year, legislation went through the Parliament to give councils the power to impose a social responsibility levy on 16,000-odd licensed premises across Scotland with no regulatory impact assessment or any idea about how that will work in practice. Therefore, before we consider this issue, we will be pushing very hard for that situation to be considered by the regulatory review group. However, that is a discussion for the chair and members of the RRG, and I do not want to say too much for fear of prejudicing the outcome of those discussions.

Mary Mulligan: Mr Ironside, do you want to add anything?

Tom Ironside: Only that a BRIA would play an important role in ensuring the transparency of the process and allowing everyone the opportunity to take a rounded view of whether the measures that

are being introduced are beneficial in the way that is being asserted.

Mary Mulligan: In view of the facts and figures that are being handed out at the moment, it would have been useful for us to get some idea of what the impact might be from a Government report, but we are where we are.

From this morning's evidence, it seems to me that Bob Doris might be right—I do not say that often—to say that the measure will not result in the closure of larger stores. Will it impact on the expansion of stores or the introduction of new stores?

Fiona Moriarty: The levy will definitely impact on expansion. The process of development, expansion and redevelopment of current stores is quite complex, but it is basically to do with the individual store's profitability and its short, medium and long-term viability. If the store's profitability is reduced in any way—and, of course, we are talking about a levy on stores not on businesses, and some stores will be paying hundreds of thousands of pounds, which comes out of their profit line—it leaves less money to invest in developing the store. That store could eventually fall down the pecking order of stores within the broader portfolio. If the investment opportunity is missed, it is harder to get back on track.

On new store development, we have all been on record in the past couple of weeks to say that it is becoming less attractive and more expensive to open new stores of a certain size—food or non-food; town centre, edge of town or out of town—in Scotland than anywhere else in the United Kingdom. Large businesses will, of course, consider where they will get the best returns on their future medium and long-term investment.

Mary Mulligan: How will we know whether any decision that is taken not to expand a store or open a new one is a result of the proposal rather than other factors in the company? How can we know whether the measure will have an impact or whether you are just concerned about paying extra rates?

Fiona Moriarty: That is a fair point. We are not saying that the proposal will be the death knell for any future development of any store across Scotland. People still see Scotland as a marketplace in which there is room for growth, investment and job creation. Many of my larger members have made it quite clear that they want to continue to invest in and support Scotland. A complex range of factors will dictate whether companies decide to, first, expand their current footprint and activities and, secondly, open new stores. I cannot sit here and tell you that a certain company is not going to open two or three new stores. However, I can tell you that there are

serious concerns, and that there will be some interesting discussions in estates departments and boardrooms over where the most appropriate place to locate new store development is, across the UK and beyond.

Colin Borland: The SRC is far better placed than I am to comment on the issue, but I would like to make a general point about threats to expansion. We are just beginning to emerge from the recession—there were some positive figures this morning—and we must be careful not to repeat the mistakes of the past and end up again with communities that are overreliant on a small number of large employers. We made that mistake with heavy industry and then again with information technology and financial services companies. Communities that rely on large employers and do not have a broad economic base are more vulnerable to international pressures and can find themselves tossed on the waves of global financial considerations. The endless expansion of certain businesses and certain sectors is not necessarily always a good thing.

Patricia Ferguson (Glasgow Maryhill) (Lab): A number of the submissions use the phrase “unintended consequences”, and you used that expression this morning, Ms Moriarty. Have you done any work on the issue? Do you have an idea what the unintended consequences might be? We have discussed some of the obvious consequences, but have your members highlighted ones that might not be so obvious?

Fiona Moriarty: Definitely. I have briefly mentioned a few already this morning. There could be an impact on investment in current store formats and future investments. Opportunities to create jobs could be lost, not only in the retail sector but in other sectors, too, because, for every large store that is opened in Scotland, anywhere between 200 and 300 construction jobs are created, as well as jobs in ancillary services, including small businesses.

The gap-site issue, which I mentioned earlier, is important as well. We need to think about the retail mix in town and city centres. We have an arbitrary threshold of £750,000—whether it stays there or is reduced is anyone’s guess. It will become less viable to open a store at that level, which means that retailers might move out. The developments that are in the pipeline in our major cities are those with a larger footprint, which will become harder to sell, so the return on investment will become much tighter. I would be interested to hear from some of those developers what they think about the viability of those investments now.

Tom Ironside: I will highlight two additional areas. The first is the impact on local partnerships. Retailers are key supporters of business

improvement districts, which are just starting to come through across the country. They make substantial voluntary contributions to those business improvement districts, following five-yearly ballots. Retailers have finite budgets for business rates. There could be a serious unintended consequence for the partnerships if retailers’ business rates bills rise and they feel that there is no other way in which they can address shortfalls in their property budgets.

The second issue relates to the perception of the way in which the proposal was introduced. As we have indicated, we do not think that there was adequate transparency or opportunity for input when the levy was proposed. You do not want that to become a more generalised perception, with people asking which sector will be affected and which levy will be raised next. There is a potential unintended consequence in that area.

Colin Borland: You are absolutely right to say that there have been many claims and counterclaims around the issue. It is in everyone’s interest that we get some facts on the table and look at exactly what will happen. If there are to be unfair consequences, we should look at those. If the regulations are too tightly or too broadly drafted, we should consider redrafting them. None of the problems should be insurmountable. I do not know whether it is worth looking at other jurisdictions in which similar levies have been imposed. I understand from colleagues in London that there is a levy to fund crossrail, but I do not know what effect that has had down there. We could start to look at similar schemes to see whether they have had the intended consequences and whether expansion in those jurisdictions has been put on hold.

Tom Ironside: The crossrail business rate supplement is a really interesting example. The supplement was introduced with widespread business support. However, it is planned that a ballot of affected businesses will have to be held before business rate supplements can be introduced outside London. That ensures that only proposals that demonstrate clearly and transparently that economic development and positive benefits from that will flow through can move forward. We see such transparency and consultation as being integral to the process.

Patricia Ferguson: We are talking about crossrail in London; unfortunately, there are no similar proposals in Glasgow. I presume that, as Ms Moriarty hinted, if there were to be such proposals and the levy were to fund an individual project that would benefit the retail sector, your view might be slightly different.

Tom Ironside: I suspect that we would look at such proposals differently from the one that has been introduced.

Patricia Ferguson: When reading the *Evening Times* last night, I noted the comments of the manager of the St Enoch centre that, when the development was being refurbished and it was seeking to attract businesses, it might have had more difficulty attracting businesses such as Hamleys, the large toy store, if the rate had been applied at that time. Has any work that you have done with your membership indicated that companies consider that their profitability and trade capacity may be in danger as a result of the measure? The point has been made that the big supermarkets can manage the cost across the range of their business, but that may not be true of one-off large retailers. Have any of your members indicated that the measure will be a particular problem for them?

Fiona Moriarty: It is still fairly early days in the process. We have not had a lot of time to look at the measure, as the announcement was made only in November. We are working through some of the options. When we have definite examples, we may be able to share them with you privately, through the clerks.

Susan Nicol and Scott Taylor from Glasgow City Marketing Bureau have been strong on the issue. They have the second most important retail destination in the UK. Everyone, including the local authority and all parts of the retail and wider business community, has worked extraordinarily hard over the past few years to turn Glasgow city centre around. A key part of that—if not the most important part—is the retail mix. Glasgow is successful because it has a fantastic mix of different types of quality retailers. What we need to worry about is anything that jeopardises a new type of retailer coming into Glasgow or any city across Scotland.

10:45

Alasdair Morgan (South of Scotland) (SNP): We have heard assertions, but the case has not been made—in fact, Mr Borland made the opposite case—that a levy on large retailers would not necessarily deliver the kind of mix that you have spoken about. The argument that you are putting forward is that new developments with a rateable value of over £750,000 might be jeopardised. Surely such developments do not add to the retail mix but skew it towards the larger stores.

Fiona Moriarty: Any town or city centre manager who is asked about non-food retailers will say that they need unique retailers in a mix of retailers. We all co-exist; we all need each other. Large retailers, including new types of large retailer that are not yet trading in Scotland, are needed, particularly in our cities, as are mid-tier and small retailers. If you were to ask the question

of many small retailers, they would say that the footfall drivers are the big retailers, particularly the new, big-format retailers. Those big retailers bring people into our towns and cities. People come to see the big stores—the new and exciting stores or other new development—and then stay, linger and use other services, whether that is leisure or other types of retail. The mix is all important.

Alasdair Morgan: Mr Borland, have we not got enough big shops in Glasgow?

Colin Borland: Having a mix is vital. The point is that it is not just retail that is important. We have to ensure a vibrant mix of service-led and hospitality businesses in our city centres. We have some niche, high-end retailers in our city centres, but most of our members are not in business slap bang in our city centres but are in our suburbs and towns.

Alasdair Morgan: I have a follow-up question on the point that Mr Tolson made at the end of his questioning, which you did not get a chance to answer. He implied that some of your members may be affected by the proposal. Do any of your members have properties with a rateable value of over £750,000?

Colin Borland: I do not have the full list of who is in that position. However, the information that I have been able to gather from publicly available sources, through the Scottish Assessors Association website, suggests that I do not have such members.

Alasdair Morgan: Given that I was criticised for not talking about food retailers, I turn to them now. The process for a supermarket opening a new store is often tortuous because of the number of objections that are lodged. I imagine that the costs that a supermarket faces for the lawyers, consultants and so forth that they employ are significant. The costs are higher than those that they will face in one or two years' time as a result of the levy. Will the levy put off any supermarket opening a new store where it thought that a reasonable proposition?

Fiona Moriarty: This is about the difference between the known and the unknown. If a retailer decides to open in a location, past experience makes it aware of the likely costs of the planning process and development stages. As I think we said in our submission, our members have already set their budgets for next year, including for business rates. The levy came out of the blue; it allows no time for forward planning. We know the costs and types of investment that are required to open a new store—whether it is food or non-food—but the levy is an additional cost that is unknown, unanticipated and unplanned for.

Alasdair Morgan: I was comparing it with costs that are also fairly unplanned. The point is often

made to me that the big retailers—the big supermarkets—throw money at getting planning permission for their stores. Money seems to be no object in getting such permission, and the retailers do not seem to be upset about meeting those unplanned costs.

Fiona Moriarty: Local councillors may say that throwing money at it is not the best explanation of what—

Alasdair Morgan: The councillors may say that.

Fiona Moriarty: Right. There is a robust planning framework, all elements of which can be costed thoroughly. All large retailers will be able to cost out the likely costs of opening a new store to within a few thousand pounds. The point with the proposed new tax is that it is an unknown quantity and cannot be planned or budgeted for. We need to remember that it is a tax on individual stores, not on groups or businesses, and that takes us back to the viability of the store. When an individual store puts in a planning application, all the associated costs can be factored into its short, medium and long-term profitability.

Alasdair Morgan: I want to come to the generality of the situation. The cabinet secretary has introduced the measure because he has a straitened budget to deal with. Regardless of whether the money goes to local authorities, should the cabinet secretary find the £30 million elsewhere and, if so, where? Should he just cut it from expenditure somewhere and, if so, where?

Fiona Moriarty: The first thing to say is that we fully appreciate that we are in a tough fiscal environment and that all levels of government need to make savings. That is a given; we are operating in the same straitened economic environment as the one in which the cabinet secretary is trying to balance his budget. I do not think that it is up to an individual sector to come up with solutions for how the cabinet secretary should balance his budget.

Alasdair Morgan: I thought that you might say that.

Colin Borland: If you make the playing field as level as possible and make it easier for small businesses to trade us out of this mess, which is what they are best at, the need to cut services will probably recede in the rear-view mirror.

John Wilson (Central Scotland) (SNP): Ms Moriarty, you referred to developments that some companies and developers might have in the pipeline that might be affected by the decision to increase the rates. The difficulty that I have is that it is all conjecture because we do not have any facts at the moment. As a committee member, I have to consider whether the SRC's evidence is strong enough to say that the increased rates will

have an impact on the business decisions of major retail companies that operate in Scotland. You have indicated that you might be able to provide the clerks privately with some details about the concerns of some of the SRC's member organisations. Could you be firmer in your responses today? We are being asked to consider and vote on the regulations next week.

Fiona Moriarty: I would love to be able to come here and say that the levy will stop X number of supermarkets or non-food retailers opening, but I cannot do that any more than I could if I had a range of my members here such as Marks and Spencer, Debenhams, Next, Boots and any of the supermarkets. They could not and would not say that for a raft of commercially confidential reasons. We need to be sensitive to the current economic climate. We are talking about people's jobs and the viability of current stores and we have to be aware of that. I am being honest in that I am saying to you that I cannot say that X number of stores are not going to open.

However, we need to go back to the basics. The levy will be a substantial economic burden on a small proportion of a single sector.

John Wilson: That was an interesting response. You talked about the viability of current stores. Are you telling us that certain stores that might be affected by the rates increase are currently looking at their viability and that the rates increase might push them over the edge and make them decide to close?

Fiona Moriarty: I am not saying that. I am talking about viability in terms of future growth, investment and development.

John Wilson: Just to clarify, you did mention the viability of current stores.

Fiona Moriarty: I am talking about the viability of current stores to grow, invest and improve their infrastructure.

John Wilson: Earlier, though, you said that the levy would affect individual stores not groups or businesses. How could we apply the same levy to groups or businesses to achieve the level in revenue that we are trying to achieve with this increase?

Fiona Moriarty: You cannot do that through the business rates system. It would require another form of taxation that I cannot think of and over which the Scottish Parliament has no power.

John Wilson: You are right. The Scottish Government and Parliament do not have those powers—unlike, of course, the UK Government, which recently raised national insurance contributions for all employers throughout the UK. I am simply trying to be clear in my mind whether the imposition of this rates increase will have a

major detrimental effect on business investment in Scotland and any employment opportunities that might come from that. As I have said, the evidence that has been provided today gives no indication that, as a result of this measure, businesses will make any major changes to their forward planning or business development in Scotland.

Fiona Moriarty: I am sorry, convener—perhaps I have not expressed myself clearly enough. I cannot say that company X will not invest in store 1, 2 and 3 and not open store A, B and C, but I make it clear for the record that there are serious concerns and worries about the signal that the proposal sends to those with stores over a certain size about the security of investment, the ability to grow and the cost base associated with continued growth in Scotland.

Colin Borland: With regard to concerns over whether the regulations are too narrow or too tight and whether they target the wrong people and so on, I should point out that we have a very complicated system of collecting business rates. Indeed, at the end of last year, we published a paper exploring the difficulties faced by many of our members in interacting with it. Forgive me if I am speaking out of turn, but would it be an idea to speak to someone in the Scottish Assessors Association, the expert body on such matters, which might be able to suggest how, through using the current business rates system—it is not perfect, but at least the work has been done—one might amend the proposal to deliver the result that the committee and, by extension, the Parliament want?

John Wilson: I am sure that we can put that question to the cabinet secretary next week. I thank the panel for their responses.

The Convener: I should point out, Mr Borland, that you are here to answer questions, not to pose them.

Colin Borland: I apologised in advance, convener.

The Convener: As members have no other questions and as the witnesses appear to have no further points to raise, I thank them for their attendance and, indeed, their evidence, which I am sure will prove very useful when we debate the regulations further next week.

10:58

Meeting suspended.

11:03

On resuming—

Property Factors (Scotland) Bill: Stage 2

The Convener: Item 2 is consideration of stage 2 amendments to the Property Factors (Scotland) Bill. I welcome Alex Neil, the Minister for Housing and Communities, and, from the Scottish Government, Simon Stockwell, the head of family and property law; Barry McCaffrey, legal adviser to the Scottish Government's European Union office; and Willie Ferrie, Scottish parliamentary counsel. The member in charge of the bill, Patricia Ferguson MSP, is supported by Mike Dailly, principal solicitor of Govan Law Centre. Malcolm Chisholm is here as a committee substitute.

Section 1—Register of property factors

The Convener: Amendment 36, in the name of Patricia Ferguson, is grouped with amendments 37, 38, 40 to 42, 114, 43 to 45, 50 to 54, 58, 106 and 111.

Patricia Ferguson: I will be brief. The first group consists of technical amendments that are designed to provide clarity and to correct typographical issues in part 1 of the bill. Amendment 54 updates section 5(2)(b) to provide a link with the new Equality Act 2010.

I move amendment 36.

The Minister for Housing and Communities (Alex Neil): The Government is content with amendments 36, 37, 38, 40, 41, 42, 114, 43, 44, 45, 50, 51, 52, 53, 54, 58, 106, 111—I am happy to repeat those numbers if members wish. All the amendments are from the member in charge of the bill and many of them pick up comments that the Government has made.

Amendment 42 is fine as far as it goes, but companies that gave evidence at stage 1 criticised section 3(2)(e) on the ground of commercial confidentiality. The committee also noted that the need for constant updates was too onerous. In the stage 1 debate, Patricia Ferguson said:

“the committee is right to suggest that the database should be updated ... on a yearly basis, rather than immediately a change occurs. I will seek to clarify that provision at stage 2. I propose that the information should remain confidential and should not be published.”—[*Official Report*, 8 December 2010; c 31294.]

It would be useful to know whether she plans to lodge further amendments on that at stage 3.

Patricia Ferguson: We are still considering that matter. I am happy to look at it again before stage 3 and to lodge further amendments if necessary. We have tried to clarify the position in several

amendments that are to be discussed today. I hope that that will become clearer as we deal with those amendments. Our amendment 42 covers the specifics of publishing the list.

Amendment 36 agreed to.

Section 1, as amended, agreed to.

Section 2—Meaning of “property factor”

Amendments 37 and 38 moved—[Patricia Ferguson]—and agreed to.

The Convener: Amendment 39, in the name of Patricia Ferguson, is grouped with amendments 1 to 5, 22, 27, 107, 109 and 110. If amendment 39 is agreed to, amendments 1 and 2 will be preempted.

Patricia Ferguson: Section 2(1) provides a definition of a property factor in three scenarios, which can be summarised as a traditional factor of flatted dwellings, a council or housing association factor and a land management company factor. At paragraph 62 of its stage 1 report, the committee recognised the need to tighten the drafting

“to ensure that there is no doubt as to whether a land-owning maintenance company is covered by the Bill’s provisions.”

In consultation with my legal team, I have considered the issue. With the support of Consumer Focus Scotland, we propose a much tighter definition that will add new paragraphs (c) and (d) to section 2(1). Amendment 39 deals with land-owning maintenance companies. The committee will note that we have anticipated the possibility of a land-owning maintenance company delegating its functions to a third party—proposed new paragraph (d) covers that.

The minister’s amendment 1 is helpful and we have incorporated its wording in amendment 39. Amendment 2 is unnecessary, given that we use the concept of owners of related properties, which implies two or more owners and which is defined by the Title Conditions (Scotland) Act 2003. Through amendment 110, I propose that the bill should adopt that definition in its interpretation section.

I support the minister’s amendments 4, 5, 22 and 27, which deal with persons or associations that are excluded from being property factors for the purposes of the bill. However, I remain to be convinced that amendment 3 is needed, as section 2(1)(b) deals with local authority or registered social landlord factors generally.

My amendments 107, 109 and 110 propose changes to section 28—the bill’s interpretation section—to define the concepts of “facilities”, “land” and “related properties”, which I believe is

necessary to capture land-owning maintenance companies as clearly and objectively as possible.

I move amendment 39.

Alex Neil: The amendments all relate to the definition of “property factor”; I will speak first about the Government’s amendments. There is a high level of consensus between the Government and Patricia Ferguson in what we are trying to achieve—the issue is how best to achieve it.

Amendment 1 relates to section 2(1)(c) and seeks to ensure that land maintenance companies are covered generally by the definition. The first part of the amendment deletes the reference to ownership, given that in some cases land may continue to be owned for a period of time by the developer rather than the land maintenance company. Amendment 1 also ensures that under section 2(1)(a), only those carrying out a business are caught by the definition at section 2(1)(c).

Amendment 2 provides that the definition at section 2(1)(c) applies only when the land is available for use by the owners of two or more properties. Section 2(1)(c) as currently drafted might cover individuals who grant someone a servitude or access rights and require a payment in exchange so that the land can be maintained. Amendment 2 puts beyond doubt that private arrangements of that nature are not covered.

Amendment 3 is linked to amendment 1, which restricts section 2(1)(c) to those who operate as a factor as part of a business. Amendment 1 could have the effect of taking local authorities and housing associations in land management cases out of the definition, but amendment 3 ensures that they are still covered.

Amendment 4 excludes various bodies and parties from the definition of “property factor”. The first exclusion at proposed new paragraph (a) is for the Queen’s and Lord Treasurer’s Remembrancer, and the second exclusion at proposed new paragraph (b) is for development management schemes. The third exclusion at proposed new paragraph (c) puts it beyond doubt that sub-contractors who are working on behalf of the property factor or land maintenance company will not themselves be caught by the definition of “property factor”.

Amendment 5 gives ministers an order-making power to amend the definition of “property factor” that is subject to affirmative resolution. As a result, amendment 27 excludes the power to amend the definition of “property factor” from powers to make statutory instruments under the bill that are subject to negative resolution procedures.

Amendment 22 relates to the power at section 26 for ministers to delegate functions. The amendment provides that ministers may not

delegate the order-making power to amend the definition of “property factor”.

Turning to Patricia Ferguson’s amendments, we have a major concern about amendment 39, which refers to “related properties”. Amendment 110, which was also lodged by Patricia Ferguson, would provide that “related properties” has the meaning that is given in section 66 of the Title Conditions (Scotland) Act 2003. However, the definition in the 2003 act is lengthy and complex, and serves a particular purpose in relation to manager burdens. It is not clear to what extent some aspects of the definition of “related properties” would be applicable to land as maintained by land maintenance companies.

That is an unnecessary complication, and there may be unintended consequences. We would not want an unduly narrow and technical interpretation of the concept of “property factor” under section 2(1) of the bill that relies on concepts that have been imported from the 2003 act, which has a different legal context. The amendments that I have lodged avoid such complications and seek to ensure that all property factoring arrangements are covered in section 2(1).

11:15

Patricia Ferguson also lodged amendments 107 and 109 in this group. Amendment 109 defines “land”, and amendment 107 defines “facilities”. We have concerns about those two proposed definitions as they rely on references to “related properties”, which, as I have already indicated, produces an uncertain result.

I appreciate why Patricia Ferguson considers that definitions might be helpful under the bill, and the Government is happy to meet her and her advisers to see whether any definition should be added at stage 3.

There might be further unintended consequences from amendment 39’s proposed insertion into section 2(1) of new paragraph (d), which refers to persons who are

“instructed to carry out management and maintenance”.

That might cast further doubt on whether subcontractors who are engaged by property factors are excluded from the definition. Our amendment 4 seeks to remove any doubt by creating an express exclusion.

I invite the committee to agree to Government amendments 1 to 5, 22 and 27, and to reject Ms Ferguson’s amendments 39, 107, 109 and 110.

Mary Mulligan: I thank the member in charge of the bill and the minister for their comments. As we are all aware, the committee was exercised at stage 1 about the definition of “property factor” and

the desire to include those who had both a land ownership role and a factoring role. The member in charge has gone some way, through amendment 39, to ensuring that we do that, which is helpful.

Having listened to the minister’s concerns, I am not convinced that the amendment would have the unintended consequences that he spoke about. However, I hope that there will be an opportunity for further discussion and that the matter can be addressed again at stage 3. The amendment relates to an important point, which the committee wished to ensure was covered in the bill, so I hope that we can get a definition that achieves that.

Malcolm Chisholm (Edinburgh North and Leith) (Lab): The minister will no doubt comment on this when he winds up, but if I understood what he said, his amendment 3 was lodged only in consequence of amendment 1. Does he accept that amendment 3 is not necessary if amendment 39 is agreed to? That is what Patricia Ferguson said.

Alex Neil: Amendment 3 is obviously linked to amendment 1. If amendment 1 falls, amendment 3 will be redundant.

Patricia Ferguson: In drafting amendment 39, we were careful to refer back to the concerns that the committee raised about clarity and the definition in respect of property managers, recognising that there is more than one model of property manager operating in Scotland—hence the specific nature of the amendment.

I will try to answer some of the minister’s concerns, which I appreciate are genuine. I also appreciate his offer of further meetings, the purpose of which would be to come to a consensual agreement on the matter. When it comes to third-party contractors, our specifying that responsibility arises only in respect of the burdens that are placed on owners in their title deeds suggests to me that contractors would be excluded. Furthermore, we mention that

“in the course of the person’s business”

they are obliged to manage or maintain land, and that helps to give clarity as to who is caught by that aspect of the provisions.

Indeed, the element to do with the burdens in the title deeds would also help to clarify whether a developer who was acting in lieu of owners at the beginning of a new development would be captured by the provisions. I press amendment 39.

The Convener: The question is, that amendment 39 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 McNeil, Duncan (Greenock and Inverclyde) (Lab)
 Mulligan, Mary (Linlithgow) (Lab)

Against

Doris, Bob (Glasgow) (SNP)
 Johnstone, Alex (North East Scotland) (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 39 disagreed to.

Amendment 1 moved—[Alex Neil]—and agreed to.

Amendment 2 moved—[Alex Neil].

The Convener: The question is, that amendment 2 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Doris, Bob (Glasgow) (SNP)
 Johnstone, Alex (North East Scotland) (Con)
 Morgan, Alasdair (South of Scotland) (SNP)
 Tolson, Jim (Dunfermline West) (LD)
 Wilson, John (Central Scotland) (SNP)

Against

Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 McNeil, Duncan (Greenock and Inverclyde) (Lab)
 Mulligan, Mary (Linlithgow) (Lab)

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

Amendment 2 agreed to.

Amendment 3 moved—[Alex Neil].

The Convener: The question is, that amendment 3 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Doris, Bob (Glasgow) (SNP)
 Johnstone, Alex (North East Scotland) (Con)
 Morgan, Alasdair (South of Scotland) (SNP)
 Tolson, Jim (Dunfermline West) (LD)
 Wilson, John (Central Scotland) (SNP)

Against

Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 McNeil, Duncan (Greenock and Inverclyde) (Lab)
 Mulligan, Mary (Linlithgow) (Lab)

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

Amendment 3 agreed to.

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

Section 2, as amended, agreed to.

Section 3—Application for registration

Amendments 40 to 42, 114, 43 and 44 moved—[Patricia Ferguson]—and agreed to.

Section 3, as amended, agreed to.

Section 4—Registration

Amendment 45 moved—[Patricia Ferguson]—and agreed to.

The Convener: Amendment 46, in the name of Patricia Ferguson, is grouped with amendments 48, 55, 60, 84 and 86.

Patricia Ferguson: This group of amendments deals with compliance with the property factor code of conduct. The bill requires property factors to demonstrate “reasonable compliance” with the code. The Scottish Government observed that given that the code would set out minimum standards the drafting gives rise to the danger that factors might be able to provide a service at a lower level than is envisaged in the code, which is not the intention. Accordingly, the amendments would remove the word “reasonable”, to ensure that there must be compliance with the code as a minimum standard.

I move amendment 46.

Malcolm Chisholm: I strongly support the amendments in the group. They are important, because the code of conduct is at the heart of the bill. Indeed, the legislation will come in two parts and we will need to scrutinise what is in the code of conduct in due course. Obviously, I had concerns that the word “reasonable” might be a way in which factors could get round the intention of the bill. It is better to remove it, because that makes it absolutely clear to everyone that the code of conduct must be adhered to. The amendments are important ones to what, in my mind, is the most important aspect of the bill.

The Convener: As no other members want to speak, I call the minister.

Alex Neil: Thank you, Presiding Officer—I mean convener. That was perhaps forecasting what will happen after the election.

The Convener: There is no chance of that. Anyway, move on quickly.

Alex Neil: The Government is content with amendments 46, 48, 55, 60, 84 and 86. Some of the amendments ensure that there must be full compliance with property factor enforcement orders, which is entirely appropriate. In addition, many of them relate to the code of conduct, which will be published under section 13 and which will set out minimum standards. To require only

reasonable compliance with standards that are set at the minimum level would not work. Simply requiring compliance, as Ms Ferguson's amendments will do, is preferable.

The approach taken to the section 13 code of conduct is different from the approach taken by the Government-led stakeholder group, which has developed a draft statement of quality standards for a voluntary accreditation scheme. The rationale for the voluntary scheme is to encourage best practice whereas, clearly, the minimum standards that are required for statutory registration cannot be set at too exacting a level. The differences in approach between the code of conduct and the accreditation scheme mean that the accreditation scheme standards cannot just be taken and used as the code of conduct. Thought and consultation will be needed on the code.

Amendment 46 agreed to.

The Convener: Amendment 47, in the name of Patricia Ferguson, is grouped with amendments 49, 56, 57, 61 and 62.

Patricia Ferguson: I will be brief again. The amendments in the group are technical in nature and will help to ensure consistency in the use of the terms "property factor code of conduct" and "property factor enforcement order".

I move amendment 47.

Alex Neil: The Government is content with the amendments in the group, which we believe will improve the clarity of the provisions to which they relate.

Amendment 47 agreed to.

Amendments 48 to 52 moved—[Patricia Ferguson]—and agreed to.

Section 4, as amended, agreed to.

Section 5—Section 4: considerations

Amendments 53 to 57 moved—[Patricia Ferguson]—and agreed to.

The Convener: Amendment 6, in the name of the minister, is grouped with amendments 21, 24 and 29.

Alex Neil: These amendments relate to the recovery from property factors of costs that are linked to the dispute resolution service under part 2 of the bill.

The intention is to ensure that the costs of the dispute resolution service are not met just by the taxpayer. Amendment 21 provides ministers with the power, subject to the affirmative resolution procedure, to make provision for the recovery of costs. Charges may be imposed to recover the costs of the panel, the president of the panel and

the committee that arise from their functions under part 2.

11:30

Amendment 21 also lays down that charges may be levied on factors only when the president of the panel refers an application to the committee and when a property factor enforcement order is made. Section 17(2) provides that the president may reject an application and not send it to the committee if there is good reason for rejecting it. That ensures that factors should not be landed with charges for malicious complaints. Ministers will be obliged to ensure that income from the charges

"does not exceed the relevant costs."

Amendment 6 relates to section 5, which lays down matters to which the Scottish ministers are to have regard when deciding whether a person is a fit and proper person to be registered as a property factor. Section 5 includes cases in which the factor is or has previously been a property factor. Amendment 6 provides that in such cases ministers shall have regard to any failure to pay charges that are levied on factors in respect of the dispute resolution service.

Amendment 24 is a consequential amendment to section 26, to ensure that ministers' power to make regulations on charges on property factors cannot be delegated. Amendment 29 is another consequential amendment. It amends section 27 to exclude that regulation-making power from the list of statutory instruments under the bill that are subject to negative resolution procedures.

I invite the committee to agree to amendments 6, 21, 24 and 29.

I move amendment 6.

Patricia Ferguson: I am supportive of this group of amendments, which will enable the Scottish ministers to make rules requiring property factors to pay for the cost of proceedings in certain cases, on what I hope will be a polluter-pays basis. That will be a matter for ministers and Parliament to determine, but I support the amendments.

Amendment 6 agreed to.

Amendment 58 moved—[Patricia Ferguson]—and agreed to.

Section 5, as amended, agreed to.

Sections 6 and 7 agreed to.

Section 8—Removal from register

The Convener: Amendment 59, in the name of Patricia Ferguson, is grouped with amendments 63 to 71.

Patricia Ferguson: This group contains some tidying-up amendments, as well as some more substantial amendments that address a particular issue that the committee highlighted at stage 1.

In paragraphs 81 to 83 of the committee's stage 1 report, concern was expressed that if a factor were deregistered there would need to be transitional arrangements to prevent a break in continuity of service. Our solution to that important concern is to amend section 8(7) with amendments 65 and 66.

Amendment 65 sets the date of removal from the register at 21 days after notice of impending removal is given to the property factor under section 8. The period of 21 days ties in with the 21-day period of appeal for which section 11(2) provides, so a factor will not be deregistered immediately.

Amendment 66 requires the public notice, as defined by section 14(3), that is to be given of the date of removal to include notice to local authorities, who could circulate information to advice networks and, perhaps, the media. That would provide customers of a factor that was to be deregistered with notice of that possibility and enable them to take steps to ensure that a replacement factor was appointed or, at least, that continuity of basic services was provided as an interim measure.

I move amendment 59.

Alex Neil: The Government is content with all the amendments in the group, which reflect a number of suggestions that we made to the member in charge of the bill.

Amendment 59 agreed to.

Amendments 60 to 66 moved—[Patricia Ferguson]—and agreed to.

Section 8, as amended, agreed to.

Section 9—Effect of refusal to enter in register or removal from register

Amendments 67 and 68 moved—[Patricia Ferguson]—and agreed to.

The Convener: Amendment 116, in the name of Patricia Ferguson, is grouped with amendment 117.

Patricia Ferguson: Following discussions with Consumer Focus Scotland after stage 1, I accepted that, on land-owning maintenance companies, there was a need to link the bill to the Title Conditions (Scotland) Act 2003 in relation to deregistration of companies such as property factors and, of course, in relation to the ability of home owners to take decisions in accordance with that act, whether on the appointment of a new

property factor or of no property factor, if that was their decision. The position is complex, in that the company will still own the land. I fully accept that that issue needs to be addressed, but for a number of reasons I do not believe that it can be addressed in the bill.

Civic Scotland would need to be consulted on what would, in effect, be a compulsory purchase provision, and the complexity of the issue means that there must be a particular focus on it. The relatively radical nature of the provision could also be well beyond the bill's competence, given what the standing orders say on bill amendments that go beyond a bill's general principles. However, amendments 116 and 117 would at least clarify the law as a consequence of deregistration under the bill, and would make the necessary consequential amendments to the 2003 act.

I move amendment 116.

Mary Mulligan: The issue of how to deal with property factors who are also landowners exercised the committee at stage 1. The member in charge of the bill is absolutely right to say that the issue is particularly complex, and it is disappointing that we will not be able to resolve the situation at this stage. Despite the extensive consultation that she clearly carried out for stage 1, that consultation did not particularly address the issue and was unable to furnish us with solutions.

Whatever happens after the elections in May, I hope that the next Government will return to the issue, as it was flagged up to the committee as an issue of concern. The member in charge of the bill was correct to say that we will not be able to address it. I welcome amendments 116 and 117, as far as they go in addressing the issue, although I think that we will return to it.

Alex Neil: There are two main technical problems with amendments 116 and 117. First of all, the bill empowers ministers to refuse to register or to deregister a land maintenance company. The burden of the title deeds to pay the company for maintenance would remain, which would provide an income stream that the deregistered company might seek to sell on to a registered company. The bill does not deal with that issue, I presume because the member in charge took the view that a deregistered land maintenance company should be entitled to sell its assets. If that is indeed the view, it follows that any new powers that would be available to residents to appoint a new manager might need to reflect the fact that burdens in title deeds might still exist. Residents could seek to vary or discharge those burdens by applying to the Lands Tribunal for Scotland under part 9 of the Title Conditions (Scotland) Act 2003.

Secondly, there is a clear defect in amendment 116, which seems to offer a choice between sections 28 and 64 of the 2003 act. We do not think that such a choice can be provided, given the different ways in which the sections work. Section 28 is about the power of a majority to appoint a manager of community burdens, subject to the title deeds or where nothing is laid down in them. On the other hand, the provision in section 64 allows for a two-thirds majority to dismiss and replace a manager of related properties in relation to a manager burden once a time period has elapsed, regardless of what is provided in the deeds. Amendment 116 would create further uncertainty in providing for the appointment of a new factor or no property factor in accordance with the title deeds. Again, it is unclear how that relates to the specific provisions on the appointment of new property managers in sections 28 or 64 of the 2003 act.

We are also uncertain about the exact impact of amendment 117. To extend the 2003 act to property factors in the way that the member proposes might well add to rather than reduce confusion, and would also bring into play concepts such as related properties, which could create uncertainty and complicate matters unnecessarily.

The Government has an alternative approach. We have recognised that further provision might be needed to deal with the consequences of deregistration, including its interaction with existing legislation such as the 2003 act. The Government's amendment 26, which we will discuss next week, seeks to empower ministers to make ancillary provision by affirmative resolution or order to give full effect to the bill. My officials and I are happy to meet Ms Ferguson and her advisers to go through the various scenarios and to discuss how the ancillary provisions powers that are proposed in amendment 26 might be used. If together we conclude that more powers are needed in the bill, I am happy to consider with the member the need for any amendments at stage 3.

In the meantime, I ask the member not to press amendments 116 and 117.

The Convener: Does the member wish to press or seek to withdraw amendment 116?

Patricia Ferguson: I am going to press amendment 116, convener, although I thought that I would get the chance to respond.

The Convener: I am sorry—you do.

Patricia Ferguson: I hope that what I have to say will be helpful.

I entirely agree with Mrs Mulligan that it is unfortunate that it has not been possible to introduce a provision that will solve once and for all the problem of covering the full situation of

those who depend on land management companies for maintenance of the common parts of an estate or other development. Nevertheless, those who find themselves in such a situation must have an opportunity to avail themselves of the provisions in the bill, so to that end we have tried to define who the persons in question might be—for example, factors also include land maintenance companies—and are giving people recourse to the panel.

That said, we need to consider what will happen if such a company is deregistered. I think that it is extremely unlikely that a land maintenance company will be deregistered, because too much rides on their ability to perform the tasks on behalf of owners on estates and developments. Although it is unlikely that they would allow themselves to get to that extreme, we have to work on the basis that no matter how unlikely a scenario is, it may occur. Amendments 116 and 117 attempt to give people some back-up and reassurance in that situation.

11:45

Amendment 116 makes it clear that where land management companies are deregistered, the home owner can still make decisions about the land under the 2003 act. However, the act mentions managers, and we are making it clear that that also means a factor or a property manager, in this case. The minister suggested that we are giving people an either/or scenario. What we are actually doing is referring to either of the situations in which people might find themselves. At the point at which it has to be adjudicated it will be clear to them, bearing in mind the burdens on their title deeds, which of the scenarios applies to them. We are not introducing confusion, as was suggested by the minister.

The Convener: The question is, that amendment 116 be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

For

Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
Mulligan, Mary (Linlithgow) (Lab)

Against

Doris, Bob (Glasgow) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Morgan, Alasdair (South of Scotland) (SNP)
Wilson, John (Central Scotland) (SNP)

Abstentions

Tolson, Jim (Dunfermline West) (LD)

The Convener: The result of the division is: For 3, Against 4, Abstentions 1.

Amendment 116 disagreed to.

Amendment 69 moved—[Patricia Ferguson]—and agreed to.

Section 9, as amended, agreed to.

Section 10—Section 9: interpretation etc

Amendments 70 and 71 moved—[Patricia Ferguson]—and agreed to.

The Convener: Amendment 72, in the name of Patricia Ferguson, is grouped with amendments 7 and 108. If amendment 72 is agreed to, amendment 7 will be pre-empted.

Patricia Ferguson: Given the importance of the definition of “homeowner” for the purposes of the whole bill, on reflection I believe that it would be better if the definition was moved to the interpretation section, which is section 28. Although the minister has lodged an amendment to the existing definition in section 10, I suggest that that is not necessary now, given the new and comprehensive definition that is proposed in my amendment 108.

Amendment 108 proposes a definition of “homeowner” that includes all possible property factoring scenarios in which the home owner is a residential occupier, and traditional property factoring arrangements, as well as those for land-owning land maintenance companies.

I move amendment 72.

Alex Neil: My amendment 7 and Patricia Ferguson’s amendments 72 and 108 are aimed at ensuring that all customers of property factors, including customers of land-owning land maintenance companies, can use the dispute resolution service in part 2 of the bill. However, the Government amendment is preferable, so I invite the committee to agree to amendment 7 and to reject amendments 72 and 108.

Amendment 7 is straightforward. Part 2 of the bill provides a dispute resolution service. Under section 16 of the bill, a home owner can apply to the home owner housing panel to resolve a dispute with a property factor. “Homeowner”, as currently defined in section 10(5) of the bill, refers only to an owner of land or buildings. As the customers of land-owning land maintenance companies do not generally own the land being managed or maintained, they could be excluded inadvertently from the dispute resolution service.

To resolve that, amendment 7 expands the definition of “homeowner” so that it will cover

“an owner of residential property adjoining or neighbouring land”

that the owner can use and is managed or maintained by a factor. That ensures that for all

types of property factors—as described in section 2(1) of the bill—their customers, as home owners, will be able to have recourse to the dispute resolution service.

Amendments 72 and 108 also deal with access by land maintenance company customers to the part 2 dispute resolution service. Patricia Ferguson and the Government are both trying to achieve the same effect. However, we do not consider that Patricia Ferguson’s amendments work technically.

In the definition that amendment 108 proposes, both paragraphs (a) and (b) of the proposed new definition of “homeowner” for section 28 of the bill would refer to “an owner of land”, which does not cover cases in which the owner is a land maintenance company. That takes us back to the problem that we are trying to resolve. I appreciate that paragraph (b) is meant to provide a clear alternative to paragraph (a), but we do not think that the drafting achieves that.

In addition, amendment 108 refers to “related properties”. That term would be defined by amendment 110, which was also lodged by Patricia Ferguson, by using the definition in the Title Conditions (Scotland) Act 2003. The definition in the 2003 act is complex and is used in a different legal context. To use it here would produce a highly uncertain result, so I invite the committee to agree to Government amendment 7 and to reject Patricia Ferguson’s amendments 72 and 108.

Patricia Ferguson: I have a feeling that these amendments are probably redundant, in view of the fact that the minister won the vote on an earlier amendment, so I will not press them and seek to withdraw amendment 72.

Amendment 72, by agreement, withdrawn.

Mary Mulligan: I am sorry, convener, but I just want to clarify that when Patricia Ferguson referred to “these amendments” being redundant, was she just referring to her own amendments?

Patricia Ferguson: Yes. I will clarify that. I am sorry for causing confusion; it will probably not be the last time. My amendments 72 and 108 are redundant because the committee voted against my amendment 39 earlier. For that reason, I will not press my amendments, but I think that the minister’s amendments are still relevant.

Mary Mulligan: That is helpful.

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

Section 10, as amended, agreed to.

Section 11—Appeal against refusal to register or removal from register

The Convener: Amendment 73, in the name of Patricia Ferguson, is grouped with amendments 74 to 79, 8, 80 and 23. I point out that amendment 8 will pre-empt amendment 80.

Patricia Ferguson: Section 11 covers the procedure for appeal against refusal to register or removal from the register. The amendments in my name in this group contain technical changes to improve the clarity and purpose of section 11. However, I think that the Scottish Government's position is that amendment 80 is not strictly necessary, given that a general power is available to the Court of Session to regulate civil procedure in the sheriff court. If that is the minister's view, I am happy to accept his position and to move all my amendments except amendment 80, and to support the minister's amendments 8 and 23, which would mean that section 11(12) would be removed from the bill.

I move amendment 73.

Alex Neil: I thank Patricia Ferguson for her statement on amendment 80. We are content with all the other amendments in the group and are happy to support them. I do not think that there is a need to go into further detail, quite frankly, if we are happy to agree that amendment 80 be dropped.

Amendment 73 agreed to.

Amendments 74 to 79 moved—[Patricia Ferguson]—and agreed to.

Amendment 8 moved—[Alex Neil]—and agreed to.

Section 11, as amended, agreed to.

Section 12—Offence of operating as a property factor without registration

The Convener: Amendment 81, in the name of Patricia Ferguson, is grouped with amendments 82 and 83.

Patricia Ferguson: This small group of amendments will make minor but important typographical changes to improve the precision of section 12 by using the word “when” instead of the word “after” in relation to appeals when an offence is or is not committed when a property factor operates as a property factor without being registered.

I move amendment 81.

Alex Neil: The Government is content with the amendments. They are based on suggestions that we have made and they will add clarity to the bill's purpose.

Amendment 81 agreed to.

Amendments 82 and 83 moved—[Patricia Ferguson]—and agreed to.

Section 12, as amended, agreed to.

Section 13—Code of conduct

Amendment 84 moved—[Patricia Ferguson]—and agreed to.

Section 13, as amended, agreed to.

Malcolm Chisholm: Convener, is it possible to make a point about section 13? Do we have a debate on the section?

The Convener: We have just agreed to section 13.

Malcolm Chisholm: Do we not have the chance to debate the section?

The Convener: You can put something on the record, if you wish.

Malcolm Chisholm: I have been prompted by a debate earlier this morning to raise the question. We might want to return to the point at stage 3, but it seems to me that the “minimum standards” that are referred to in the second line of section 13 could be open to two different interpretations. In his contribution to earlier amendments around the word “reasonable”, the minister suggested that minimum standards could not be the same as or similar to the draft code of accreditation that has already been consulted on. The implication of what the minister was saying is that the code of conduct would embody relatively weak standards that everyone should meet, and that best practice would be far beyond that. The alternative interpretation of “minimum” is that the standards should be strong and everyone should have to adhere to them, but some people can do even better than just meeting those standards.

Given that the code of conduct is the pivot of the bill, I am concerned that the minister is using the word “minimum” in different ways. Patricia Ferguson's intention is that the standards should be strong. I suppose I should have lodged a probing amendment on that, and I might do so at stage 3. If it is in order, I would welcome comments from the minister and Patricia Ferguson.

12:00

The Convener: I think that it is not in order to get additional comments. We are in unusual territory, however. Your comments are on the record. We will move on.

After section 13

The Convener: Amendment 115, in the name of Patricia Ferguson, is in a group on its own.

Patricia Ferguson: I am happy to help Mr Chisholm with his difficulties later—or at least the one that relates to the bill. [*Laughter.*]

Amendment 115 is on the registered property factor identifier. The system of registration under the bill is designed to protect the Scottish public and ensure minimum standards among registered property factors. Clearly, the public should be able to check and identify easily that a property factor is properly registered. Amendment 115 will require Scottish ministers to devise a form of identification that registered property factors should use in their communications with home owners or in general advertising of their factoring services. I am conscious that there is a similar provision on landlord registration in the Private Rented Housing (Scotland) Bill. It is appropriate to include this provision in this bill. Given the debate about whether to have a mark or a registration number, I thought it appropriate to refer to an “identifier”. I will leave it to ministers to ensure consistency at a later date.

I move amendment 115.

Alex Neil: We are sympathetic to the aim of the provision, but more work needs to be done before we can agree to it. We have some questions in that regard. What would the identifier be used for? Will it be part of the registration process? Is it to help customers to know that their factor is registered? Is it to allow factors to demonstrate that they are registered? Is it for all those objectives? We also need to ask whether statutory provision is needed at all. A registered factor will want to demonstrate to customers that it is registered. As part of the registration process, ministers are likely to give a registration number to each registered factor. Those points might suggest that nothing statutory is needed in terms of an identifier.

One point is clear: amendment 115 contains no sanctions if a factor does not use the identifier. If we impose a duty, a sanction must also be available to us if the duty is not complied with. The Government cannot, therefore, support amendment 115 as it is currently drafted. We could amend section 8(2)(b) of the bill to include a sanction such that a factor’s failure to comply with the duty to include the identifier, or inappropriate use of the identifier, could lead to deregistration. In devising sanctions on any failure to comply with a statutory duty, we need to take account of the fact that, under the bill, there are circumstances—albeit that they are limited—in which unregistered factors can operate. Section 12 envisages two such circumstances: first, when ministers are considering applications for registration during the transitional introductory period; and, secondly, when deregistration is being appealed.

As I said, a bit more work is required on amendment 115. I suggest that Patricia Ferguson seek leave to withdraw the amendment for now. I commit to the Government’s discussing further her ideas with her. I hope that we can agree on a stage 3 amendment that satisfies all the points that have been raised.

Patricia Ferguson: In view of the minister’s helpful comments, I seek leave to withdraw amendment 115.

Amendment 115, by agreement, withdrawn.

Section 14 agreed to.

The Convener: That concludes day 1 of our stage 2 consideration of the Property Factors (Scotland) Bill. I thank you all for your attendance.

Meeting closed at 12:03.

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